IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 1:25-cr-143-AJT
	)	
MOHAMMAD SHARIFULLAH,	)	
	)	
Defendant.	)	
	)	

GOVERNMENT OBECTIONS TO DEFENSE JURY INSTRUCTIONS

The United States of America submits the following objections to the defendant's proposed jury instructions, and, where applicable, respectfully requests that the Court adopt the government's corresponding proposed instruction.

Respectfully Submitted,

/s/

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Objection to D-1.[1] It is possible that jurors may not know of any pretrial publicity surrounding this case before hearing of it for the first time in this jury instruction. To the extent the Court gives this instruction, it should only do so if any selected juror indicates in voir dire that they have heard of this case.

Objection to D-2. G-2 and D-2 both utilize O'Malley § 12:10 as a baseline, but defense utilizes the January 2022 version while the government utilizes the latest version.[2] The government objects to the defense's deletion of the third paragraph from G-2, which is taken directly from O'Malley § 12:10 (*i.e.*, "It is not required that the government prove guilt beyond all possible doubt. The test is one of reasonable doubt."). This is a correct statement of the law, is standard O'Malley language used across this district, and should be included. As to the last paragraph of D-2, the government objects to all but the last sentence, because such text is not O'Malley. (The government cannot discern where this language comes from.)

Additionally, the first sentence in this last paragraph is needlessly confusing (*i.e.*, "To establish a defendant's guilt, the government's evidence must exclude any reasonable doubt as to the defendant's innocence."). While the jury must acquit when a reasonable doubt arises, the sentence's double negative of "exclud[ing]" "doubt" adds confusion. The inclusion of "any" also confuses the jury into thinking that the government must prove its case beyond "any" doubt.

The second sentence in the last paragraph is also problematic because it seeks to define reasonable doubt. O'Malley's own commentary acknowledges that in the Fourth Circuit "'[t]he rule regarding reasonable doubt for the jury is well settled in this Circuit—a trial judge may define

[1] For brevity and clarity, the government will refer to proposed Government Instructions as "G-__" and proposed Defense Instructions as "D-__".

[2] Notably, not a single other Defense Instruction cites to this January 2022 version of O'Malley, and the defense has provided no justification why the Court should use an outdated version only for this one instruction while using other O'Malley versions elsewhere. The government generally objects to the defense's use of different O'Malley versions for different instructions.

reasonable doubt only if the jury requests a definition; however, the trial judge is not required to provide a definition, even if the jury requests it.'" O'Malley § 12:10 commentary.

The government's instruction, in contrast, is standard and up-to-date O'Malley language with deletions to sections defining reasonable doubt and using a two-inference instruction.

Objection to D-3. The defendant departs again from O'Malley without good reason in favor of the Modern Federal Jury Instructions. The government, in contrast, suggests O'Malley § 15:01 in the alternative proposed G-3. The government particularly objects to the defendant's proposed instruction because it is unduly suggestive as to how the jury should make a factual determination of a witness' credibility. For example, the third paragraph of D-3 asks the jury to go through a formulaic list of questions in coming to a credibility determination:

> "Your decision whether or not to believe a witness may depend on how that witness impressed you. Was the witness candid, frank and forthright? Or, did the witness seem as if he or she was hiding something, being evasive or suspect in some way? How did the way the witness testified on direct examination compare with how the witness testified on cross-examination? Was the witness consistent in his testimony or did he contradict himself? Did the witness appear to know what he or she was talking about and did the witness strike you as someone who was trying to report . . . knowledge accurately?"

D-3 thus improperly suggest to a jury *how* they must arrive at a credibility determination – *i.e.*, by ticking through these questions. A jury should be free to disregard this formulaic approach to arriving at an assessment of witness credibility. Other areas of the Modern Federal Jury Instruction approach are equally concerning. For example, D-3 instructs the jury, "How much you choose to believe a witness may be influenced by the witness' bias." This presupposition of a witness's bias leaves the jury little room to assess that the witness's testimony is *not* colored by bias. The O'Malley approach in contrast gives the jury proper latitude to make the credibility determinations that are within their discretion.

Objection to D-4. D-4 seeks an "absence of witness" instruction. "To qualify for such an instruction, two requirements must be met." *United States v. Graves*, 545 F. App'x 230, 241 (4th Cir. 2013) (per curiam). "First, it must be shown that the party failing to call the witness has it peculiarly within its power to produce the witness." *Id.* (citing *United States v. Brooks*, 928 F.2d 1403, 1412 (4th Cir.1991)). "This requirement can be satisfied by showing either (1) that the witness is physically available only to the other party, or (2) that, because of the witness's relationship with the other party, the witness 'pragmatically' is only available to that party." *Id.* A witness is not "'pragmatically'' available only to the government because he is bound by a "plea agreement" to "cooperate[] with the government," "is a paid government informant," or even is "in federal custody." *Id.* Further, the "court must consider the explanation (if any) for the witness's absence." *See, e.g.*, *United States v. Anderson*, 452 F.3d 66, 82 (1st Cir. 2006); *United States v. Ramirez*, 714 F.3d 1134, 1137 (9th Cir. 2013) (explaining "judge could reasonably have concluded that the government chose not to call [witness] because it feared that his effectiveness as a witness was compromised by [prison] attack").

Second, the party seeking the instruction must show that the "witness's testimony" would "elucidate issues important to the trial, as opposed to being irrelevant or cumulative." *Graves*, 545 F. App'x at 241. Clearing that hurdle requires that it be "'natural and reasonable'" to infer the witness's "'testimony'" would be "'unfavorable'" to the non-moving party. *See, e.g.*, *Ramirez*, 714 F.3d at 1137; *United States v. Myerson*, 18 F.3d 153, 159 (2d Cir. 1994); *United States v. Norris*, 873 F.2d 1519, 1522 (D.C. Cir. 1989). On that score, the defendant must offer "more than conjecture to establish that" the absent witness "could have offered exculpatory evidence." *See, e.g.*, *United States v. Cordova-Villa*, 743 F. App'x 97, 99 (9th Cir. 2018) (unpublished).

Here, while the government does not know what witness the defendant thinks is "missing," he will not be able to satisfy either requirement (much less both) for a simple reason: The government is not hiding any unfavorable witnesses.

Objection to D-5. D-5 on "bias and hostility"—which does not appear in O'Malley—is unduly suggestive and unsupported by the evidence. When, as here, the Court provides a general "credibility" instruction and the defendant fails to point to "evidence" of bias or hostility "related to a particular witness," a "specific" bias or hostility instruction is unnecessary. *See, e.g.*, *United States v. Moquete*, 669 F. App'x 179, 180 (4th Cir. 2016) (per curiam); *United States v. Gilmore*, 730 F.2d 550, 555 (8th Cir. 1984).

Objection to D-6. D-6 is similar to G-4, but G-4 is verbatim O'Malley § 15:06. The second and third paragraphs of D-6 incorporate language from the First Circuit Pattern Jury instructions without good reason. This additional language is repetitive with the first paragraph of O'Malley § 15:06 as well as the general witness credibility instruction in O'Malley § 15:01.

Objection to D-7. The government has no objections to D-7.

Objection to D-8. D-8 seeks a "weaker or less satisfactory evidence" instruction. O'Malley expressly notes the instruction is "appropriate" only "in a rare case, and great caution is urged when deciding to give the instruction." O'Malley § 14:14. Here, the defendant fails to identify what stronger and more satisfactory evidence the government has access to. *See United States v. Berrios-Bonilla*, 822 F.3d 25, 34 (1st Cir. 2016) (requiring that "'party ha[ve] exclusive control over relevant, noncumulative evidence,' yet fail[] to produce it"). And the defendant comes nowhere close to showing the evidence that the government will introduce is weaker or less satisfactory. To the contrary, the government will introduce the defendant's own "confession"—"'the most probative and damaging evidence that can be admitted against'" him. *United States v.*

Johnson, 400 F.3d 187, 197 (4th Cir. 2005). Moreover, the instruction is "unnecessary because the defendant's counsel" remains "'free to argue that . . . the government had not sufficiently linked [the defendant] to the crime.'" *Berrios-Bonilla*, 822 F.3d at 34.

Objection to D-9. D-9 seeks an instruction on the corroboration of the defendant's confession. A corroboration instruction departs from ordinary practice and duplicates D-10 addressing the "Prior Statement of Defendant." Further, D-9 uses unduly negative language not drawn from any treatise or model instruction.

Every circuit to address the issue, with one exception, has held that the Court need not instruct on corroboration. *Compare United States v. Kourani*, 6 F.4th 345, 355 n.33 (2d Cir. 2021) ("agree[ing]" "a district court is not required to instruct a jury on a so-called corroboration rule"); *United States v. McDowell*, 687 F.3d 904, 912 (7th Cir. 2012) ("the district court is not obligated to instruct the jury on the requirement of corroboration" because "the standard instructions regarding the government's burden of proof and the presumption of innocence are generally sufficient"); *United States v. Dickerson*, 163 F.3d 639, 642 (D.C. Cir. 1999) ("the jury need not be separately instructed on the issue for it is akin to other admissibility issues, and therefore the trial judge alone decides whether the corroboration test has been met"); *United States v. Singleterry*, 29 F.3d 733, 738-39 (1st Cir. 1994) (rejecting "responsibility, either generally or in certain cases, to instruct the jury to determine that the confession is trustworthy before considering it as evidence of guilt"), *with United States v. Marshall*, 863 F.2d 1285, 1285-87 (6th Cir. 1988) (requiring instruction jury cannot "find the defendant guilty solely on the basis of defendant's uncorroborated admissions").

Defendant claims his proposed instruction is supported by *United States v. Rodriguez-Soriano*, 931 F.3d 281 (4th Cir. 2019), and *United States v. Abu Ali*, 528 F.3d 210 (4th Cir. 2008).

Not so. In neither case did the district court give a corroboration instruction. *See United States v. Rodriguez-Soriano*, 1:17-cr-197, ECF No. 81 at 149-170; *Abu Ali*, 528 F.3d at 234 n.8. Rather, corroboration was addressed by the Court on a "motion for acquittal" under Rule 29. *See Rodriguez-Soriano*, 931 F.3d at 286; *Abu Ali*, 528 F.3d at 234. Indeed, *Abu Ali* expressly rejected the defendant's argument "that the district court erred when it failed to instruct the jury on the need for corroboration," explaining that he could not "begin to demonstrate plain error given that a number of our sister circuits have held that a court need not instruct juries on the corroboration rule, even if requested to do so." 528 F.3d at 234 n.8. Hence, as suggested by *Abu Ali* and endorsed by the First, Second, Seventh, and D.C. Circuits, the Court should hold unnecessary a specific corroboration instruction.

Caselaw aside, D-9 is duplicative of D-10 (not to mention the general burden of proof and credibility instructions), which requires the jury to find defendant's confession "was made voluntarily"; to "carefully" "scrutinize" the "defendant's statements" and "decide what weight, if any, you feel the statement deserves"; and to "ask yourselves whether a statement made under these circumstances is one you can rely on." D-10. Given that uncontested language, a second instruction casting doubt on the confession is unwarranted.

Finally, the defendant's proposed corroboration instruction improperly focuses on what is *not* sufficient to corroborate a confession, rather than what *is*—perhaps explaining why it does not appear drawn from any model instruction or treatise. *See* D-9 ("You cannot rely on subsequent uncorroborated admissions or statements as independent evidence corroborating the initial statement."). In contrast, the Sixth Circuit's pattern jury instruction simply says "You may not convict the defendant solely upon his own uncorroborated statement or admission." Sixth Circuit Pattern Jury Instruction 7.20(2). Should the Court think it necessary to instruct on corroboration—

which it should not—the Court should incorporate that sentence into D-10. Alternatively, if the Court deems a separate corroboration instruction necessary, it should give the following instruction approved by the Sixth Circuit:

> You may not convict defendant solely upon his own uncorroborated statement or admission. However, one available mode of corroboration is for the independent evidence to bolster the confession itself, and thereby prove the offense through the statements of the accused.

United States v. Johnson, 480 F. App'x 835, 840 (6th Cir. 2012) (unpublished); *Rodriguez-Soriano*, 931 F.3d at 288 ("'one mode of corroboration is for the independent evidence to bolster the confession itself and thereby prove the offense through the statements of the accused'").

Objection to D-10. The government has no objections to the bulk of this instruction. There is no doubt that if the jury finds that Sharifullah's statements were made involuntarily, they must disregard it. However, the government objects to the last two sentences of the D-10:

> In determining whether any alleged statement was made voluntarily, you should consider Mr. Sharifullah's age, training, education, occupation, and physical and mental condition, and his treatment while in custody or under interrogation as shown by the evidence in the case. Also consider all other circumstances in evidence surrounding the making of the alleged statement.

The defense cherry picks only certain factors to emphasize, which risks confusing the jury into assigning disproportionate weight to these factors. The jury should also consider as part of its voluntariness assessment, for example, whether: (1) *Miranda* warnings were properly administered; (2) whether the defendant felt free to laugh and joke with his interviewers; (3) whether the defendant volunteered information about which he was not asked; (4) whether the defendant felt free to deny involvement in certain attacks; and (5) whether the defendant ever actually made the statements allegedly sought by the Pakistanis. Put simply, emphasizing some factors over others needlessly puts the thumb of the scale of the jury's factual finding. Rather than

making an exhaustive list of all possible factors, the government instead proposes more neutral, general language tracking the "totality of circumstances" standard:

> In determining whether any alleged statement was made voluntarily, you should consider the totality of the circumstances surrounding these statements.

Objection to D-11. D-11 is similar to G-7 but fails to include all three alternative knowledge elements. The Court should give the government's correct instruction, rather than the defendant's incomplete instruction omitting "engages in terrorism." 18 U.S.C. § 2339B(a)(1).

Objection to D-12. D-12, purporting to define the "elements of the offense charged," is materially different from the analogous G-8. The government's instruction is drawn from *Chippa* and *Elsheikh*, but modified to be *more favorable* to the defendant. *See Chippa*, 1:23-cr-97, ECF 230-2 at 37 (instruction no. 31); *Elsheikh*, 1:20-cr-239, ECF 354 at 121:1-122:8 (jury charge). Specifically, the government's instruction includes the trigger for extraterritorial liability, that the defendant was "brought into" the United States, as an element, *see* 18 U.S.C. § 2339B(d)(1)(C), even though *Chippa* and *Elsheikh* did not do so. Gov't Instr. 8.

The government objects to several of the defendant's departures from *Chippa* and *Elsheikh.* First—and most critically—the defendant's instruction defines the "objective" of the conspiracy as "that *the defendant* would provide material support or resources to a foreign terrorist organization." D-12 (emphasis added). The conspiracy alleged in the indictment, however, is not limited to the defendant's provision of material support. *See* ECF No. 18 at 5 (alleging that defendant "and others . . . did conspire to provide 'material support or resources'"). The government's language, "That two or more persons entered into an agreement that had as its objective providing material support or resources to a foreign terrorist organization," properly tracks the indictment and *Chippa*. G-8. Second, after mischaracterizing the conspiracy alleged in the indictment, the defendant's instruction confusingly refers to "the conspiracy charged in Count

One of the Indictment," D-12, rather than "that agreement," G-8. Third, even were the Court to hold that the death-results enhancement requires proximate cause, which it should not for the reasons explained in ECF No. 120, a jury will not understand what it means for a death to have "proximately resulted." D-12. Rather than injecting unfamiliar language not found in the statute into the elements instruction, the Court could describe any foreseeability requirement in the death-results instruction. Fourth, D-12 fails to provide the additional clarification the government's does—for instance, making clear that specific intent is not required and that the "brought into" element is satisfied even if the conduct occurred overseas.

Objection to D-13. The government is unable to locate the 2008 version of O'Malley to verify the defendant's language in D-13. Moreover, this appears to be the only defense instruction from the 2008 O'Malley version. The Court should not jump between O'Malley versions for different instructions and should instead uniformly use the latest version as baseline (as the government's instructions and the joint instructions do). The defense also purportedly uses a hybrid of O'Malley and the Sixth Circuit Pattern Jury Instructions. There is no need to depart from O'Malley here. This Court has used the same instruction in *Chippa*, 1:23-cr-97, ECF 230-2 at 38-39 (instruction no. 32). In contrast, the defense does not identify any prior case where their instruction has been adopted in this district.

Objection to D-14. G-10 is identical to the first three paragraphs of D-14, but the defense argues for the inclusion of an extra paragraph:

> You may only convict the defendant of a count if you find that the government has proven beyond a reasonable doubt that the defendant was a member of the particular conspiracy charged in the indictment.

Though the defense's citation represents that their language is unmodified O'Malley, this additional defense paragraph does not appear in O'Malley. G-10, in contrast, accurately represents

the latest version of O'Malley. And unlike the defense's instruction, the government's instruction has been used in similar cases in this district. *See Pahlawan,* 3:24-cr-41, ECF 523-1 at 41 (instruction no. 35); *Chippa*, 1:23-cr-97, ECF 230-2 at 40 (instruction no. 33); *United States v. Elsheikh,* 1:20-cr-239, ECF 354 at 102:6-103:8 (jury charge).

Objection to D-15. D-15 on "Single or Multiple Conspiracies" is doubly unwarranted here. First, "[s]uch an instruction is designed to abate the risk that a jury will 'imput[e] guilt to [a defendant] as a member of one conspiracy because of the illegal activity of members of [an]other conspiracy.'" *United States v. Simmons*, 11 F.4th 239, 264 (4th Cir. 2021). "But where, as here, a defendant is tried alone, there is no significant concern about spillover prejudice." *United States v. Offill*, 666 F.3d 168, 179 (4th Cir. 2011).

Second, the instruction is not appropriate "'unless the proof at trial demonstrates that'" the defendants were "'involved only in separate conspiracies *unrelated* to the overall conspiracy charged in the indictment.'" *United States v. Young*, 989 F.3d 253, 265 (4th Cir. 2021). In assessing whether a single conspiracy exists, courts consider "overlapping actors, methods, and goals." *United States v. Cannady*, 924 F.3d 94, 100-01 (4th Cir. 2019). Under that standard, a single conspiracy exists where a "core group of coconspirators" are "aware of their roles in the larger scheme"—even if the defendant does not "'know[] its full scope'" or "'all its members,'" or "'tak[e] part in the full range of its activities or over the whole period of its existence.'" *Id.* Thus, the Fourth Circuit has found a "single . . . conspiracy" despite the fact that each defendants' "roles encompassed only one type of narcotic charged in the conspiracy, or spanned a discrete period of time within the five-year period charged, or did not connect with each other and only occasionally had direct coordination with other participants." *United States v. Baker*, 598 F. App'x 165, 171 (4th Cir. 2015) (per curiam). Similarly, "involve[ment] in the conspiracy before" a defendant

"went to jail in 1994, and . . . upon his release in 1999" did not undercut the existence of a single conspiracy. *United States v. Stockton*, 349 F.3d 755, 762 (4th Cir. 2003).

Courts engage in a similar analysis in gauging whether potentially separate conspiracies are "[]*related* to the overall conspiracy charged in the indictment." *United States v. Squillacote*, 221 F.3d 542, 574 (4th Cir. 2000). For instance, in a prosecution for "conspiracy to compromise information related to this country's national defense," one defendant's attempts to share information with South Africa "could be viewed as separate from the original conspiracy." *See id.* Even so, the Fourth Circuit held that "the district court properly refused to instruct the jury on multiple conspiracies" because the "South African foray" was "certainly closely related to the conspiracy charged in the indictment." *Id.* at 574-75. Likewise, "although it" was "conceivable that [two drug groups] constituted separate conspiracies," the "extensive and long-lasting distributional relationships with [a third dealer]" precluded the showing of "unrelated" "conspiracies" required for the multiple-conspiracy instruction. *United States v. Kennedy*, 32 F.3d 876, 884 (4th Cir. 1994); *see also, e.g.*, *Young*, 989 F.3d at 265 (explaining that "[e]ven if the evidence at trial showed that [multiple] conspiracies existed," a jury "could" convict on "the conspiracy count for" drug distribution, "regardless of whether a separate conspiracy was afoot").

Here, the evidence of "overlapping actors, methods, and goals" will demonstrate a single conspiracy. *See, e.g.*, *Cannady*, 924 F.3d at 101. At a minimum, even were it "conceivable that" separate conspiracies existed, the evidence will show they are, at the least, "related." *See Kennedy*, 32 F.3d at 884. Sharifullah described his role in more than a dozen attacks, with remarkable consistency in his role, how the attacks were carried out, and who was involved. Start with the actors. Sharifullah described being trained by and working with Faridoon on nine attacks, while other actors like Zelgai, Adil, and Ahmad were involved in numerous attacks. In the early years,

Sharifullah, Faridoon, and others took direction from Dr. Naqib, the individual who recruited Sharifullah to ISIS-K and whose photograph the defendant identified during the interview. But when the defendant was released from prison in 2021, he explained that Dr. Naqib had been killed. Moving forward, the defendant described reporting to new leaders, Qari Nawab and Shukrullah. The defendant also repeatedly referenced the overall ISIS-K emir, Sanaullah Ghafari a/k/a Dr. Shahab al-Muhajir, while describing ISIS-K's operations and decision-making.

Methods and goals were likewise remarkably consistent. ISIS-K endeavored to carry out lethal attacks on its enemies (like foreigners and the Afghan government) and to film those attacks for propaganda and recruiting purposes. As noted above, Sharifullah worked with others in what he described as his small, compartmentalized ISIS-K cell in Kabul and took action at the direction of higher ups. The defendant repeatedly surveilled targets, reported attack opportunities to leadership, received explosives or suicide bombers from the same leadership, and then transported the eventual suicide bomber or other form of weaponry to the attack site. Sharifullah admitted to conducting surveillance or transporting suicide bombers or explosives in more than half a dozen attacks. Eventually, once he had fled Afghanistan, Sharifullah acted as a communications conduit between individuals like Ahmad and ISIS-K leadership such as Qari Nawab and Shukrullah.

Objection to D-16. The government has no objection to using D-16 rather than the virtually identical G-11.

Objection to D-17. D-17 addresses "proximate cause." Even were the Court to find that § 2339B requires proximate cause, which it should not, this instruction is unnecessary. Rather than introducing an unfamiliar term through a separate instruction, the death results instruction could simply describe any foreseeability requirement. Further, as drafted, defendant's proximate cause and death results instructions will confuse the jury because they employ *different* language.

Compare D-17 (requiring "direct relationship" and "substantial part in bringing about the death, so that the death was the direct result or a reasonably probable consequence of the defendant's commission of the charged offense"), *with* D-19 (requiring death be "natural and foreseeable consequence of the defendant's conspiracy to provide his material support"). More still, the defendant's own proximate cause cases foreclose any requirement of "direct causation." *See United States v. Guillette*, 547 F.2d 743, 749 (2d Cir. 1976). At bottom, even were proximate cause required, a separate, divergently worded, and legal incorrect instruction is unnecessary and confusing when the death results instruction could instead just require that "death" be "a foreseeable result of the defendant's . . . offense." *Burrage v. United States*, 571 U.S. 204, 209 (2014).

Objection to D-18. D-18 omits definitions of relevant terms, such as "foreign terrorist organization," "terrorist activity," "terrorism," "personnel," or "services." The Court should give G-13 and G-14, which provide the relevant definitions and explain that the Court has taken judicial notice that ISIS-K is and was a designated foreign terrorist organization.

Objection to D-19. D-19, addressing the "death results element," is (loosely) drawn from a Seventh Circuit instruction addressing a different offense, while the analogous G-16 is taken primarily from *Elsheikh*, 1:20-cr-239, ECF 354 at 126:12-128:9. Beyond needlessly departing from an instruction previously used in this district, defendant's instruction misses the mark several times over. First, the phrase "the death was a natural and foreseeable consequence of the material support the defendant conspired to provide" could be read as suggesting that death must result from the defendants' specific actions, rather the conspiracy as a whole. Second, the instruction incorrectly describes the conspiracy as one "to provide the *defendant's* material support." D-19. As addressed above, the conspiracy is not limited to the defendant's provision of material support.

Third, the instruction also omits the statement that "The Government is not required to prove that the defendant, or anyone else, intended to cause the victim's death," G-16, which is present not only in *Elsheikh* but also in the model Seventh Circuit instruction the defendant purportedly modeled his instruction on. *See* Pattern Criminal Jury Instructions of the Seventh Circuit, 18 U.S.C. § 241 Death (2023). Likewise, the instruction omits the proviso that "[t]he Government does not have to prove that any act personally done by the defendant caused the victim's death." G-16. Finally, as addressed above, the use of the phrase "proximate cause" is unnecessarily confusing to a lay jury. Were it required, the Court could describe any foreseeability requirement without using the phrase "proximate cause," for instance, by replace the fourth paragraph in D-19 with a requirement the government prove "death" was "a foreseeable result of the defendant's . . . offense." *See Burrage*, 571 U.S. at 209.

Objection to Verdict Form. The government's verdict form, by specifically listing and cabining the jury to the 13 servicemembers killed at Abbey Gate and an Afghan civilian, better avoids any risk the jury will find death resulted from an attack other than Abbey Gate. The government's verdict form is also more precise because the victims do not need to have died *at* the "Hamid Karzai International Airport" (as opposed to succumbing to their wounds nearby). Additionally, the government objects to reversing the typical order by putting "Not Guilty:_____" before "Guilty:_____" and "Not Proven:_____" before "Proven:____."