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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 UNITED STATES OF AMERICA,) CR 03-0095 WBS
15 Plaintiff,)
16 v.) **UNITED STATES' PROPOSED**
17) **JURY INSTRUCTIONS FOR**
18 AMR MOHSEN,) **SECOND PHASE OF TRIAL**
19 Defendant.)
20)

21 The United States submits the following jury instructions for Phase Two of the
22 trial in the above-captioned case. The government has included special proposed
23 instructions that are tailored to the charges in Phase Two of this trial.

24 The government requests that the Court give the following standard instructions
25 from the Ninth Circuit Manual of Model Criminal Jury Instructions, 2003 Edition (as
26 amended):
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2. INSTRUCTIONS IN THE COURSE OF TRIAL	
2.4	Stipulations of Fact. <i>[if applicable]</i>
3. INSTRUCTIONS AT THE END OF TRIAL	
3.1	Duties of Jury to Find Facts and Follow Law.
3.2	Charge Against Defendant Not Evidence—Presumption of Innocence—Burden of Proof.
3.3	Defendant’s Decision Not to Testify. <i>[if applicable]</i>
3.4	Defendant’s Decision to Testify. <i>[if applicable]</i>
3.5	Reasonable Doubt—Defined.
3.6	What Is Evidence.
3.7	What Is Not Evidence.
3.8	Direct and Circumstantial Evidence.
3.9	Credibility of Witnesses.
3.12	Separate Consideration of Multiple Counts.
4.8	Impeachment Evidence—Witness.
4.9	Testimony of Witness Under Grant of Immunity.
4.13	Government’s Use of Undercover Agents and Informants.
4.17	Opinion Evidence, Expert Witness. <i>[if applicable]</i>
4.18	Summaries Not Received in Evidence. <i>[if applicable]</i>
4.19	Charts and Summaries in Evidence. <i>[if applicable]</i>
5.3	Attempt.
4. INSTRUCTIONS CONCERNING JURY DELIBERATIONS	
7.1	Duty to Deliberate.
7.2	Consideration of Evidence.
7.3	Use of Notes.
7.4	Jury Consideration of Punishment.
7.5	Verdict Form.
7.6	Communication With Court.

1 The full text of the United States' proposed special instructions appears below.

2 Dated:

Respectfully submitted,

3 KEVIN V. RYAN
4 United States Attorney

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6 ROBIN L. HARRIS
7 KYLE F. WALDINGER
8 Assistant United States Attorneys

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10 **ATTEMPTED WITNESS TAMPERING**

11 The defendant Amr Mohsen is charged in Count Twenty-One of the indictment
12 with attempted witness tampering in violation of 18 U.S.C. § 1512(b)(1). In order for the
13 defendant to be found guilty of that charge, the government must prove each of the
14 following elements beyond a reasonable doubt:

15 First, the defendant knowingly attempted to use intimidation, threaten, or corruptly
16 persuade persons who were witnesses in an official proceeding and

17 Second, the defendant did so with the intent to influence, delay or prevent the
18 testimony of those witnesses in an official proceeding.

19 "Corruptly persuade" means to be motivated by an improper or inappropriate
20 purpose to convince person another to engage in a course of behavior, for example, to
21 interfere with trial testimony, and encompasses non-coercive attempts by a defendant to
22 tamper with prospective witnesses.

23 To act with "intent to influence delay or prevent" includes an act which intends to
24 cause any person to withhold testimony.

25 The government need not prove that the defendant actually influenced, delayed or
26 prevented any person from testifying; the question is whether the defendant attempted to
27 do so.

28 An "official proceeding" includes this trial, any other trial or hearing conducted

1 before this Court in this case, any trial or hearing before a federal magistrate judge in this
2 case, or any proceeding before a federal grand jury in this case. The government need not
3 prove that the testimony at issue be admissible in evidence in the official proceeding.

4
5 **SOLICITATION TO COMMIT ARSON**

6 The defendant Amr Mohsen is charged with solicitation to commit a crime of
7 violence in violation of 18 U.S.C. § 373. In order for the defendant to be found guilty of
8 that charge, the government must prove each of the following elements beyond a
9 reasonable doubt:

10 First, the defendant solicited, commanded, induced, or otherwise endeavored to
11 persuade another person to engage in felonious conduct, which felonious conduct
12 includes the use, attempted use, or threatened use of physical force against property or
13 against a person in violation of the laws of the United States;

14 Second, the defendant intended that another person engage in the felonious
15 conduct; and

16 Third, the solicitation, commanding, inducing or endeavoring occurred under
17 circumstances strongly corroborative of that intent.

18 The federal “felonious conduct” that the government alleges Mohsen solicited,
19 commanded, induced or otherwise endeavored to persuade another person to engage in
20 Count Twenty-Two is a violation of 18 U.S.C. § 844(h)(1). For purposes of Count
21 Twenty-Two, you are instructed as a matter of law that burning a witness’s car in order to
22 influence, delay and prevent the testimony of that witness in this case is a violent felony
23 that may be prosecuted in a court of the United States.

24 “Circumstances strongly corroborative of intent” can consist of discussions or
25 planning between the defendant and the person solicited regarding the crime to be
26 committed, offers of payment, or the providing of information regarding the description
27 or location of the proposed victim. These factors are not exclusive factors for
28 consideration, nor are these factors exclusive indicators of intent. The surrounding

1 circumstances in general must indicate that the defendant was serious when he solicited
2 the criminal conduct.

3 **SOLICITATION TO COMMIT MURDER**

4 The defendant Amr Mohsen is charged with solicitation to commit a crime of violence
5 in violation of 18 U.S.C. § 373. In order for the defendant to be found guilty of that
6 charge, the government must prove each of the following elements beyond a reasonable
7 doubt:

8 First, the defendant solicited, commanded, induced, or otherwise endeavored to
9 persuade another person to engage in felonious conduct, which felonious conduct
10 includes the use, attempted use, or threatened use of physical force against property or
11 against a person in violation of the laws of the United States;

12 Second, the defendant intended that another person engage in the felonious
13 conduct; and

14 Third, the solicitation, commanding, inducing or endeavoring occurred under
15 circumstances strongly corroborative of that intent.

16 The federal “felonious conduct” that the government alleges Mohsen solicited,
17 commanded, induced or otherwise endeavored to persuade another person to engage in
18 Count Twenty-Three is a violation of 18 U.S.C. § 1114. For purposes of Count Twent-
19 three, you are instructed as a matter of law that killing or attempting to kill a federal judge
20 on account of a federal judge’s performance of official duties is a violent felony in
21 violation of Title 18 U.S.C. § 1114.

22 “Circumstances strongly corroborative of intent” can consist of discussions or
23 planning between the defendant and the person solicited regarding the crime to be
24 committed, offers of payment, or the providing of information regarding the description
25 or location of the proposed victim. These factors are not exclusive factors for
26 consideration, nor are these factors exclusive indicators of intent. The surrounding
27 circumstances in general must indicate that the defendant was serious when he solicited
28 the criminal conduct.

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