

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

v.

[1] JULIA BEATRICE KELEHER,  
[2] ARIEL GUTIERREZ-RODRIGUEZ,  
Defendants.

CRIMINAL NO. 20-19 (FAB)

**PROPOSED JURY INSTRUCTIONS**

The United States of America, through its undersigned counsel, respectfully requests that the following jury instructions, where not inconsistent with the evidence presented at trial, be given to the jury.<sup>1</sup>

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 6th day of March, 2020.

W. STEPHEN MULDROW  
UNITED STATES ATTORNEY

*/s/ Jose Capo Iriarte*  
Jose Capo Iriarte  
Senior Litigation Counsel

*/s/ Alexander L. Alum*  
Alexander L. Alum – G01915  
Assistant United States Attorney

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<sup>1</sup> Unless otherwise noted, the proposed jury instructions are taken from the 2019 Revisions to Pattern Criminal Jury Instructions for the First Circuit, District of Maine Edition (updated June 24, 2019 by Chief Judge Nancy Torresen), available at <http://www.med.uscourts.gov/pdf/crpjilinks.pdf>.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this date, I electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

*/s/ Alexander L. Alum*

Alexander L. Alum-G01915  
Assistant United States Attorney

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CRIMINAL NO. 20-19 (FAB)

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**PROPOSED JURY INSTRUCTIONS**

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**JURY INSTRUCTION NO. 1**

**DUTIES OF THE JURY TO FIND FACTS AND FOLLOW LAW<sup>2</sup>**

It is your duty to find the facts from all the evidence admitted in this case. To those facts you must apply the law as I give it to you. The determination of the law is my duty as the presiding judge in this court. It is your duty to apply the law exactly as I give it to you, whether you agree with it or not. You must not be influenced by any personal likes or dislikes, prejudices or sympathy. That means that you must decide the case solely on the evidence before you and according to the law. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions, or into anything I may have said or done, any suggestions by me as to what verdict you should return—that is a matter entirely for you to decide.

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<sup>2</sup> Pattern Criminal Jury Instructions for the District Courts of the First Circuit, Instruction 1.01, (Updated 10/05/12), District of Maine Internet Site Edition, <http://www.med.uscourts.gov/pdf/crpfjlinks.pdf>.

## **JURY INSTRUCTION NO. 2**

### **PRESUMPTION OF INNOCENCE; PROOF BEYOND A REASONABLE DOUBT<sup>3</sup>**

It is a cardinal principle of our system of justice that every person accused of a crime is presumed to be innocent unless and until his guilt is established beyond a reasonable doubt. The presumption is not a mere formality. It is a matter of the most important substance.

The presumption of innocence alone may be sufficient to raise a reasonable doubt and to require the acquittal of a defendant. The defendant before you has the benefit of that presumption throughout the trial, and you are not to convict him of a particular charge unless you are persuaded of his guilt of that charge beyond a reasonable doubt.

The presumption of innocence until proven guilty means that the burden of proof is always on the government to satisfy you that a defendant is guilty of the crime with which he is charged beyond a reasonable doubt. It is a heavy burden, but the law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to the defendant. It is always the government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt by the evidence and the reasonable inferences to be drawn from that evidence. The defendant has the right to rely upon the failure or inability of the government to establish beyond a reasonable doubt any essential element of a crime charged against him.

If, after fair and impartial consideration of all the evidence, you have a reasonable doubt as to the defendant's guilt of a particular crime, it is your duty to find him not guilty of that crime. On the other hand, if, after fair and impartial consideration of all the evidence, you are satisfied beyond a reasonable doubt of the defendant's guilt of a particular crime, you should find him guilty of that crime.

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<sup>3</sup> Pattern Criminal Jury Instructions for the District Courts of the First Circuit, Instruction 3.02, (Updated: 04/08/16), District of Maine Internet Site Edition, <http://www.med.uscourts.gov/pdf/crpjilinks.pdf>.

**JURY INSTRUCTION NO. 3**  
**WHAT IS EVIDENCE; INFERENCES<sup>4</sup>**

The evidence from which you are to decide what the facts are consists of sworn testimony of witnesses, both on direct and on cross-examination, regardless of who called the witness; the exhibits that have been received into evidence; and any facts to which the lawyers have agreed or stipulated. A stipulation means simply that the government and defendant accept the truth of a particular proposition or fact. Since there is no disagreement, there is no need for evidence apart from the stipulation. You must accept the stipulation as fact to be given whatever weight you choose.

Although you may consider only the evidence presented in the case, you are not limited in considering that evidence to the bald statements made by the witnesses or contained in the documents. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw from facts that you find to have been proven such reasonable inferences as you believe are justified in the light of common sense and personal experience.

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<sup>4</sup> Pattern Criminal Jury Instructions for the District Courts of the First Circuit, Instruction 3.04, (Updated: 08/10/07), District of Maine Internet Site Edition, <http://www.med.uscourts.gov/pdf/crjlinks.pdf>.

**JURY INSTRUCTION NO. 4**

**KINDS OF EVIDENCE: DIRECT AND CIRCUMSTANTIAL<sup>5</sup>**

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness that the witness saw something. Circumstantial evidence is indirect evidence, that is proof of a fact or facts from which you could draw the inference, by reason and common sense, that another fact exists, even though it has not been proven directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

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<sup>5</sup> Pattern Criminal Jury Instructions for the District Courts of the First Circuit, Instruction 3.05, (Updated: 06/14/02), District of Maine Internet Site Edition, <http://www.med.uscourts.gov/pdf/crpfjlinks.pdf>.

## **JURY INSTRUCTION NO. 5**

### **WHAT IS NOT EVIDENCE<sup>6</sup>**

Certain things are not evidence. I will list them for you:

1. Arguments and statements made by lawyers are not evidence. The lawyers are not witnesses. What they say in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them from the evidence differ from the way the lawyers have stated them, your memory of them controls.
2. Questions and objections by lawyers are not evidence. Lawyers have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by my ruling on it.
3. Anything that I have excluded from evidence or ordered stricken and instructed you to disregard is not evidence. You must not consider such items.
4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at trial.
5. The Indictment is not evidence. This case, like most criminal cases, began with an Indictment. You will have that Indictment before you in the course of your deliberations in the jury room. The Indictment was returned by a grand jury, which heard only the government's side of the case. The government need not present the entire case to the grand jury. I caution you, as I have before, that the fact that the defendant has had an Indictment filed against him is no evidence whatsoever of his guilt. The Indictment is simply an accusation. It is the means by which the allegations and charges of the government are brought before this court. The indictment proves nothing.

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<sup>6</sup> Pattern Criminal Jury Instructions for the District Courts of the First Circuit, Instruction 3.08, (Updated: 07/27/07), District of Maine Internet Site Edition, <http://www.med.uscourts.gov/pdf/crpfjlinks.pdf>.



**JURY INSTRUCTION NO. 6**

**NUMBER OF WITNESSES; CREDIBILITY OF WITNESSES<sup>7</sup>**

Whether the government has sustained its burden of proof does not depend upon the number of witnesses it has called or upon the number of exhibits it has offered, but instead upon the nature and quality of the evidence presented. You do not have to accept the testimony of any witness if you find the witness not credible. You must decide which witnesses to believe and which facts are true. To do this, you must look at all the evidence, drawing upon your common sense and personal experience.

You may want to take into consideration such factors as the witnesses' conduct and demeanor while testifying; their apparent fairness or any bias they may have displayed; any interest you may discern that they may have in the outcome of the case; any prejudice they may have shown; their opportunities for seeing and knowing the things about which they have testified; the reasonableness or unreasonableness of the events that they have related to you in their testimony; and any other facts or circumstances disclosed by the evidence that tend to corroborate or contradict their versions of the events.

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<sup>7</sup> Pattern Criminal Jury Instructions for the District Courts of the First Circuit, Instruction 3.06, (Updated: 06/14/02), District of Maine Internet Site Edition, <http://www.med.uscourts.gov/pdf/crpjilinks.pdf>

**JURY INSTRUCTION NO. 7**

**CAUTIONARY AND LIMITING INSTRUCTIONS AS TO PARTICULAR KINDS OF EVIDENCE<sup>8</sup>**

A particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I have told you when that occurred, and instructed you on the purposes for which the item can and cannot be used.

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<sup>8</sup> Pattern Criminal Jury Instructions for the District Courts of the First Circuit, Instruction 3.07, (Updated: 06/14/02), District of Maine Internet Site Edition, <http://www.med.uscourts.gov/pdf/crpfjlinks.pdf>

**JURY INSTRUCTION NO. 8**

**DEFENDANT'S CONSTITUTIONAL RIGHT NOT TO TESTIFY<sup>9</sup>**

The defendants have a constitutional right not to testify and no inference of guilt, or of anything else, may be drawn from the fact that the defendants did not testify. For any of you to draw such an inference would be wrong; indeed, it would be a violation of your oath as a juror.

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<sup>9</sup> Pattern Criminal Jury Instructions for the District Courts of the First Circuit, Instruction 3.03, (Updated: 02/10/16), District of Maine Internet Site Edition, <http://www.med.uscourts.gov/pdf/crpfjlinks.pdf>

## JURY INSTRUCTION NO. 9

### EVIDENCE; OBJECTIONS; RULINGS; BENCH CONFERENCES<sup>10</sup>

I have mentioned the word “evidence.” Evidence includes the testimony of witnesses, documents and other things received as exhibits, and any facts that have been stipulated—that is, formally agreed to by the parties.

There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence, and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. This simply means that the lawyer is requesting that I make a decision on a particular rule of evidence.

Then it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference here while the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.
2. Objections are not evidence. Lawyers have a duty to their client to object when they believe something is improper under the rules of evidence. You should not be influenced by the objection. If I sustain an objection, you must ignore the question or exhibit and must not try to guess what the answer might have been or the exhibit might have contained. If I overrule

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<sup>10</sup> Pattern Criminal Jury Instructions for the District Courts of the First Circuit, Instruction 1.05, (Updated: 06/14/02), District of Maine Internet Site Edition, <http://www.med.uscourts.gov/pdf/crjlinks.pdf>

the objection, the evidence will be admitted, but do not give it special attention because of the objection.

3. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.
4. Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for a particular purpose, and not for any other purpose. I will tell you when that occurs and instruct you on the purposes for which the item can and cannot be used.

Finally, some of you may have heard the terms “direct evidence” and “circumstantial evidence.” Direct evidence is testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find or infer another fact. You may consider both direct and circumstantial evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

**JURY INSTRUCTION NO. 10**

**INDICTMENT**

**[Read Indictment]**

**JURY INSTRUCTION NO. 11**

**DEFINITIONS: KNOWINGLY, WILLFULLY AND “ON OR ABOUT”<sup>11</sup>**

The word “knowingly,” as that term has been used from time to time in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.<sup>12</sup>

To act “willfully” means to act voluntarily and intelligently and with the specific intent that the underlying crime be committed—that is to say, with a bad purpose, either to disobey or disregard the law—not to act by ignorance, accident or mistake.<sup>13</sup>

You will note that the indictment charges that the offenses were committed on or about a specified date. The government does not have to prove that the crime was committed on that exact date, so long as the government proves beyond a reasonable doubt that the defendants committed the crime on a date reasonably near the date stated in the indictment.

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<sup>11</sup> Pattern Crim. Jury Instr. 5th Cir. 1.18 (2015).

<sup>12</sup> Pattern Criminal Jury Instructions for the District Courts of the First Circuit, Instruction 2.15, (Updated: 10/05/12), District of Maine Internet Site Edition, <http://www.med.uscourts.gov/pdf/crjlinks.pdf>.

<sup>13</sup> Pattern Criminal Jury Instructions for the District Courts of the First Circuit, Instruction 2.17, (Updated: 06/04/14), District of Maine Internet Site Edition, <http://www.med.uscourts.gov/pdf/crjlinks.pdf>.

**JURY INSTRUCTION NO. 12**  
**CONSPIRACY TO COMMIT HONEST SERVICES WIRE FRAUD**  
**18 U.S.C. § 1349<sup>14</sup>**

The defendants are accused of conspiring to commit a federal crime—specifically, the crime of honest services fraud. It is against federal law to conspire with someone to commit this crime, which requires that the government prove the following this beyond a reasonable doubt:

First, that there was a scheme, substantially as charged in the indictment, to defraud;

Second, that the scheme to defraud involved the misrepresentation or concealment of a material fact or matter;

Third, that the defendants knowingly and willfully participated in this scheme with the intent to defraud; and

Fourth, that for the purpose of executing the scheme or in furtherance of the scheme, [defendant] caused the United States mail to be used, or it was reasonably foreseeable that for the purpose of executing the scheme or in furtherance of the scheme, the United States mail would be used, on or about the date alleged.

A scheme includes any plan, pattern or course of action. It is not necessary that the government prove all of the details alleged in the indictment concerning the precise nature and purpose of the scheme or that the alleged scheme actually succeeded in defrauding anyone. But the government must prove beyond a reasonable doubt that the scheme was substantially as charged in the indictment.

The term “defraud” means to deceive another in order to obtain money or property. It includes a scheme to deprive another of the intangible right of honest services.

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<sup>14</sup> See Pattern Criminal Jury Instructions for the District Courts of the First Circuit, Instructions 4.18.1343 (Updated: 12/14/18), and 4.18.1343 (Updated 5/9/18), District of Maine Internet Site Edition, <http://www.med.uscourts.gov/pdf/crpfjlinks.pdf>.



The term “false or fraudulent pretenses” means any false statements or assertions that were either known to be untrue when made or were made with reckless indifference to their truth and that were made with the intent to defraud. The term includes actual, direct false statements as well as half-truths and the knowing concealment of facts.

A “material” fact or matter is one that has a natural tendency to influence or be capable of influencing the decision of the decisionmaker to whom it was addressed.

Defendants acted “knowingly” if they were conscious and aware of their actions, realized what they were doing or what was happening around them, and did not act because of ignorance, mistake or accident.

For you to find the defendants guilty of conspiracy, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, that the agreement specified in the indictment, and not some other agreement or agreements, existed between at least two people to commit honest services fraud; and

Second, that the defendants willfully joined in that agreement.

A conspiracy is an agreement, spoken or unspoken. The conspiracy does not have to be a formal agreement or plan in which everyone involved sat down together and worked out all the details.

But the government must prove beyond a reasonable doubt that those who were involved shared a general understanding about the crime. Mere similarity of conduct among various people, or the fact that they may have associated with each other or discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy, but you may consider such factors.

To act “willfully” means to act voluntarily and intelligently and with the specific intent that the underlying crime be committed—that is to say, with bad purpose, either to disobey or disregard the law—not to act by ignorance, accident or mistake. The government must prove two types of intent beyond a reasonable doubt before the defendants can be said to have willfully joined the conspiracy: an intent to agree and an

intent, whether reasonable or not, that the underlying crime be committed. Intent may be inferred from the surrounding circumstances.

Proof that the defendants willfully joined in the agreement must be based upon evidence of their own words and/or actions. You need not find that the defendants agreed specifically or knew about all the details of the crime, or knew every other co-conspirator or that they participated in each act of the agreement or played a major role, but the government must prove beyond a reasonable doubt that the defendants knew the essential features and general aims of the venture. Even if the defendants were not part of the agreement at the very start, they can be found guilty of conspiracy if the government proves that they willfully joined the agreement later. On the other hand, a person who has no knowledge of a conspiracy, but simply happens to act in a way that furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

**JURY INSTRUCTION NO. 13**  
**WIRE FRAUD**  
**18 U.S.C. § 1343<sup>15</sup>**

The defendants are charged with violating the federal statute making wire fraud illegal.

For you to find the defendants guilty of wire fraud, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, that there was a scheme, substantially as charged in the indictment, to defraud;

Second, that the scheme to defraud involved the misrepresentation or concealment of a material fact or matter;

Third, that the defendants knowingly and willfully participated in this scheme with the intent to defraud; and

Fourth, that for the purpose of executing the scheme or in furtherance of the scheme, [defendant] caused the United States mail to be used, or it was reasonably foreseeable that for the purpose of executing the scheme or in furtherance of the scheme, the United States mail would be used, on or about the date alleged.

A scheme includes any plan, pattern or course of action. It is not necessary that the government prove all of the details alleged in the indictment concerning the precise nature and purpose of the scheme or that the alleged scheme actually succeeded in defrauding anyone. But the government must prove beyond a reasonable doubt that the scheme was substantially as charged in the indictment.

The term “defraud” means to deceive another in order to obtain money or property. It includes a scheme to deprive another of the intangible right of honest services.

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<sup>15</sup>See Pattern Criminal Jury Instructions for the District Courts of the First Circuit, Instruction 4.18.1343 (Updated: 5/9/18), District of Maine Internet Site Edition, <http://www.med.uscourts.gov/pdf/crpfjlinks.pdf>.

The term “false or fraudulent pretenses” means any false statements or assertions that were either known to be untrue when made or were made with reckless indifference to their truth and that were made with the intent to defraud. The term includes actual, direct false statements as well as half-truths and the knowing concealment of facts.]

A “material” fact or matter is one that has a natural tendency to influence or be capable of influencing the decision of the decisionmaker to whom it was addressed.

The defendants acted “knowingly” if they were conscious and aware of their actions, realized what they were doing or what was happening around them, and did not act because of ignorance, mistake or accident.

An act or failure to act is “willful” if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. The burden to prove intent, as with all other elements of the crime, rests with the government.

Intent or knowledge may not ordinarily be proven directly because there is no way of directly scrutinizing the workings of the human mind. In determining what the defendants knew or intended at a particular time, you may consider any statements made or acts done or omitted by [defendant] and all other facts and circumstances received in evidence that may aid in your determination of the defendants’ knowledge or intent. You may infer, but you certainly are not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts are proven by the evidence received during this trial.

An “interstate or foreign wire communication” includes a telephone communication from one state to another or between the United States and a foreign country. The term also includes a wire transfer of funds between financial institutions as well an e-mail transmission or other internet communication. The wire communication does not itself have to be essential to the scheme, but it must have been made for the purpose

of carrying it out. There is no requirement that the defendants were themselves responsible for the wire communication, that the wire communication itself was fraudulent or that the use of wire communications facilities in interstate commerce was intended as the specific or exclusive means of accomplishing the alleged fraud. But the government must prove beyond a reasonable doubt that the defendants knew, or could reasonably have foreseen, that use of a wire communication would follow in the course of the scheme.

**JURY INSTRUCTION NO. 14**  
**FEDERAL PROGRAM BRIBERY – RECEIPT OF BRIBE**  
**18 U.S.C. § 666(a)(1)(B)<sup>16</sup>**

Defendant Keleher is accused of corruptly soliciting or demanding for her own benefit, or accepting or agreeing to accept, anything of value from defendant Gutierrez, intending to be influenced or rewarded in connection with a transaction that involved \$5,000.00 or more.

For you to find defendant Keleher guilty of bribery, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, that defendant Keleher was an agent of of the Puerto Rico Department of Education;

Second, that defendant Keleher solicited, demanded, accepted, or agreed to accept anything of value from another person;

Third, that defendant Keleher did so corruptly with the intent to be influenced or rewarded in connection with some transaction of the Department of Education;

Fourth, that this business or transaction involved anything of a value of \$5,000 or more; and

Fifth, that the Puerto Rico Department of Education, in a one year period preceding December 31, 2018, or during the one year period following December 31, 2015, received benefits in excess of \$10,000 under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of federal assistance.

An act is done “corruptly” if it is performed voluntarily, deliberately and dishonestly for the purpose of either accomplishing an unlawful end or result, or of accomplishing some otherwise lawful end or lawful result by any unlawful method or means.

The phrase “anything of value of \$5,000 or more” refers to the value of the transaction sought to be influenced by the bribe, including any amount of money Company C stood to gain from the transaction.

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<sup>16</sup>See *United States v. Bravo-Fernandez et al.*, Crim. No. 10-232, Docket No. 960 (Besosa, J.); 18 U.S.C. § 666(a)(1)(B).

The thing of value need not have been solicited, demanded, or accepted solely with a corrupt intent to influence or reward because people rarely act for a single purpose. To find that the thing of value was solicited, demanded, or accepted with a corrupt intent to influence or reward, you must find that defendant Keleher solicited, demanded, accepted, or agreed to accept the thing of value in part to corruptly influence or reward her official acts.

The term “reward” applies when a person promises a thing of value to a public official before the public official takes an official action, then, after the public official takes the action, the person gives the thing of value to the public official. In other words, you may find there was a “reward” if you find that defendant Gutierrez promised defendant Keleher a thing of value in connection with her purchase of an apartment in Ciudadela if she took action to cede property of the Padre Rufo School to Company C, and once defendant Keleher took action, defendant Gutierrez delivered on his promise.

The term “agent” as relevant to this case, means any employee, partner, director, officer, manager, or representative of the Puerto Rico Department of Education.

The government is not required to prove that defendant Keleher solicited, demanded, accepted, or agreed to accept anything of value from defendant Gutierrez with the intent to be influenced or rewarded by defendant Gutierrez for a specific action. Instead, it is sufficient if the government proves beyond a reasonable doubt that defendant Keleher corruptly solicited, demanded, accepted, or agreed to accept from defendant Gutierrez anything of value in connection with the purchase of an apartment in Ciudadela with the intent to be influenced or rewarded for a course of conduct. Therefore, the government has met its burden under the First and Second elements above if you find beyond a reasonable doubt that defendant Keleher corruptly solicited, demanded, accepted, or agreed to accept anything of value in connection with the purchase of an apartment in Ciudadela with the intent to be influenced or rewarded for one or all of

several actions taken by defendant Keleher in connection with the ceding of a piece of property of the Padre Rufo School to Company C.

The government is not required to prove that defendant Keleher's solicitation, demand, acceptance, or agreement to accept anything of value in connection with the purchase of an apartment in Ciudadela caused her to change her actions or course of conduct in connection with the ceding of a piece of property of the Padre Rufo School.

The government is not required to show that any business, transaction, or series of transactions was actually performed by defendant Keleher. Nor is the government required to show that any action or series of actions actually performed by defendant Keleher was, or were, unlawful, undesirable, or not beneficial to the citizens of Puerto Rico. You are instructed not to consider whether the ceding of the Padre Rufo School was good or bad for students, the public, or the community. Instead, the government need only prove beyond a reasonable doubt that defendant Keleher corruptly solicited, demanded, accepted, or agreed to accept something of value in connection with the purchase of an apartment in Ciudadela, with an intent to be influenced or rewarded.



**JURY INSTRUCTION NO. 15**  
**FEDERAL PROGRAM BRIBERY – PAYMENT OF BRIBE**  
**18 U.S.C. § 666(a)(2)<sup>17</sup>**

Defendant Gutierrez is accused of corruptly giving, offering, or agreeing to give things of value to defendant Keleher with intent to influence or reward defendant Keleher in connection with a business, or transaction valued at \$5,000 or more.

For you to find defendant Gutierrez guilty of bribery, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, that defendant Gutierrez gave, offered, or agreed to give anything of value to any person;

Second, that defendant Gutierrez did so corruptly with the intent to influence or reward an agent of the Puerto Rico Department of Education in connection with any business, transaction, or series of transactions;

Third, that this business, transaction, or series of transactions involved any thing of a value of \$5,000 or more; and

Fourth, that the Puerto Rico Department of Education, in a one year period preceding December 31, 2018, or during the one year period following December 31, 2015, received benefits in excess of \$10,000 under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of federal assistance.

An act is done “corruptly” if it is performed voluntarily, deliberately and dishonestly for the purpose of either accomplishing an unlawful end or result, or of accomplishing some otherwise lawful end or lawful result by any unlawful method or means.

The phrase “anything of value of \$5,000 or more” refers to the value of the transaction sought to be influenced by the bribe, including any amount of money Company C stood to gain from the transaction.

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<sup>17</sup>See *United States v. Bravo-Fernandez et al.*, Crim. No. 10-232, Docket No. 960 (Besosa, J.); 18 U.S.C. § 666(a)(2).

The thing of value need not have been given, offered, or promised solely with a corrupt intent to influence or reward because people rarely act for a single purpose. To find that the thing of value was given, offered, or promised with a corrupt intent to influence or reward, you must find that defendant Gutierrez gave, offered, or promised a thing of value in part to corruptly influence or reward defendant Keleher's official acts.

The term "reward" applies when a person promises a thing of value to a public official before the public official takes an official action, then, after the public official takes the action, the person gives the thing of value to the public official. In other words, you may find there was a "reward" if you find that defendant Gutierrez promised defendant Keleher a things of value in connection with her purchase of an apartment in Ciudadela if she took action to cede property of the Padre Rufo School to Company C, and once defendant Keleher took action, defendant Gutierrez delivered on his promise.

The term "agent" as relevant to this case, means any employee, partner, director, officer, manager, or representative of the Puerto Rico Department of Education.

The government is not required to prove that defendant Gutierrez gave, offered, or agreed to give anything of value with the intent to influence or reward a course of conduct by defendant Keleher. Instead, it is sufficient if the government proves that defendant Gutierrez gave, offered, or agreed to give anything of value anything of value in connection with defendant Keleher's purchase of an apartment in Ciudadela with the intent to influence or reward course of conduct. Therefore, the government has met its burden under the First and Second elements above if you find beyond a reasonable doubt that defendant Gutierrez corruptly gave, offered, or agreed to give anything of value in connection with defendant Keleher's purchase of an apartment in Ciudadela with the intent to influence or reward Keleher for one or all of several actions taken by her in connection with the ceding of property of the Padre Rufo School.

The government is not required to prove that defendant Gutierrez's giving, offer, or agreement to give anything of value to defendant Keleher caused defendant Keleher to change her actions or course of conduct with respect to the ceding of property of the Padre Rufo School.

The government is not required to show that any business, transaction, or series of transactions was actually performed by defendant Keleher. Nor is the government required to show that any action or series of actions actually performed by defendant Keleher was, or were, unlawful, undesirable, or not beneficial to the citizens of Puerto Rico. You are instructed not to consider whether the ceding of the Padre Rufo School was good or bad for students, the public, or the community. Instead, the government need only prove beyond a reasonable doubt that defendant Gutierrez gave, offered, or agreed to give anything of value pertaining to the purchase of an apartment in Ciudadela corruptly, with an intent to be influence or reward defendant Keleher.

**JURY INSTRUCTION NO. 16**

**FOREPERSON'S ROLE; UNANIMITY<sup>18</sup>**

I come now to the last part of the instructions, the rules for your deliberations.

When you retire you will discuss the case with the other jurors to reach agreement if you can do so. You shall permit your foreperson to preside over your deliberations, and your foreperson will speak for you here in court. Your verdict must be unanimous.

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<sup>18</sup> Pattern Criminal Jury Instructions for the District Courts of the First Circuit, Instruction 6.01 (Updated: 06/17/02), District of Maine Internet Site Edition, <http://www.med.uscourts.gov/pdf/crjlinks.pdf>.

**JURY INSTRUCTION NO. 17**

**CONSIDERATION OF EVIDENCE<sup>19</sup>**

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

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<sup>19</sup> Pattern Criminal Jury Instructions for the District Courts of the First Circuit, Instruction 6.02 (Updated: 04/29/13), District of Maine Internet Site Edition, <http://www.med.uscourts.gov/pdf/crjlinks.pdf>.

**JURY INSTRUCTION NO. 18**

**REACHING AGREEMENT<sup>20</sup>**

Each of you must decide the case for yourself, but you should do so only after considering all the evidence, discussing it fully with the other jurors, and listening to the views of the other jurors.

Do not be afraid to change your opinion if you think you are wrong. However, do not come to a decision simply because other jurors think it is right.

This case has taken time and effort to prepare and try. There is no reason to think it could be better tried or that another jury is better qualified to decide it. It is important therefore that you reach a verdict if you can do so conscientiously. If it looks at some point as if you may have difficulty in reaching a unanimous verdict, and if the greater number of you are agreed on a verdict, the jurors in both the majority and the minority should reexamine their positions to see whether they have given careful consideration and sufficient weight to the evidence that has favorably impressed the jurors who disagree with them. You should not hesitate to reconsider your views from time to time and to change them if you are persuaded that this is appropriate.

It is important that you attempt to return a verdict, but, of course, only if each of you can do so after having made your own conscientious determination. Do not surrender an honest conviction as to the weight and effect of the evidence simply to reach a verdict.

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<sup>20</sup> Pattern Criminal Jury Instructions for the District Courts of the First Circuit, Instruction 6.03 (Updated: 06/14/02), District of Maine Internet Site Edition, <http://www.med.uscourts.gov/pdf/crpjilinks.pdf>.

**JURY INSTRUCTION NO. 19**

**COMMUNICATION WITH THE COURT<sup>21</sup>**

If it becomes necessary during your deliberations to communicate with me, you may send a note through the jury officer signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me on anything concerning the case except by a signed writing, and I will communicate with any member of the jury on anything concerning the case only in writing, or orally here in open court. If you send out a question, I will consult with the parties as promptly as possible before answering it, which may take some time.

You may continue with your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged.

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<sup>21</sup> Pattern Criminal Jury Instructions for the District Courts of the First Circuit, Instruction 6.05 (Updated: 10/5/12), District of Maine Internet Site Edition, <http://www.med.uscourts.gov/pdf/crjlinks.pdf>.

**JURY INSTRUCTION NO. 20**

**DUTY TO DELIBERATE<sup>22</sup>**

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 Indictment. Your deliberations will be secret. You will never have to explain your verdict to anyone.

It is your duty to consult with one another and to 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 as to the weight or effect of the evidence 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. Your duty is to decide whether the government has proved any of the defendants guilt beyond a reasonable doubt.

When you go to the jury room, the first thing that you should do is select one of your number as your foreperson, who will help to guide your deliberations and will speak for you here in the courtroom.

A verdict form has been prepared for your convenience.

**[Explain verdict form.]**

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

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<sup>22</sup> Pattern Crim. Jury Instr. 5th Cir. 1.24 (2015).



If you need to communicate with me during your deliberations, the foreperson should write the message and give it to the court security officer. I will either reply in writing or bring you back into the court to answer your message.

Bear in mind that you are never to reveal to any person, not even to the court, how the jury stands, numerically or otherwise, on any count of the Indictment, until after you have reached a unanimous verdict.

**JURY INSTRUCTION NO. 21**

**THE USE OF ELECTRONIC TECHNOLOGY<sup>23</sup>**

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, smart phone, iPhone, Blackberry or computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, LinkedIn, YouTube, or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations. I expect you will inform me as soon as you become aware of another juror's violation of these instructions.

You may not use these electronic means to investigate or communicate about the case because it is important that you decide this case based solely on the evidence presented in this courtroom. Information on the internet or available through social media might be wrong, incomplete, or inaccurate. You are only permitted to discuss the case with your fellow jurors during deliberations because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not by your fellow jurors or the parties in the case. This would unfairly and adversely impact the judicial process.

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<sup>23</sup> (1) Pattern Crim. Jury Instr. 5th Cir. 1.01 (2015), Pattern Crim. Jury Instr. 5th Cir. 1.01 (2015).  
(2) Federal Judicial Center's Benchbook for U.S. District Court Judges 2.07 (6th ed. 2013).