

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
-vs-)
)
JOSEPH MALDONADO-PASSAGE,)
a/k/a Joseph Allen Maldonado,)
a/k/a Joseph Allen Schreibvogel,)
a/k/a “Joe Exotic,”)
)
Defendant.)

Case No. CR-18-227-SLP

PROPOSED JURY INSTRUCTIONS
OF THE UNITED STATES

The United States of America respectfully submits the following proposed jury instructions and requests leave of the Court to file additional proposed jury instructions as may be necessary to conform to the evidence at trial.

Respectfully submitted,
ROBERT J. TROESTER
First Assistant U.S. Attorney

s/Amanda Green
AMANDA GREEN, OBA #19876
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CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2019, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing to:

William Earley and Kyle Wackenheim, Counsel for Defendant.

s/Amanda Green
AMANDA GREEN
Assistant U.S. Attorney

INSTRUCTION NO. 1

PRELIMINARY INSTRUCTIONS BEFORE TRIAL

Members of the Jury:

At the end of the trial I will give you detailed guidance on the law and on how you will go about reaching your decision. But now I simply want to generally explain how the trial will proceed.

This criminal case has been brought by the United States government. I will sometimes refer to the government as the prosecution. The government is represented by Assistant United States Attorneys Amanda Green and Charles Brown. The defendant, Joseph Maldonado-Passage, is represented by his attorneys, William Earley and Kyle Wackenheim.

The Superseding Indictment charges the defendant with two counts of the use of facilities of interstate commerce in the commission of the murder-for-hire of a person named C.B. In brief, Count 1 alleges that in or about November 2017, defendant paid Individual 1 money in exchange for Individual 1's promise to commit the murder of C.B. It is further alleged that defendant caused Individual 1 to travel in interstate commerce and also that defendant used the mail and facilities of interstate commerce, all with the intent that the murder of C.B. be committed. Count 2 alleges that on or about December 8, 2017, defendant promised and agreed to pay an undercover FBI agent a sum of money to commit the murder of C.B., and that defendant used facilities of interstate commerce with the intent that the murder of C.B. be committed. The Superseding Indictment also charges defendant with five counts of violating the Endangered Species Act by shooting tigers; one count of

violating the Endangered Species Act by offering tiger cubs for sale; three counts of violating the Endangered Species Act by selling tiger cubs; and ten counts of creating false records concerning wildlife, namely tigers, lions, and a lemur. The Superseding Indictment is simply the description of the charges made by the government against the defendant; it is not evidence of guilt or anything else. The defendant pleaded not guilty and is presumed innocent. The defendant may not be found guilty by you unless all twelve of you unanimously find that the government has proved his guilt beyond a reasonable doubt.

The first step in the trial will be the opening statements. The government in its opening statement will tell you about the evidence which it intends to put before you. Just as the Superseding Indictment is not evidence, neither is the opening statement. Its purpose is only to help you understand what the evidence will be. It is a road map to show you what is ahead.

After the government's opening statement, the defendant's attorneys may make an opening statement.

Evidence will be presented from which you will have to determine the facts. The evidence will consist of the testimony of the witnesses, documents and other things received into the record as exhibits, and any facts about which the lawyers agree or to which they stipulate.

The government will offer its evidence. After the government's evidence, the defendant's lawyers may present evidence, but they are not required to do so. I remind you that the defendant is presumed innocent and it is the government that must prove

the defendant's guilt beyond a reasonable doubt. If the defendant submits evidence, the government may introduce rebuttal evidence.

At times during the trial, a lawyer may make an objection to a question asked by another lawyer, or to an answer by a witness. This simply means that the lawyer is requesting that I make a decision on a particular rule of law. Do not draw any conclusion from such objections or from my rulings on the objections. If I sustain an objection to a question, the witness may not answer it. Do not attempt to guess what answer might have been given if I had allowed the answer. If I overrule the objection, treat the answer as any other. If I tell you not to consider a particular statement, you may not refer to that statement in your later deliberations. Similarly, if I tell you to consider a particular piece of evidence for a specific purpose, you may consider it only for that purpose.

During the course of the trial I may have to interrupt the proceedings to confer with the attorneys about the rules of law that should apply. Sometimes we will talk briefly, at the bench. But some of these conferences may take more time, so I will excuse you from the courtroom. I will try to avoid such interruptions whenever possible, but please be patient even if the trial seems to be moving slowly because conferences often actually save time in the end.

You are to consider all the evidence received in this trial. It will be up to you to decide what evidence to believe and how much of any witness's testimony to accept or reject.

After you have heard all the evidence from all sides, the government and the defense will each be given time for their final arguments.

The final part of the trial occurs when I instruct you on the rules of law which you are to use in reaching your verdict.

During the course of the trial I may ask a question of a witness. If I do, that does not indicate I have any opinion about the facts in the case but am only trying to bring out facts that you may consider.

If you would like to take notes during the trial, you may. On the other hand, you are not required to take notes.

If you do decide to take notes, be careful not to get so involved in note taking that you become distracted, and remember that your notes will not necessarily reflect exactly what was said, so your notes should be used only as memory aids. Therefore, you should not give your notes precedence over your independent recollection of the evidence. You should also not be unduly influenced by the notes of other jurors. If you do take notes, leave them in the jury room at night and do not discuss the contents of your notes until you begin deliberations.

Ordinarily, the attorneys will develop all the relevant evidence that will be necessary for you to reach your verdict. However, in rare situations, a juror may believe a question is critical to reaching a decision on a necessary element of the case. In that exceptional circumstance, you may write out a question and provide it to the courtroom deputy while the witness is on the stand. I will then consider that question with the lawyers. If it is determined to be a proper and necessary question, I will ask it. If I do not

ask it, you should recognize that I have determined it is not a legally appropriate question and not worry about why it was not asked or what the answer would have been.

During the course of the trial, you should not talk with any witness, or defendant, or with any of the lawyers at all. In addition, during the course of the trial you should not talk about the trial with anyone else. Do not discuss the case with anyone or provide any information about the trial to anyone outside the courtroom until the verdict is received. Do not use the internet or any other form of electronic communication to provide any information. Simply put, do not communicate with anyone about the trial until your verdict is received. Also, you should not discuss this case among yourselves until I have instructed you on the law and you have gone to the jury room to make your decision at the end of the trial. It is important that you wait until all the evidence is received and you have heard my instructions on the controlling rules of law before you deliberate among yourselves. Let me add that during the course of the trial you will receive all the evidence you properly may consider to decide the case. Because of this, you should not attempt to gather any information or do any research on your own. Do not attempt to visit any places mentioned in the case, either actually or on the internet, and do not in any other way try to learn about the case outside the courtroom.

The court reporter is making stenographic notes of everything that is said. This is basically to assist any appeals. However, a typewritten copy of the testimony will not be available for your use during deliberations. On the other hand, any exhibits will be available to you during your deliberations.

Now that the trial has begun you must not hear or read about it in the media. The reason for this is that your decision in this case must be made solely on the evidence presented at the trial.

With that introduction, Mr. Brown may present the opening statement for the government.

Authority: Tenth Circuit Pattern Jury Instructions 1.01 (modified) and 1.02(B).

INSTRUCTION NO. 2

INTRODUCTION TO FINAL INSTRUCTIONS

Members of the Jury:

In any jury trial there are, in effect, two judges. I am one of the judges, you are the other. I am the judge of the law. You, as jurors, are the judges of the facts. I presided over the trial and decided what evidence was proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

In explaining the rules of law that you must follow, first, I will give you some general instructions which apply in every criminal case—for example, instructions about burden of proof and insights that may help you to judge the believability of witnesses. Then I will give you some specific rules of law that apply to this particular case and, finally, I will explain the procedures you should follow in your deliberations, and the possible verdicts you may return. These instructions will be given to you for use in the jury room, so you need not take notes.

Authority: Tenth Circuit Pattern Jury Instruction 1.03.

INSTRUCTION NO. 3

THE SUPERSEDING INDICTMENT

The Superseding Indictment by which the defendant is charged reads as follows:

Introduction

1. Defendant **JOSEPH MALDONADO-PASSAGE** was a resident of the Western District of Oklahoma. He owned and/or operated an exotic animal park in Wynnewood, Oklahoma.
2. C.B. was a resident of the state of Florida.
3. **MALDONADO-PASSAGE** and C.B. had an ongoing dispute regarding the proper care, exhibition, and breeding practices for big cats, such as tigers and lions. Until 2011, the dispute was carried on primarily through traditional and social media.
4. In or about January 2011, C.B. and her related business entities filed a civil lawsuit against **MALDONADO-PASSAGE** and his related business entities.
5. In or about February 2013, the civil litigation resulted in the court entering a money judgment in excess of \$1 million against **MALDONADO-PASSAGE**. Since that time, and continuing until the present, C.B. and her related business entities have been attempting to collect on the money judgment against **MALDONADO-PASSAGE** and his related business entities and their successor entities.
6. Beginning at least by January 2012, **MALDONADO-PASSAGE** posted content online, including on Facebook and YouTube websites, containing threats of violence against C.B.

Laws Pertaining to Wildlife

7. The Endangered Species Act (“ESA”) provided a legal framework for the protection of endangered and threatened wildlife found within the United States. The Secretary of the Interior determined which species were endangered or threatened under the ESA. The Secretary of the Interior delegated the authority to administer endangered and threatened species permit matters to the Director of the U.S. Fish and Wildlife Service. The Service’s Division of Management Authority administered the permit program for the import or export of listed species, the sale or offer for sale in interstate and foreign commerce for non-native listed species, and the “taking” of non-native listed wildlife within the United States.

8. All species and subspecies of tigers, *Panthera tigris*, were listed as endangered under the ESA. 50 C.F.R. § 17.11.

9. All species of lemurs, *Lemuridae*, were listed as endangered under the ESA. 50 C.F.R. § 17.11.

10. Effective January 22, 2016, one subspecies of lion, *Panthera leo leo*, was listed as endangered under the ESA. 50 C.F.R. § 17.11. Another subspecies of lion, *Panthera leo melanochaita*, was listed as threatened under the ESA. 50 C.F.R. § 17.11. The prohibitions applicable to endangered species were also applicable to *Panthera leo melanochaita*. 50 C.F.R. §§ 17.40(r), 17.31(a), and 17.21.

11. The ESA makes it illegal to “take” any endangered species of wildlife within the United States. 16 U.S.C. § 1538(a)(1)(B). “Take” is defined as “harass, harm, pursue,

hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19).

12. The ESA makes it illegal to “sell or offer for sale in interstate or foreign commerce” any endangered species of wildlife. 16 U.S.C. § 1538(a)(1)(F).

13. The ESA makes it illegal for “any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense” under the ESA. 16 U.S.C. § 1538(g).

14. A person could become authorized to conduct activities otherwise prohibited under the ESA, such as taking and sales in interstate commerce, only if that person either obtained a specific permit from the U.S. Fish and Wildlife Service or became registered under the Service’s Captive-Bred Wildlife (CBW) regulations. Issuance of an ESA permit and CBW registration require the applicant to demonstrate that his/her activities will enhance the propagation or survival of the species. *See* 50 C.F.R. § 17.21.

15. Effective May 5, 2016, the CBW regulations applied to all tigers, including inter-subspecific crossed or “generic” tigers.

16. The Lacey Act makes it illegal for “any person to make or submit any false record, account, or label for, or any false identification of, any fish, wildlife, or plant which has been, or is intended to be . . . transported in interstate or foreign commerce.” 16 U.S.C. § 3372(d)(2).

17. **MALDONADO-PASSAGE** did not obtain any ESA permits from the U.S. Fish and Wildlife Service and was not registered under the CBW regulations.

Count 1

(Use of Interstate Commerce Facilities in the Commission of Murder-for-Hire)

18. The Federal Grand Jury incorporates paragraphs 1-6 by reference.

19. At least by early November 2017, **MALDONADO-PASSAGE** inquired of Individual 1 whether Individual 1 would travel to Florida to murder C.B. in exchange for a sum of money. Individual 1 told **MALDONADO-PASSAGE** that he would travel to Florida to murder C.B. in exchange for a sum of money.

20. On or about November 6, 2017, **MALDONADO-PASSAGE** caused Individual 1 to travel from the Western District of Oklahoma to Dallas, Texas, to obtain a fake identification card for use in a proposed plot for Individual 1 to travel to Florida to murder C.B.

21. On or about November 25, 2017, **MALDONADO-PASSAGE** used the U.S. Postal Service to mail Individual 1's cell phone from the Western District of Oklahoma to Nevada to conceal Individual 1's involvement in a proposed plot to murder C.B. in Florida.

22. On or about November 25, 2017, in the Western District of Oklahoma, **MALDONADO-PASSAGE** gave Individual 1 approximately \$3,000 in cash in exchange for Individual 1's agreement to travel to Florida to murder C.B. **MALDONADO-PASSAGE** had obtained the cash the previous day from the sale of a big cat. **MALDONADO-PASSAGE** promised to pay Individual 1 thousands of dollars more after Individual 1 murdered C.B.

23. **MALDONADO-PASSAGE** agreed with Individual 1 that Individual 1 would travel from the Western District of Oklahoma to South Carolina, and then to Florida, to murder C.B.

24. On or about November 26, 2017, Individual 1 traveled from the Western District of Oklahoma to South Carolina.

25. No physical harm came to C.B. as a result of **MALDONADO-PASSAGE**'s proposed plot for her murder.

26. In or about November 2017, in the Western District of Oklahoma and elsewhere,

----- **JOSEPH MALDONADO-PASSAGE,**
a/k/a Joseph Allen Maldonado,
a/k/a Joseph Allen Schreibvogel,
a/k/a "Joe Exotic," -----

caused another person to travel in interstate commerce, used and caused another person to use the mail, and used and caused another person to use any facility of interstate commerce, with intent that the murder of C.B. be committed in violation of the laws of the state of Oklahoma and the state of Florida as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value.

All in violation of Title 18, United States Code, Section 1958(a), and Title 18, United States Code, Section 2.

Count 2
(Use of Interstate Commerce Facilities in the Commission of Murder-for-Hire)

27. The Federal Grand Jury incorporates paragraphs 1-6 by reference.

28. Beginning in approximately July 2016, and continuing through approximately March 2018, **MALDONADO-PASSAGE** repeatedly asked Individual 2 whether Individual 2 could find someone to murder C.B. in exchange for a sum of money.

29. On or about December 5, 2017, Individual 2 called from his cell phone and spoke with **MALDONADO-PASSAGE** on his cell phone. Individual 2 offered to introduce **MALDONADO-PASSAGE** to a person who would be willing to murder C.B. in exchange for a sum of money. **MALDONADO-PASSAGE** agreed to the meeting.

30. On or about December 8, 2017, Individual 2 introduced **MALDONADO-PASSAGE** to an undercover FBI agent, and together the three individuals discussed the details of **MALDONADO-PASSAGE**'s proposed plot to murder C.B.

31. On various dates from December 2017 to March 2018, **MALDONADO-PASSAGE** used his cell phone to speak with Individual 2 on his cell phone about using the undercover FBI agent to murder C.B.

32. No physical harm came to C.B. as a result of **MALDONADO-PASSAGE**'s proposed plot for her murder.

33. Beginning at least by December 5, 2017, and continuing through about March 2018, in the Western District of Oklahoma,

----- **JOSEPH MALDONADO-PASSAGE,**
a/k/a Joseph Allen Maldonado,
a/k/a Joseph Allen Schreibvogel,
a/k/a "Joe Exotic," -----

used and caused another person to use any facility of interstate commerce, with intent that the murder of C.B. be committed in violation of the laws of the state of Oklahoma and the

state of Florida as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value.

All in violation of Title 18, United States Code, Section 1958(a), and Title 18, United States Code, Section 2.

Counts 3-7
(Violation of the Endangered Species Act)

34. The Federal Grand Jury incorporates paragraphs 1 and 7-17 by reference.

35. In or around October 2017, **MALDONADO-PASSAGE** anticipated the arrival of certain big cats that were to be boarded for a fee at the exotic animal park. **MALDONADO-PASSAGE** needed empty cages to house the big cats.

36. In or around October 2017, in the Western District of Oklahoma,

----- **JOSEPH MALDONADO-PASSAGE,**
a/k/a Joseph Allen Maldonado,
a/k/a Joseph Allen Schreibvogel,
a/k/a “Joe Exotic,” -----

knowingly and unlawfully took the following endangered species of wildlife, by shooting and killing them:

Count	Endangered Species
3	Tiger (<i>Panthera tigris</i>) #1
4	Tiger (<i>Panthera tigris</i>) #2
5	Tiger (<i>Panthera tigris</i>) #3
6	Tiger (<i>Panthera tigris</i>) #4
7	Tiger (<i>Panthera tigris</i>) #5

All in violation of Title 16, United States Code, Section 1538(a)(1)(B), and Title 18, United States Code, Section 2.

Count 8
(Violation of the Endangered Species Act)

37. The Federal Grand Jury incorporates paragraphs 1 and 7-17 by reference.

38. On or about October 30, 2017, in the Western District of Oklahoma and elsewhere,

----- **JOSEPH MALDONADO-PASSAGE,**
a/k/a Joseph Allen Maldonado,
a/k/a Joseph Allen Schreibvogel,
a/k/a “Joe Exotic,” -----

knowingly and unlawfully offered for sale in interstate commerce endangered species of wildlife, namely two tiger cubs (*Panthera tigris*).

All in violation of Title 16, United States Code, Section 1538(a)(1)(F), and Title 18, United States Code, Section 2.

Counts 9-11
(Violation of the Endangered Species Act)

39. The Federal Grand Jury incorporates paragraphs 1 and 7-17 by reference.

40. On or about the following dates, in the Western District of Oklahoma and elsewhere,

----- **JOSEPH MALDONADO-PASSAGE,**
a/k/a Joseph Allen Maldonado,
a/k/a Joseph Allen Schreibvogel,
a/k/a “Joe Exotic,” -----

knowingly and unlawfully sold in interstate commerce from the Western District of Oklahoma to the following destinations, the following endangered species of wildlife:

Count	Date	Animal	Recipient/ Destination
9	11/16/16	Tiger, male, cub	Brown Zoo, Illinois

10	2/3/18	Tiger, female, 11 weeks old	T.S., Indiana
11	3/6/18	Tiger, female, 6 weeks old	Brown’s Oakridge Zoo, Illinois

All in violation of Title 16, United States Code, Section 1538(a)(1)(F), and Title 18, United States Code, Section 2.

Counts 12-20
(Violation of the Lacey Act: False Labeling of Wildlife)

41. The Federal Grand Jury incorporates paragraphs 1 and 7-17 by reference.

42. On or about the dates listed below, in the Western District of Oklahoma and elsewhere,

----- **JOSEPH MALDONADO-PASSAGE,**
a/k/a Joseph Allen Maldonado,
a/k/a Joseph Allen Schreibvogel,
a/k/a “Joe Exotic,” -----

knowingly made and submitted and caused to be made and submitted a false record, account, and label for, and a false identification of the following wildlife with a market value greater than \$350, that was transported and that was intended to be transported in interstate commerce. Specifically, **MALDONADO-PASSAGE** designated and caused to be designated on delivery forms and Certificates of Veterinary Inspection (CVI) that the wildlife was being donated to the recipient or transported for exhibition only, when he knew that, in fact, the wildlife was being sold in interstate commerce:

Count	Date	Animal	False Form	Recipient/ Destination
12	11/16/16	Tiger, male, cub	Delivery form	Brown Zoo, Illinois
13	12/15/16	Lion, female, 5 years old	Delivery form	Monterey Zoo, California
14	12/16/16	African lion, female, 5 years old	CVI	Monterey Zoo, California

15	6/11/17	Lion, white female, 6 weeks old	Delivery form	T.S., Indiana
16	2/3/18	Tiger, female, 11 weeks old	Delivery form	T.S., Indiana
17	3/6/18	Tiger, female, 6 weeks old	Delivery form	Brown's Oakridge Zoo, Illinois
18	6/12/18	African lion, male, 8 years old African lion, female, 8 years old	CVI	Animal Haven Zoo, Wisconsin
19	6/13/18	Lion, male, 5 years old Lion, female, 7 years old	Delivery form	Animal Haven Zoo, Wisconsin
20	6/18/18	Lion, male, 2 weeks old Lion, male, adult, "Moses"	Delivery form	Branson Wild World, Missouri

All in violation of Title 16, United States Code, Section 3372(d)(2), and Section 3373(d)(3)(A)(ii), and Title 18, United States Code, Section 2.

Count 21

(Violation of the Lacey Act: False Labeling of Wildlife)

43. The Federal Grand Jury incorporates paragraphs 1 and 7-16 by reference.

44. On or about September 29, 2017, in the Western District of Oklahoma and elsewhere,

----- **JOSEPH MALDONADO-PASSAGE,**
a/k/a Joseph Allen Maldonado,
a/k/a Joseph Allen Schreibvogel,
a/k/a "Joe Exotic," -----

knowingly made and submitted a false record, account, and label for, and a false identification of wildlife, namely a 10-week-old female lemur, with a market value greater than \$350, in that **MALDONADO-PASSAGE** created a delivery form showing that the lemur was donated from himself to Ringling Animal Care, in Ringling, Oklahoma, when he knew that, in fact, the lemur had been sold and transported in interstate commerce.

All in violation of Title 16, United States Code, Section 3372(d)(2), and Section 3373(d)(3)(A)(ii), and Title 18, United States Code, Section 2.

INSTRUCTION NO. 4

DUTY TO FOLLOW INSTRUCTIONS

You, as jurors, are the judges of the facts. But in determining what actually happened—that is, in reaching your decision as to the facts—it is your sworn duty to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences. However, you should not read into these instructions, or anything else I may have said or done, any suggestion as to what your verdict should be. That is entirely up to you.

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took.

Authority: Tenth Circuit Pattern Criminal Jury Instruction 1.04.

INSTRUCTION NO. 5

**PRESUMPTION OF INNOCENCE –
BURDEN OF PROOF-- REASONABLE DOUBT**

The government has the burden of proving the defendant guilty beyond a reasonable doubt. The law does not require a defendant to prove his innocence or produce any evidence at all. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must find the defendant not guilty.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A reasonable doubt is a doubt based on reason and common sense after careful and impartial consideration of all the evidence in the case. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crimes charged, you must find him guilty. If on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Authority: Tenth Circuit Pattern Criminal Jury Instruction 1.05.

INSTRUCTION NO. 6

EVIDENCE -- DEFINED

You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying under oath, the exhibits that I allowed into evidence, the stipulations that the lawyers agreed to, and the facts that I have judicially noticed.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. And my comments and questions are not evidence.

During the trial, I did not let you hear the answers to some of the questions that the lawyers asked. I also ruled that you could not see some of the exhibits that the lawyers wanted you to see. And sometimes I ordered you to disregard things that you saw or heard, or I struck things from the record. You must completely ignore all of these things. Do not even think about them. Do not speculate about what a witness might have said or what an exhibit might have shown. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way.

Authority: Tenth Circuit Pattern Criminal Jury Instruction 1.06.

INSTRUCTION NO. 7

EVIDENCE -- DIRECT AND CIRCUMSTANTIAL -- INFERENCES

There are, generally speaking, two types of evidence from which a jury may properly determine the facts of a case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, that is, the proof of a chain of facts which point to the existence or non-existence of certain other facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence. The law simply requires that you find the facts in accord with all the evidence in the case, both direct and circumstantial.

While you must consider only the evidence in this case, you are permitted to draw reasonable inferences from the testimony and exhibits, inferences you feel are justified in the light of common experience. An inference is a conclusion that reason and common sense may lead you to draw from facts which have been proved.

By permitting such reasonable inferences, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in this case.

Authority: Tenth Circuit Pattern Criminal Jury Instruction 1.07.

INSTRUCTION NO. 8

CREDIBILITY OF WITNESSES

I remind you that it is your job to decide whether the government has proved the guilt of the defendant beyond a reasonable doubt. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to the witness’s testimony. An important part of your job will be making judgments about the testimony of the witnesses [including the defendant] who testified in this case. You should think about the testimony of each witness you have heard and decide whether you believe all or any part of what each witness had to say, and how important that testimony was. In making that decision, I suggest that you ask yourself a few questions: Did the witness impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome in this case? Did the witness have any relationship with either the government or the defense? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he/she testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness’s testimony differ from the testimony of other witnesses? When weighing the conflicting testimony, you should consider whether the discrepancy has to do with a material fact or with an unimportant detail. And you should keep in mind that innocent mis-recollection -- like failure of recollection -- is not uncommon.

[The testimony of the defendant should be weighed and his credibility evaluated in the same way as that of any other witness.]

In reaching a conclusion on particular point, or ultimately in reaching a verdict in this case, do not make any decisions simply because there were more witnesses on one side than on the other.

Authority: Tenth Circuit Pattern Criminal Jury Instruction 1.08.

INSTRUCTION NO. 9

NON-TESTIFYING DEFENDANT

The defendant did not testify and I remind you that you cannot consider his decision not to testify as evidence of guilt. You must understand that the Constitution of the United States grants to a defendant the right to remain silent. That means the right not to testify. That is a constitutional right in this country, it is very carefully guarded, and you must not presume or infer guilt from the fact that a defendant does not take the witness stand and testify or call any witnesses.

Authority: Tenth Circuit Pattern Criminal Jury Instruction 1.08.1.

INSTRUCTION NO. 10

EVIDENCE OF GOOD CHARACTER

[The defendant has offered evidence of his reputation for good character.] [The defendant has offered evidence of someone's opinion as to his good character.] You should consider such evidence along with all the other evidence in the case.

Evidence of good character may be sufficient to raise a reasonable doubt whether the defendant is guilty, because you may think it improbable that a person of good character would commit such a crime. Evidence of a defendant's character, inconsistent with those traits of character ordinarily involved in the commission of the crime charged, may give rise to a reasonable doubt.

You should also consider any evidence offered to rebut the evidence offered by the defendant.

You should always bear in mind, however, that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Authority: Tenth Circuit Pattern Criminal Jury Instruction 1.09.

INSTRUCTION NO. 11

EVIDENCE OF REPUTATION FOR HONESTY

The defendant has offered evidence in the form of reputation for honesty and integrity. You should consider such evidence along with all the other evidence in the case.

Evidence in the form of reputation for honesty and integrity may be sufficient to raise a reasonable doubt whether the defendant is guilty, because you may think it improbable that a person of honesty and integrity would commit such a crime. Evidence in the form of reputation of a defendant's honesty and integrity may be inconsistent with those traits of character ordinarily involved in the commission of the crime charged, and may give rise to a reasonable doubt.

You should also consider any evidence offered to rebut the evidence offered by the defendant.

You will always bear in mind, however, that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Authority: Tenth Circuit Pattern Criminal Jury Instruction 1.09.1

INSTRUCTION NO. 12

IMPEACHMENT BY PRIOR INCONSISTENCIES

You have heard the testimony of [name of witness]. You have also heard that, before this trial, he made a statement that may be different from his testimony here in court.

This earlier statement was brought to your attention only to help you decide how believable his testimony in this trial was. You cannot use it as proof of anything else. You can only use it as one way of evaluating his testimony here in court.

Authority: Tenth Circuit Pattern Criminal Jury Instruction 1.10.

INSTRUCTION NO. 13

**IMPEACHMENT BY PRIOR CONVICTION
(Witness Other Than Defendant)**

The testimony of a witness may be discredited or impeached by showing that the witness previously has been convicted of a [felony, that is, of a crime punishable by imprisonment for a term of years] or of a [crime of dishonesty or false statement]. A prior conviction does not mean that a witness is not qualified to testify, but is merely one circumstance that you may consider in determining the credibility of the witness. You may decide how much weight to give any prior [felony conviction] [crime of dishonesty] that was used to impeach a witness.

Authority: Tenth Circuit Pattern Criminal Jury Instruction 1.12.

INSTRUCTION NO. 14

IMPEACHMENT BY EVIDENCE OF UNTRUTHFUL CHARACTER

You have heard the testimony of [name of witness], who was a witness in the [government's] [defense] case. You also heard testimony from others concerning [their opinion about his/her character for truth-telling] [his reputation, in the community where he lives, for telling the truth]. It is up to you to decide from what you heard here whether [name of witness] was telling the truth in this trial. In deciding this, you should bear in mind the testimony concerning his [reputation for] truthfulness.

Authority: Tenth Circuit Pattern Criminal Jury Instruction 1.13.

INSTRUCTION NO. 15

INFORMANT

An informant is someone who provides evidence against someone else for a personal reason or advantage. The testimony of an informant alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilt, even though not corroborated or supported by other evidence. You must examine and weigh an informant's testimony with greater care than the testimony of an ordinary witness. You must determine whether the informant's testimony has been affected by self-interest, by an agreement he has with the government, by his own interest in the outcome of the case, or by prejudice against the defendant.

Authority: Tenth Circuit Pattern Criminal Jury Instruction 1.14.

INSTRUCTION NO. 16

EXPERT WITNESS

During the trial, you heard the testimony of expert witnesses, who expressed their opinions concerning _____. In some cases, such as this one, scientific, technical, or other specialized knowledge may assist the jury in understanding the evidence or in determining a fact in issue. A witness who has knowledge, skill, experience, training or education, may testify and state an opinion concerning such matter.

You are not required to accept such an opinion. You should consider opinion testimony just as you consider other testimony in this trial. Give opinion testimony as much weight as you think it deserves, considering the education and experience of the witness, the soundness of the reasons given for the opinion, and other evidence in the trial.

Authority: Tenth Circuit Pattern Criminal Jury Instruction 1.17.

INSTRUCTION NO. 17

ON OR ABOUT A PARTICULAR DATE

You will note that the Superseding Indictment charges that crimes were committed “on or about” certain dates. The government need not establish with certainty the exact date of an alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that an offense was committed on a date reasonably near the date alleged.

Authority: Tenth Circuit Pattern Criminal Jury Instruction 1.18 (modified); Instruction No. 15, Given by The Honorable Stephen P. Friot in *United States v. Foust*, Case No. 18-CR-11-F (W.D. Okla. Feb. 4, 2019) (Doc. 81).

INSTRUCTION NO. 18

CAUTION- CONSIDER ONLY CRIME CHARGED

You are here to decide whether the government has proved beyond a reasonable doubt that the defendant is guilty of the crime charged. The defendant is not on trial for any act, conduct, or crime not charged in the Superseding Indictment.

It is not up to you to decide whether anyone who is not on trial in this case should be prosecuted for the crime charged. The fact that another person also may be guilty is no defense to a criminal charge.

The question of the possible guilt of others should not enter your thinking as you decide whether this defendant has been proved guilty of the crime charged.

Authority: Tenth Circuit Pattern Criminal Jury Instruction 1.19.

INSTRUCTION NO. 19

CAUTION—PUNISHMENT

If you find the defendant guilty, it will be my duty to decide what the punishment will be. You should not discuss or consider the possible punishment in any way while deciding your verdict.

Authority: Tenth Circuit Pattern Jury Instruction 1.20.

INSTRUCTION NO. 20

SIMILAR ACTS

You have heard evidence of other crimes, acts, or wrongs engaged in by the defendant. You may consider that evidence only as it bears on the defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, and for no other purpose. Of course, the fact that the defendant may have previously committed an act similar to the one charged in this case does not mean that the defendant necessarily committed the act charged in this case.

Authority: Tenth Circuit Pattern Criminal Jury Instruction 1.30.

INSTRUCTION NO. 21

TRANSCRIPT OF RECORDED CONVERSATION

During this trial, you have heard sound recordings of certain conversations. These conversations were legally recorded; they are a proper form of evidence and may be considered by you as you would any other evidence. You were also given transcripts of those recorded conversations.

Keep in mind that the transcripts are not evidence. They were given to you only as a guide to help you follow what was being said. The recordings themselves are the evidence. If you noticed any differences between what you heard on the recordings and what you read in the transcripts, you must rely on what you heard, not what you read. If you could not hear or understand certain parts of the recordings, you must ignore the transcript as far as those parts are concerned.

Authority: Tenth Circuit Pattern Criminal Jury Instruction 1.40.

INSTRUCTION NO. 22

LAW ENFORCEMENT WITNESS

You have heard the testimony of certain law enforcement officials. The fact that a witness may be employed by the federal government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

It is your decision, after reviewing all of the evidence, whether to accept the testimony of the law enforcement witnesses, and it is your province to give that testimony whatever weight, if any, you find it deserves.

Authority: Instruction No. 15, Given by The Honorable Stephen P. Friot in *United States v. Foust*, Case No. 18-CR-11-F (W.D. Okla. Feb. 4, 2019) (Doc. 81). Instruction No. 9, Given by The Honorable David Russell in *United States v. Christian*, Case No. 17-CR-68-R (W.D. Okla. Oct. 11, 2017) (Doc. 45). Instruction No. 12, Given by The Honorable Robin Cauthron in *United States v. Ehrens*, Case No. 15-CR-200-C (W.D. Okla. Dec. 4, 2015) (Doc. 84).

INSTRUCTION NO. 23

INVESTIGATIVE TECHNIQUES

You have heard testimony as to the manner in which the government conducted its investigation in this case, including certain investigative methods or techniques that were used and certain investigative methods or techniques that were not used. In attempting to prove its case, the government is under no obligation to use all of the investigative methods that are available to it or to use any particular method. The failure to utilize some particular technique or techniques does not tend to show that a defendant is not guilty of a crime with which he has been charged. The question is whether the evidence presented is sufficient to convince you beyond a reasonable doubt of the defendant's guilt.

Authority: Instruction No. 16, Given by The Honorable Stephen P. Friot in *United States v. Foust*, Case No. 18-CR-11-F (W.D. Okla. Feb. 4, 2019) (Doc. 81). *United States v. Johnson*, 479 Fed. App'x 811, 817–18 (10th Cir. 2012) (similar instruction); *United States v. Cota-Meza*, 367 F.3d 1218, 1223 (10th Cir. 2004) (similar instruction).

INSTRUCTION NO. 24

**USE OF FACILITIES OF INTERSTATE COMMERCE
IN THE COMMISSION OF MURDER-FOR-HIRE
18 U.S.C. § 1958**

The defendant is charged in Count 1 and Count 2 of the Superseding Indictment with Use of Interstate Facilities in the Commission of Murder-for-Hire in violation of 18 U.S.C. Section 1958. For you to find the defendant guilty of either of those charges, the government must prove each of the following elements beyond a reasonable doubt:

- First: that the defendant traveled in or caused another person to travel in interstate commerce;
or
that the defendant used or caused another person to use the mail or any facility of interstate commerce;
- Second: that the defendant did so with the intent that a murder be committed;
- Third: that the murder in question was intended to be committed as consideration for the receipt of anything of pecuniary value or as consideration for a promise or agreement to pay anything of pecuniary value.

“Anything of pecuniary value” means anything of value in the form of money, negotiable instrument, a commercial interest, or anything else the primary significance of which is economic advantage.

You are instructed that cellular telephones are “facilities of interstate commerce.”

Authority: Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases*, District of South Carolina § 1958 (2018 Online Edition) (modified).

18 U.S.C. § 1958(b)(2) (“facility of interstate commerce” includes means of transportation and communication”); *United States v. Mandel*, 647 F.3d 710, 716 (7th Cir. 2011) (cellular telephones are facilities of interstate commerce)cont. on next page

...(citing *United States v. Evans*, 476 F.3d 1176, 1180 (11th Cir. 2007) (telephones and cellular telephones are instrumentalities of interstate commerce); *United States v. Clayton*, 108 F.3d 1114, 1117 (9th Cir. 1997) (cellular telephones are instrumentalities of interstate commerce); *United States v. Richeson*, 338 F.3d 653, 660 (7th Cir. 2003) (use of telephone lines constitutes use of facility of interstate commerce for purposes of section 1958(a), even when telephone calls themselves are intrastate)). *See also Mandel*, 647 at 716, n.2 (“For present purposes, the terms ‘facility of interstate commerce,’ as used in section 1958, and ‘instrumentality of interstate commerce,’ as used in case law concerning the Commerce Clause, are essentially interchangeable.”) (internal citations omitted).

INSTRUCTION NO. 25

PROOF OF INTENT

Intent ordinarily may not be proved directly because there is no way of directly fathoming or scrutinizing the operations of the human mind. You may infer the intent of the defendant from the surrounding circumstances. Intent may be, and usually is, proved by circumstantial evidence if it is proved at all. You may consider any statements made and any acts done or omitted by the defendant, and all other facts and circumstances in evidence that indicate the defendant's state of mind.

You may consider it reasonable to draw an inference and thus find that a person intends the natural and probable consequences of acts knowingly done.

Authority: *United States v. Espinoza*, 244 F.3d 1234, 1241-42 (10th Cir. 2001); *see also* Instruction No. 20, Given by The Honorable Stephen P. Friot in *United States v. Foust*, Case No. 18-CR-11-F (W.D. Okla. Feb. 4, 2019) (Doc. 81); Instruction No. 14, Given by The Honorable Stephen P. Friot in *United States v. Smith*, No. CR-14-195-F (W.D. Okla. Oct. 30, 2014).

INSTRUCTION NO. 26

ILLEGAL TAKING UNDER ENDANGERED SPECIES ACT
16 U.S.C. § 1538(a)

The defendant is charged in Counts 3-7 of the Superseding Indictment with illegally taking endangered species of wildlife in violation of 16 U.S.C. Section 1538(a), the Endangered Species Act. In order for the defendant to be found guilty of any of those charges, the government must prove each of the following elements beyond a reasonable doubt:

First: The defendant did take an endangered species within the United States;

Second: The animal was, in fact, the endangered species alleged by the government;

Third: The defendant acted knowingly; and

Fourth: The defendant did not have a permit to take the animal.

“Take” is defined to include harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

You are instructed that tigers are endangered species.

The government must prove that the defendant acted with general intent to commit the act which is prohibited by the statute. The government does not have to prove that the defendant knew that he was violating a particular law.

Authority: See Eric Wm. Ruschky, *Pattern Jury Instructions for Federal Criminal Cases, District of South Carolina* 16 U.S.C. § 1538 (2018 Online Edition). *United States v. Ivey*, 949 F.2d 759, 766 (5th Cir. 1991) (knowledge of the law is not an element of § 1538).

INSTRUCTION NO. 27

ILLEGAL OFFER FOR SALE UNDER ENDANGERED SPECIES ACT
16 U.S.C. § 1538(a)

The defendant is charged in Count 8 of the Superseding Indictment with illegally offering for sale in interstate commerce endangered species of wildlife in violation of Title 16 U.S.C. Section 1538(a), the Endangered Species Act. 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 offered an endangered species for sale in interstate commerce;
- Second: the animal was, in fact, the endangered species alleged by the government;
- Third: the defendant acted knowingly; and
- Fourth: the defendant did not have a permit to offer the endangered species for sale.

You are instructed that tigers are endangered species.

The government must prove that the defendant acted with general intent to commit the act which is prohibited by the statute. The government does not have to prove that the defendant knew that he was violating a particular law.

Authority: *See* Eric Wm. Ruschky, Pattern Jury Instructions for Federal Criminal Cases, District of South Carolina 16 U.S.C. § 1538 (2018 Online Edition). *United States v. Ivey*, 949 F.2d 759, 766 (5th Cir. 1991) (knowledge of the law is not an element of § 1538).

INSTRUCTION NO. 28

ILLEGAL SALE UNDER ENDANGERED SPECIES ACT
16 U.S.C. § 1538(a)

The defendant is charged in Counts 9-11 of the Superseding Indictment with illegally selling in interstate commerce endangered species of wildlife in violation of Title 16 U.S.C. Section 1538(a), the Endangered Species Act. In order for the defendant to be found guilty of any of those charges, the government must prove each of the following elements beyond a reasonable doubt:

- First: the defendant sold an endangered species;
- Second: the animal was, in fact, the endangered species alleged by the government;
- Third: the defendant acted knowingly; and
- Fourth: the defendant did not have a permit to sell the endangered species.

You are instructed that tigers are endangered species.

The government must prove that the defendant acted with general intent to commit the act which is prohibited by the statute. The government does not have to prove that the defendant knew that he was violating a particular law.

Authority: *See* Eric Wm. Ruschky, Pattern Jury Instructions for Federal Criminal Cases, District of South Carolina 16 U.S.C. § 1538 (2018 Online Edition). *United States v. Ivey*, 949 F.2d 759, 766 (5th Cir. 1991) (knowledge of the law is not an element of § 1538).

INSTRUCTION NO. 29

FALSE RECORDS CONCERNING WILDLIFE

16 U.S.C. § 3372(d)(3)(A)(ii)

The defendant is charged in Counts 12-21 of the Superseding Indictment with making false records concerning wildlife, in violation of Title 16 U.S.C. Section 3372(d)(3)(A)(ii). In order for the defendant to be found guilty of any of those charges, the government must prove each of the following elements beyond a reasonable doubt:

- First: the defendant knowingly made or submitted any false record, account, or label for, of any false identification of, any wildlife;
- Second: the wildlife had been or was intended to be transported in interstate commerce; and
- Third: the defendant's making or submission of the false record, account, or label for, or false identification of, wildlife involved the sale of wildlife with a market value greater than \$350.

Authority: *See* Model Crim. Jury Instr. 9th Cir. 9.14 (2018). *See* Eric Wm. Ruschky, Pattern Jury Instructions for Federal Criminal Cases, District of South Carolina 16 U.S.C. § 3372 (2018 Online Edition).

INSTRUCTION NO. 30

DUTY TO DELIBERATE - VERDICT FORM

In a moment the bailiff will escort you to the jury room and provide each of you with a copy of the instructions that I have just read. Any exhibits admitted into evidence will also be placed in the jury room for your review.

When you go to the jury room, you should first select a foreperson, who will help to guide your deliberations and will speak for you here in the courtroom. The second thing you should do is review the instructions. Not only will your deliberations be more productive if you understand the legal principles upon which your verdict must be based, but for your verdict to be valid, you must follow the instructions throughout your deliberations. Remember, you are the judges of the facts, but you are bound by your oath to follow the law stated in the instructions.

To reach a verdict, whether it is guilty or not guilty, all of you must agree. Your verdict must be unanimous on each count of the Superseding Indictment. Your deliberations will be secret. You will never have to explain your verdict to anyone.

You must consult with one another and deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are judges -- judges of the facts. You must decide whether the government has proved the defendant guilty beyond a reasonable doubt.

A form of verdict has been prepared for your convenience.

The foreperson will write the unanimous answer of the jury in the space provided for each count of the Superseding Indictment, either guilty or not guilty. At the conclusion of your deliberations, the foreperson should date and sign the verdict.

If you need to communicate with me during your deliberations, the foreperson should write the message and give it to the bailiff. I will either reply in writing or bring you back into the court to respond to your message. Under no circumstances should you reveal to me the numerical division of the jury.

Authority: Tenth Circuit Pattern Criminal Jury Instructions 1.23.

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
-vs-)	No. CR-18-227 SLP
)	
JOSEPH MALDONADO-PASSAGE,)	
a/k/a Joseph Allen Maldonado,)	
a/k/a Joseph Allen Schreibvogel,)	
a/k/a "Joe Exotic,")	
)	
Defendant.)	
)	

VERDICT

We, the jury, being duly sworn and upon our oaths find the defendant, **Joseph Maldonado-Passage,**

Count 1:	Not Guilty _____	
	Guilty _____	
Count 2:	Not Guilty _____	
	Guilty _____	
Count 3:	Not Guilty _____	
	Guilty _____	

Count 4: Not Guilty _____

Guilty _____

Count 5: Not Guilty _____

Guilty _____

Count 6: Not Guilty _____

Guilty _____

Count 7: Not Guilty _____

Guilty _____

Count 8: Not Guilty _____

Guilty _____

Count 9: Not Guilty _____

Guilty _____

Count 10: Not Guilty _____

Guilty _____

Count 11: Not Guilty _____

Guilty _____

Count 12: Not Guilty _____

Guilty _____

Count 13: Not Guilty _____

Guilty _____

Count 14: Not Guilty _____

Guilty _____

Count 15: Not Guilty _____

Guilty _____

Count 16: Not Guilty _____

Guilty _____

Count 17: Not Guilty _____

Guilty _____

Count 18: Not Guilty _____

Guilty _____

Count 19: Not Guilty _____

Guilty _____

Count 20: Not Guilty _____

Guilty _____

Count 21: Not Guilty _____

Guilty _____

DATE

JURY FOREPERSON