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

14 UNITED STATES OF AMERICA,)
15 Plaintiff,)
16 v.)
17 AMR MOHSEN,)
18 Defendant.)
19

CR 03-0095 WBS

**UNITED STATES' REVISED JURY
INSTRUCTIONS FOR SECOND
PHASE OF TRIAL**

20 The United States submits the following revised jury instructions for Phase Two of
21 the trial in the above-captioned case. The government requests that the Court give the
22 standard instructions requested previously.

23 Dated: March 9, 2006

Respectfully submitted,

24 KEVIN V. RYAN
United States Attorney

25
26 /s/
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ROBIN L. HARRIS
KYLE F. WALDINGER
28 Assistant United States Attorneys

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Instruction No. _____

You have heard evidence in the second phase of this trial that the defendant Amr Mohsen engaged in efforts to vandalize cars belonging to Tom Huang and his wife in order to try to explain the theft of his engineering notebooks from his own vehicle in 1998. The proposed vandalism to the Huangs' cars is not charged in this case. However, you may consider the evidence of these efforts insofar as such evidence relates to the defendant's guilt of the crimes charged in Counts 21 through 23.

1 Instruction No. _____

2 The government has the burden of proving beyond a reasonable doubt that the
3 defendant was not entrapped. The government must prove either of the following:

- 4 1. the defendant was predisposed to commit the crime before being contacted
5 by a government agent, or
6 2. the defendant was not induced by the government agent to commit the
7 crime.

8 Where a person, independent of and before government contact, is predisposed
9 to commit the crime, it is not entrapment if a government agent merely provides an
10 opportunity to commit the crime.

11 In determining whether the defendant was predisposed to commit the crime
12 before being approached by the government agent you may consider the following:

- 13 1. the defendant's character and reputation;
14 2. whether the government initially suggested criminal activity;
15 3. whether the defendant engaged in the criminal activity for profit;
16 4. the nature of any government inducement; and
17 5. any other factors related to predisposition.

18 Inducement is government conduct that creates a substantial risk that an
19 otherwise law-abiding person will commit a crime. Mere suggestions or the offering of
20 an opportunity to commit a crime is not conduct amounting to inducement. *United States*
21 *v. Jones*, 231 F.3d 508, 517 (9th Cir. 2000). Moreover, even if there is government
22 inducement, if a defendant is predisposed to commit the crime, there is no government
23 entrapment.

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Instruction No. _____

In this case, Manuel Primas first became a government agent on May 19, 2004. Any conduct between Manuel Primas and the defendant that occurred before May 19, 2004 cannot be attributed to the government as an inducement to the defendant to commit a crime.

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Instruction No. _____

You have heard evidence that two witnesses, Manuel Primas and Michael Silva, have been convicted of a felony. You may consider this evidence, along with other pertinent evidence, in deciding whether or not to believe these witnesses and how much weight to give to the testimony of the witnesses.

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Instruction No. _____

You have heard testimony from Manuel Primas, Mohamed Ali Moussa, and Magda Metwally, witnesses who have received immunity. Their testimony was given in exchange for a promise by the government that their testimony will not be used in any case against them. Mr. Primas also received or may have received other benefits from the government in connection with this case.

For these reasons, in evaluating the testimony of Mr. Primas, Mr. Moussa, and Ms. Metwally, you should consider the extent to which or whether their testimony may have been influenced by any of these factors. In addition, you should examine the witnesses' testimony with greater caution than that of other witnesses.

1 Instruction No. _____
2 You have heard testimony from an informant and an undercover FBI agent who
3 were involved in the government' s investigation in this case. Law enforcement
4 officials are not precluded from engaging in stealth and deception, such as the use of
5 informants and undercover agents, in order to apprehend persons engaged in criminal
6 activities. Undercover agents and informants may properly make use of false names
7 and appearances and may properly assume the roles of members in criminal
8 organizations. The government may utilize a broad range of schemes and ploys to
9 ferret out criminal activity.

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Instruction No. _____

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

First, the defendant intended to commit witness tampering, that is, to use intimidation, to use threats, or to corruptly persuade other persons with intent to influence, delay, and prevent the testimony of those persons in an official proceeding; and

Second, the defendant did something which was a substantial step toward committing the crime of witness tampering, with all of you agreeing as to what constituted the substantial step.

It is a crime to commit witness tampering.

Mere preparation is not a substantial step toward the commission of the witness tampering.

An “official proceeding” includes this trial, any other trial or hearing conducted before a federal district court or magistrate judge in this case, or any proceeding before a federal grand jury in this case. The government need not prove that the testimony at issue be admissible in evidence in the official proceeding.

1 Instruction No. _____

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

6 First, the defendant solicited, commanded, induced, or otherwise tried to persuade
7 another person to commit the crime of arson, namely, the use of fire to burn a witness' car
8 in order to influence, delay or prevent the testimony of that witness in the case of *United*
9 *States v. Amr Mohsen*, CR 03-0095;

10 Second, the defendant intended that another person commit or cause to be
11 committed the crime of arson of the car of witness David Moore; and

12 Third, the defendant's actions occurred under circumstances that were strongly
13 corroborative of that intent.

14 "Circumstances strongly corroborative of intent" can consist of discussions or
15 planning between the defendant and the person solicited regarding the crime to be
16 committed, offers of payment, or the providing of information regarding the description
17 or location of the proposed victim. These factors are not exclusive factors for
18 consideration, nor are these factors exclusive indicators of intent. The surrounding
19 circumstances in general must indicate that the defendant was serious when he solicited
20 the criminal conduct.

1 Instruction No. _____

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

6 First, the defendant solicited, commanded, induced, or otherwise tried to persuade
7 another person to commit the crime of murder of a federal judge in order to prevent that
8 judge from performing his official duties in the case of *United States v. Amr Mohsen*, CR
9 03-0095;

10 Second, the defendant intended that another person commit or cause to be
11 committed the murder of United States District Court Judge William Alsup; and

12 Third, the defendant's actions occurred under circumstances strongly corroborative
13 of that intent.

14 "Circumstances strongly corroborative of intent" can consist of discussions or
15 planning between the defendant and the person solicited regarding the crime to be
16 committed, offers of payment, or the providing of information regarding the description
17 or location of the proposed victim. These factors are not exclusive factors for
18 consideration, nor are these factors exclusive indicators of intent. The surrounding
19 circumstances in general must indicate that the defendant was serious when he solicited
20 the criminal conduct.