PRELIMINARY INSTRUCTION NO.

MEMBERS OF THE JURY:

Thank you for your willingness to serve as jurors. I will now read some preliminary instructions about the process we will follow throughout the trial. At the end of the trial, I will provide more instructions about the law that governs the issues. During the trial you should focus your attention on the facts of this case, as shown by the evidence presented.

It will be your duty to find the facts from the evidence presented in court. I will give you detailed instructions at the conclusion of the evidence on the law, the required proof, and how you should proceed to reach a verdict. Nothing I may say or do during the course of the trial is intended to indicate that I have any opinion about the facts of this case nor should anything I say or do be taken as indicating what your verdict should be.

PRELIMINARY INSTRUCTION NO.

This is a criminal case brought by the United States government. I will sometimes refer to the government as the prosecution.

There are three basic rules about a criminal case that you must keep in mind.

First, the defendant is presumed innocent until proven guilty. The Indictment against the defendant brought by the prosecution is only an accusation, nothing more. It is not proof of anything. The defendant starts out with a clean slate.

Second, the burden of proof is on the prosecution. The defendant has no burden to prove the defendant’s innocence, or to present any evidence, or to testify. Since the defendant has the right to remain silent, the law prohibits you from arriving at your verdict by considering the fact that the defendant may not have testified.

Third, the prosecution must prove the defendant’s guilt beyond a reasonable doubt. I will give you further instructions on this point later but bear in mind that a criminal case is different than a civil case in this respect.

PRELIMINARY INSTRUCTION NO.

The charges against the defendant, [name of the defendant], are stated in a document called an Indictment. An Indictment is brought by the government against a defendant and merely states the charges against a defendant. Its purpose is to give notice of the charges against a defendant. It is only an accusation, nothing more. It is not proof of guilt nor should you infer the defendant’s guilt merely because the government brought the Indictment. Because the Indictment is not evidence of guilt, it may not be considered as such by you.

Also, the defendant, [name of the defendant], is not on trial for any act or conduct not specifically charged in the Indictment.

PRELIMINARY INSTRUCTION NO.

As I mentioned earlier, I will give you detailed instructions on the law at the end of the case, and those instructions will guide your deliberations and your eventual verdict. But in order to help you follow the evidence, I will now give you a brief summary of the elements of the offense[s] that the prosecution seeks to prove.

COUNT I

The defendant, [name of defendant], is charged with one count of [name of offense] in violation of 18 U.S.C. § [XXX]. [SUMMARY OF ELEMENTS]

PRELIMINARY INSTRUCTION NO.

The evidence from which you will find the facts will consist of the sworn testimony of witnesses; documents and other things received as exhibits, regardless of who may have produced them; and any facts the lawyers agree or stipulate to, or that I may instruct you to find.

Certain things are not evidence and must not be considered by you. I will list them for you now:

1. Statements, arguments, and questions by lawyers are not evidence.

2. Objections to questions are not evidence. Lawyers have an obligation to make an objection when they believe evidence being offered is improper under the rules of evidence. You should not be influenced by an objection or by my ruling on it. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other.

3. Testimony that I have excluded or told you to disregard is not evidence and you must not consider it.

4. If you are instructed that testimony or evidence is received for a limited purpose, it may only be considered for that purpose.

5. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded. You must decide the case solely on the evidence presented here in the courtroom.

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. I will give you further instructions on these as well as other matters at the end of the case, but keep in mind that you may consider both kinds of evidence.

PRELIMINARY INSTRUCTION NO.

You are the sole judges of the credibility of the witnesses and the weight of the testimony and evidence. In judging the weight of the testimony and the credibility of the witnesses you may take into consideration: their bias; their interest in the result of the case; their relationship to any of the parties; any probable motive or lack thereof to testify fairly; their demeanor on the witness stand; the reasonableness of their testimony; their frankness or candor, or the lack thereof; their opportunity to know; their ability to understand; their capacity to remember; and the extent to which their testimony has been either supported or contradicted by other credible evidence.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may simply see or hear it differently. Innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, you think it deserves. You may believe or disbelieve all or any part of any witness’s testimony.

PRELIMINARY INSTRUCTION NO. (IF APPLICABLE)

You may hear the testimony of an expert witness. An expert witness is a witness who, by education and experience, has expertise in some art, science, profession, or calling. This witness may state opinions as to matters in which the witness is an expert and may also state the reasons for the opinion.

But you are not bound by such an opinion. You should weigh expert opinion testimony just as you weigh any other testimony.

PRELIMINARY INSTRUCTION NO. (IF APPLICABLE)

The prosecution and the defendant have stipulated—that is they have agreed—to certain facts. Therefore, you must treat these facts as conclusively proven. I will now read the stipulated facts:

[INSERT STIPULATED FACTS]

PRELIMINARY INSTRUCTION NO.

At the end of trial, you must make your decision based on what you recall of the evidence and the exhibits received into evidence. You will not be provided with a transcript or record of the trial. You will have the exhibits that are received into evidence. I urge you to pay close attention to the testimony as it is given.

PRELIMINARY INSTRUCTION NO.

You will be permitted to take notes during the course of the trial. If you do, leave them in the jury room when you leave at night, and remember that they are for your own personal use.

Of course, you are not obligated to take notes. If you do not take notes you should not be unduly influenced by the notes of another juror.

Note-taking must not be allowed to interfere with the ongoing nature of the trial or distract you from what happens here in court. Any notes taken by any juror concerning this case should not be disclosed to anyone other than a fellow juror and at no other time than during deliberations, which will occur only at the end of the trial.

PRELIMINARY INSTRUCTION NO. 11

The court reporter is making stenographic notes of everything that is said. The purpose is to have an accurate record of the proceeding and to assist any appeals. But this record will not be available for your use during deliberations.

PRELIMINARY INSTRUCTION NO. 12

During the trial it may be necessary for me to discuss legal matters with the lawyers out of your hearing, either by having a conference here at the bench while you are present in the courtroom, or by calling a recess. The length of these conferences may vary. Please understand that while you are waiting, we are working. Also, please do not speculate as to what we are discussing or why we are having these discussions.

PRELIMINARY INSTRUCTION NO. 13

Now to your conduct as jurors. These instructions may seem odd, but they are critically important, because if you violate these rules the trial and your verdict may be invalid.

First, until this trial is over, you may not discuss the case or the evidence with anyone, even fellow jurors.

Second, if anyone should try to talk to you about the subject of this case, bring it to the attention of the courtroom deputy promptly.

Third, do not read or listen to anything touching on this case in any way. Do not watch or listen to any news reports concerning this trial on television or on the radio, and do not read any news accounts of this trial in a newspaper, on the internet, or on any instant communication device or service, including smartphones, tablets, email, texts, social media platforms such as Facebook, Twitter, or Instagram, and other devices and services.

Fourth, do not try to do any research or make any investigation about the case on your own. This means you must not consult any person or source, including internet resources, on subjects related to this case. This includes the internet, reference books or dictionaries, newspapers, magazines, television, radio, computers, smartphones, tablets or any social media or electronic device. This also includes visiting any of the places involved in this case, using Internet maps or Google Earth or any other source, talking to possible witnesses, or creating your own experiments or reenactments.

Fifth, when family, friends, colleagues, or anyone else asks what the case is about, remember you cannot speak with them about the case. All you can tell them is that you are on a jury, the estimated schedule for the trial, and that you cannot talk about the case until it is over. This includes every form of communication you can imagine, including not just speaking, but emails, text messages, tweets, blogs, chat room discussions, comments or other postings, Facebook, Twitter, Instagram, LinkedIn, or any other social media of any kind.

Sixth, to avoid even the appearance of improper conduct, do not talk to any of the parties, the lawyers, or witnesses about anything until the case is over, even if your conversation with them has nothing to do with the case. The lawyers and parties have been given the same instruction about not speaking with you, so do not think they are being unfriendly to you if they ignore you.

After the trial is over and I have released you from the jury, you may then discuss the case with anyone. But you are not required to do so. I will give you more instructions about this when you have returned your verdict.

PRELIMINARY INSTRUCTION NO. 14

You must keep an open mind throughout the trial. Evidence can only be presented one piece at a time. Do not form or express an opinion about this case while the trial is going on. You must not decide on a verdict until after you have heard all of the evidence and have discussed it thoroughly with your fellow jurors in your deliberations.

PRELIMINARY INSTRUCTION NO. 15

The trial will generally proceed as follows:

1. Opening Statements. First, the government will make an opening statement, outlining what the case is about and what it thinks the evidence will be. Next, the defendant may, but does not have to, make an opening statement. Just as the Indictment is not evidence, opening statements are neither evidence nor arguments. Their purpose is only to help you understand what the evidence will be. It is a road map to show you what is ahead.

2. Presentation of Evidence. The government will then present its witnesses and other evidence. The defendant may cross-examine the government’s witnesses. Following the government’s case, the defendant may, if he wishes, present witnesses, whom the government may cross-examine. He may also introduce other evidence. If the defendant submits other evidence, the government may introduce rebuttal evidence.

3. Instructions on the Law. After all the evidence is in, I will instruct you on the law that you must apply.

4. Closing Arguments. Next, the lawyers will summarize and argue the case. They will share with you their views of the evidence, how it relates to the law, and how they think you should decide the case.

5. Jury Deliberations. The final step is for you to go to the jury room and discuss the case among yourselves until you reach a verdict.

The trial will begin Monday, \_\_\_\_\_\_, at 9 a.m. Please be here by 8:45 a.m. so that we may begin on time.

Thank you for your attention as I have provided these instructions. And again, thank you for your willingness to participate in this vital civic service.