

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

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**CRIM. NO. 15-739 (PAD)**

**SALLY LOPEZ MARTINEZ (2),  
IVONNE M. FALCON NIEVES (4),  
MARIELIS FALCON NIEVES (9),  
GLENN O. RIVERA PIZARRO (10),**

**Defendants.**

**FINAL JURY INSTRUCTIONS**

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**v.**

**CRIM. NO. 15-739 (PAD)**

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IVONNE M. FALCON NIEVES (4),  
MARIELIS FALCON NIEVES (9),  
GLENN O. RIVERA PIZARRO (10),**

**Defendants.**

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**JURY INSTRUCTION #1 - Introduction**

Members of the Jury:

Now that you have heard all the evidence and the arguments of counsel, I will give you the final instructions to guide and govern your deliberations. All of the instructions are important and must be followed. You should not single out some of them and ignore others. You should not read into these instructions or into anything I may have said or done, any suggestion by me as to what verdict you should return. That is for you to decide.

I will cover your role and the basic legal principles within which you will work. As you will examine evidence in reaching your decision, I will review what qualifies as evidence and the charges against which the evidence will be assessed with each of the elements that you must evaluate. Finally, I will go over the logistics to be followed during deliberations.

**JURY INSTRUCTION #2 – Role**

You are the judges of the facts. You will decide what happened; that is, who, if anyone did what, if anything, when, and why, and then apply the law to those facts. You must follow the law as I explain it to you, whether you agree with it or not. You will perform this task within the framework of 5 basic principles.

First, the defendants are presumed innocent unless and until proven guilty.

Second, the burden of proof is on the government. The defendants have no burden to prove their innocence. They have a constitutional right not to testify. For the same reason, the law prohibits you from arriving at your verdict by considering that the defendants have not testified.

Third, the government must prove the defendant's guilt beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. If after fair and impartial consideration of all the evidence, you are satisfied beyond a reasonable doubt of defendant's guilt of the crime or crimes of which he/she has been accused, you should vote guilty as to such crime. On the other hand, if after fair and impartial consideration of all the evidence, you have a reasonable doubt as to defendant's guilt, it is your duty to find them not guilty of that crime.

Fourth, you must give separate consideration to each individual defendant and to each separate charge against him or her. Each defendant is entitled to have his or her case determined from his or her own conduct and from the evidence that may be applicable to him or to her.

Fifth, you must not be moved by bias, prejudice, or sympathy for or against any of the parties or by any public opinion, but only by the evidence and my instructions.

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**JURY INSTRUCTION #3 – Evidence**

The evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them, all exhibits received in evidence, regardless of who may have produced them, and all facts which may have been agreed to or stipulated. Certain things are not evidence and must not be considered by you. These are:

1. Statements, arguments, questions and objections by lawyers. In other words, what lawyers say is not evidence.
2. Testimony that the court has excluded or told you to disregard.
3. The Indictment. The Indictment is the means by which the charges of the Government are brought before this Court. But it is not evidence. You will have that indictment before you in the course of your deliberations in the jury room. That indictment was returned by a grand jury, which heard only the government's side of the case. I caution you, that the fact that defendant has had an indictment filed against him/her is no evidence whatsoever of his/her 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. It proves nothing.

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did or felt. Circumstantial evidence is indirect evidence, that is, it is proof of one or more 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.

I'll repeat the example I gave you at the beginning of the trial. Suppose you wake up one morning and see that it is a bright and sunny day. When you go out to get the newspaper, however, you notice that the street and the sidewalk are wet. From those two facts, you may *infer* another fact, that it rained during the night. You are entitled to consider both kinds of evidence, direct and circumstantial.

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. In evaluating the evidence, you are permitted to draw from facts that you find to have been established any reasonable inference that you believe is justified in light of your common sense and personal experience.



**JURY INSTRUCTION #4 – Witnesses**

You have seen and heard many witnesses. You do not have to accept the testimony of any of the witnesses if you find the witness not credible; you may believe all of the witness' testimony, some of it or none of it. You must decide which witnesses to believe. To do this, you must look at all the evidence, drawing on your common sense and personal experience.

You may take into consideration such factors as the witnesses' conduct and demeanor while testifying; their apparent fairness; 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 fact or circumstance disclosed by the evidence that tends to confirm or contradict the witnesses' versions of the events.

Among the witnesses that you saw and heard are Héctor Vargas, Anaudi Hernández, and Víctor Burgos. They pled guilty to violating federal law, and testified under an agreement with the Government. Some people in that position are entirely truthful when testifying. Still, you should consider their testimony with particular caution. They may have had reason to make up stories or exaggerate what others did because they wanted to help themselves. Whether that occurred here is up to you to decide.

**JURY INSTRUCTION #4A - Attorney Interviewing Witnesses**

You heard that witnesses were interviewed prior to trial. It is not only proper but it may be the duty of both, the prosecutor and the defense counsel, to interview any person who may be called as a witness in preparation for trial.

**JURY INSTRUCTION #4B - Acts and Statements of Co-Conspirators**

Evidence has been admitted in this case that certain persons, who are alleged to be co-conspirators of Sally López-Martínez, Ivonne Falcón-Nieves, and Glenn Rivera Pizarro, did or said certain things. The acts or statements of any member of a conspiracy are treated as the acts or statements of all the members of the conspiracy, if these acts or statements were performed or spoken during the existence of the conspiracy and to further the objectives of the conspiracy.

Therefore, you may consider as evidence against Sally López-Martínez, and/or Ivonne Falcón-Nieves, and/or Glenn Rivera-Pizarro any acts done or statements made by any members of the conspiracy, during the existence of and to further the objectives of the alleged conspiracies. You may consider these acts and statements even if they were done and made in Sally López Martínez', and/or Ivonne Falcón-Nieves', and/or Glenn Rivera-Pizarro's absence and without his or her knowledge. As with all the evidence presented in this case, it is for you to decide whether you believe this evidence and how much weight to give it.

Acts done or statements made by an alleged co-conspirator before Sally López-Martínez, and/or Ivonne Falcón-Nieves, and/or Glenn Rivera-Pizarro joined the alleged conspiracies may also be considered by you as evidence against Sally López-Martínez, and/or Ivonne Falcón-Nieves, and/or Glenn Rivera Pizarro. However, acts done or statements made before the alleged conspiracies began or after they ended may only be considered by you as evidence against the person who performed that act or made that statement.

The sole count against Ms. Marielis Falcón-Nieves is not a conspiracy count, and therefore, this instruction has no bearing on that count. As such, statements made by those alleged coconspirators should not be considered as evidence against Marielis Falcón-Nieves.

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You may consider the admissible evidence and facts that in light of that evidence you consider have been established beyond a reasonable doubt.

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**JURY INSTRUCTION #5 – Charges**

There are 4 defendants charged in 14 Counts. I will discuss them below.

**JURY INSTRUCTION #6. Count 1.****Count 1: Conspiracy to Commit Federal Funds Bribery and Wire Fraud**

SALLY LOPEZ and IVONNE FALCÓN NIEVES are charged in Count 1 of the Indictment with conspiring to commit federal funds bribery and conspiracy to commit honest services fraud. It is against federal law to conspire with someone to commit these crimes. A conspiracy is an agreement by two or more people to commit an unlawful act. In other words, it is a kind of “partnership” for criminal purposes. Every member of a conspiracy becomes the agent or partner of every other member.

For you to find the defendants guilty, you must be convinced that the Government has proven each of the following elements beyond a reasonable doubt.

**First**, that in or about 2012, two or more people reached an agreement to commit the crimes of federal funds bribery, of honest services wire fraud, or both;

**Second**, that SALLY LOPEZ and/or IVONNE FALCÓN NIEVES willfully and knowingly joined in that agreement; and

**Third**, that one of the people in the conspiracy committed an overt act during the period of the conspiracy in an effort to further the purpose of the conspiracy.

These elements must be evaluated individually and separately as to each defendant. In that sense, in evaluating the conspiracy charge in light of the evidence and these instructions, you may convict both SALLY LOPEZ and IVONNE FALCÓN NIEVES of the conspiracy, only one of them, or neither of them. Additionally, you may convict a defendant if you conclude that a conspiracy has been established beyond a reasonable doubt to commit bribery and honest services wire fraud, or to commit only one of these crimes. You must vote not guilty if you find no conspiracy as to any of these crimes was established. Let me address then the elements of the conspiracy.

The first element of the conspiracy that must be established is an agreement. The agreement may be spoken or unspoken. It 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.

The second element of a conspiracy is to act “willfully” and “knowingly.” This 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 defendant can be said to have willfully joined the conspiracy: an intent to agree and an intent that the underlying crime be committed. Intent may be inferred from the surrounding circumstances.

A person may be a conspirator without knowing all the details of the unlawful plan or the names and identities of all the other alleged conspirators. If the Defendant played only a minor part in the plan but had a general understanding of the unlawful purpose of the plan and willfully joined in the plan on at least one occasion, that's sufficient for you to find that Defendant guilty.

Simply being present at the scene of an event or merely associating with certain people and discussing common goals and interests does not establish proof of a conspiracy. 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.

Proof that a defendant willfully and knowingly joined in the agreement must be based upon evidence of the defendant's own words and/or actions. You do not have to find that SALLY LOPEZ and/or IVONNE FALCÓN NIEVES agreed specifically to or knew about all the details of the crime, or knew every other co-conspirator or that SALLY LOPEZ and/or IVONNE FALCÓN NIEVES participated in each act of the agreement or played a major role, but the government must prove beyond a reasonable doubt that SALLY LOPEZ and/or IVONNE FALCÓN NIEVES knew the essential features and general aims of the venture. Even if SALLY LOPEZ and/or IVONNE FALCÓN NIEVES was not part of the agreement at the very start, she can be found guilty of conspiracy if the government proves that SALLY LOPEZ and/or IVONNE FALCÓN NIEVES willfully and knowingly 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. A person's knowledge may be inferred from what the defendants say or do: their words, their actions, and their conduct as of the time of the events, and reasonable inferences to be drawn from them.

The third element of a conspiracy is an overt act. This is any act knowingly committed by one or more of the conspirators in an effort to accomplish some purpose of the conspiracy. Only one overt act has to be proven. The government is not required to prove that defendant personally committed or knew about the overt act. It is sufficient if one conspirator committed one overt act at some time during the period of the conspiracy. The government does not have to



prove that the conspiracy succeeded or was achieved. The crime of conspiracy is complete upon the agreement, spoken or unspoken, to commit the underlying crime and the commission of one overt act in furtherance of the conspiracy by a member of the conspiracy. The conspiracy may be proved by direct and/or circumstantial evidence.

Now, conspiracies exist with respect to particular crimes. In Count 1, the conspiracy alleged is to commit bribery and honest services wire fraud. And even though the government is not required to prove the elements of bribery and honest services wire fraud to sustain a conviction for conspiracy, I am providing you with the elements of this offense because it is the underlying crime alleged in this count.

Bribery is the receipt of anything of value in return for being influenced in the performance of any official act. In other words, a quid pro quo. It is sufficient the public official understood that she was expected to exercise some influence on the payor's behalf as opportunities arose. Ultimately, what is needed is an agreement which can be formal or informal, written or oral.

The official and the payor do not have to state the quid pro quo in express terms. The government must do more than prove that a thing of value was provided only to cultivate a friendship or express gratitude for something given, without the expectations that something be given in return. A gratuity is the receipt of something of value by a public official without the expectation that the public official perform an official act. People at times act with a mixture of motives. If the government proves beyond a reasonable doubt that a thing of value was exchanged for an official act, it is not required to prove that this was the only reason for the payment.

Bribery can be accomplished through an ongoing course of conduct, so long as the evidence shows that things of value flowing to a public official are in exchange for a pattern of official actions favorable to the donor. That is, that the public official has obtained a thing of value to which she was not entitled, knowing that the thing of value was provided in return for official acts. The offense is completed at the time when the public official receives a thing of value in return for her agreement to perform official acts.

Finally, the conspiracy has also been charged as to honest services wire fraud. The first element of honest services wire fraud is a scheme to defraud. Such a scheme means any plan or course of action intended to deceive or cheat the people of Puerto Rico of its right to honest services from a public official by providing a thing of value with the intent that official action be taken or an official act performed. A thing of value may involve a stream of benefits provided in exchange for some official action, even if no action is identified at the time the bribe is paid. The agreement must precede the official act.

An official act is a decision or action on a question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in the public official's capacity, or in the official's place of trust. The question, matter, cause, suit, proceeding or controversy must be specific and focused and involve a formal exercise of governmental power that is similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee.

To qualify as an official act, the public official must make a decision or take an action on that question, matter, cause, suit, proceeding or controversy, or agree to do so. That decision or action may include using her official position to exert pressure on another official to perform an

official act, or advise another official, knowing or intending that such advice will form the basis for an official act by another official.

The second element of honest services wire fraud is an act with intent to defraud. This means to act knowingly and with the intent to deceive someone for the purpose of causing some loss of the public's right to honest services.

The third element of honest services wire fraud is a material false representation or concealment of fact. Such representation or concealment is material if it has a natural tendency to influence, or is capable of influencing, the decision of a reasonable person in deciding whether or not to engage or not to engage in a particular transaction. Whether the false representation or concealment of fact was material does not depend on whether the person was actually deceived.

The fourth element of honest services wire fraud is that an interstate wire communication was in fact used to carry out the scheme and the use of an interstate wire communication by someone was reasonably foreseeable. Each separate use of an interstate wire communication in furtherance of the scheme to defraud constitutes a separate offense.

Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed, and that a defendant was one of the members, then acts done by any person likewise found to be a member may be considered as evidence in the case as to a defendant found to have been a member, even though the acts may have occurred before the defendant joined the conspiracy or in the absence and without the knowledge of the defendant, provided such acts were knowingly done during the course of the conspiracy, and in furtherance of some object or purpose of the conspiracy.



**JURY INSTRUCTION #7. Count 2.**

**Count 2: Conspiracy to Commit Honest Services Wire Fraud**

Defendant SALLY LOPEZ MARTINEZ is accused in Count Two of the Indictment of conspiracy to commit honest services wire fraud. To find the defendant guilty, the government must prove the following elements beyond a reasonable doubt:

**First**, that in or about 2012, two or more people reached an agreement to commit the crime of honest services wire fraud;

**Second**, that SALLY LOPEZ willfully joined in that agreement; and

**Third**, that one of the people in the conspiracy committed an overt act during the period of the conspiracy in an effort to further the purpose of the conspiracy.

I already explained to you the elements to prove a conspiracy to commit honest services wire fraud. You must follow those instructions when evaluating the evidence as to Count 2.

**JURY INSTRUCTION #8. Counts 3-5.**  
**Counts 3-5: Honest Services Wire Fraud**

Defendant SALLY LOPEZ MARTINEZ is accused in Counts Three, Four and Five of honest services wire fraud. To find the defendant guilty of this crime, you must be convinced that the Government has proven each of the following elements, beyond a reasonable doubt.

**First**, that SALLY LOPEZ MARTINEZ knowingly and voluntarily participated in a scheme to defraud and deprive the people of Puerto Rico of honest services from a public official;

**Second**, that SALLY LOPEZ MARTINEZ did so with the intent to defraud;

**Third**, that the scheme to defraud involved a material false representation or concealment of fact; and

**Fourth**, that SALLY LOPEZ MARTINEZ used or caused to be used, wire communications in interstate commerce, in furtherance of, or in an attempt to carry out, some essential step in the scheme.

The first element the Government must prove is a scheme to defraud. Such a scheme means any plan or course of action intended to deceive or cheat the public out of its right to honest services from a public official by providing a thing of value with the intent that official action be taken or an official act performed. Things of value may involve a stream of benefits provided in exchange for some official action, even if no action is identified at the time the thing of value is provided.

The official and the payor do not have to state the quid pro quo in express terms. The government must do more than prove that a thing of value was provided only to cultivate a friendship or express gratitude for something given, without the expectations that something be given in return. A gratuity is the receipt of something of value by a public official without the

expectation that the public official perform an official act. People at times act with a mixture of motives. If the government proves beyond a reasonable doubt that a thing of value was exchanged for an official act, it is not required to prove that this was the only reason for the payment.

An official act is a decision or action on a question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in the public official's capacity, or in the official's place of trust or profit. The question, matter, cause, suit, proceeding or controversy must be specific and focused and involve a formal exercise of governmental power that is similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee.

To qualify as an official act, the public official must make a decision or take an action on that question, matter, cause, suit, proceeding or controversy, or agree to do so. That decision or action may include using her official position to exert pressure on another official to perform an official act, or advise another official, knowing or intending that such advice will form the basis for an official act by another official.

The second element the Government must prove is an act with intent to defraud. This means to act knowingly and with the intent to deceive someone for the purpose of causing some loss of the public's right to honest services from a public official. It is not a defense that the official act is lawful, or even beneficial to the public or that the scheme to defraud actually succeeded.

The third element the Government must prove is a material false representation or concealment of fact. Such representation or concealment is material if it has a natural tendency

to influence, or is capable of influencing, the decision of a reasonable person in deciding whether or not to engage in a particular transaction. Whether the false representation or concealment of fact was material does not depend on whether the person was actually deceived.

The fourth element the Government must prove is interstate wire communication. It is sufficient if an interstate wire communication was in fact used to carry out the scheme and the use of an interstate wire communication by someone was reasonably foreseeable. 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 SALLY LOPEZ herself was 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. Each separate use of an interstate wire communication in furtherance of the scheme to defraud constitutes a separate offense. It is not a defense that the official act is lawful, desirable, or even beneficial to the public or that the scheme to defraud actually succeeded.



**JURY INSTRUCTION #9. Count 11.****Count 11: Receipt of a Bribe by Agent of an Organization Receiving Federal Funds**

As relevant, in Count 11 of the Indictment SALLY LOPEZ is accused of corruptly soliciting, demanding, accepting and agreeing to accept a thing of value from a person with the intent to be influenced in connection with a transaction or series of transactions in ADL.

In order to find SALLY LOPEZ guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

**First:** That at the time alleged in the indictment, SALLY LOPEZ was an agent of ADL or the Commonwealth of Puerto Rico;

**Second:** That ADL received federal benefits in excess of \$10,000 in a one-year period. The one-year period of Federal assistance was within twelve months before or after the commission of the offense;

**Third:** That SALLY LOPEZ knowingly accepted, agreed to accept, solicited or demanded something of value from Anaudi Hernandez Perez or his co-conspirators;

**Fourth:** That SALLY LOPEZ, in her official capacity, acted corruptly with the intent to be influenced in connection with the business, a transaction or a series of transactions of ADL;

**Fifth:** That the value of the business, a transaction or a series of transactions to which the payment related was at least \$5,000; and

**Sixth:** that ADL is an agency of the Commonwealth of Puerto Rico.

The first element the government must prove is that at the time alleged in the indictment, SALLY LOPEZ MARTINEZ was an agent of ADL. An “agent” is a person authorized to act on behalf of another person, organization or government. Employees, partners, directors, officers, managers, and representatives are all agents of the organization or government with which they are associated. An agent does not necessarily have any control over the federal funds received by the government.

The second element the government must prove is that in a one-year period, the ADL received federal benefits in excess of \$10,000. The one-year period of federal assistance was within twelve-months before or after the commission of the offense. To prove this element, the government must establish that the ADL received, during a one year period, benefits in excess of \$10,000 under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or some other form of federal assistance.

The third element that the government must prove is that defendant SALLY LOPEZ knowingly accepted, agreed to accept, solicited, or demanded something of value. The thing of value may be tangible property, intangible property, or services, of any dollar value, so long as it has value. It is up to you to determine if anything was given and whether it was of value.

The government is not required to prove that the thing of value that the defendant allegedly illegally accepted, agreed to accept, solicited, or demanded or accepted was “federal benefits”, or that the illegal acts directly affected the federal benefits that the entity received. Rather, the government is required to prove, only that the defendant illegally solicited or demanded or accepted a thing of value while she was an agent of an entity that received in excess of \$10,000 in federal benefits. Finally, the government is not required to prove that the defendant knew that the entity received in excess of \$10,000 in federal benefits.

The fourth element the government must prove is that defendant SALLY LOPEZ accepted, agreed to accept, solicited, or demanded something of value corruptly and with the intent to be influenced in connection with a transaction and series of transactions of ADL.

The Government is not required to prove that the defendant solicited, demanded, accepted, or agreed to accept a thing of value in exchange for intending to be influenced for a

specific official act. Instead, it is sufficient if the Government prove that the defendant solicited, demanded, accepted, or agreed to accept the thing of value in exchange for intending to be influenced in a course of conduct. Therefore, the Government has met its burden if you find beyond a reasonable doubt that the defendant solicited, demanded, accepted, or agreed to accept anything of value corruptly with the intent to be influenced for one or several official acts taken by defendant with respect to matters pertaining to Anaudi Hernandez and his partners. To act corruptly simply means to act knowingly and intentionally with the purpose either of accomplishing an unlawful end or unlawful result or of accomplishing some otherwise lawful end or lawful result influenced by the receipt of the thing of value. Corrupt acts are ordinarily motivated by hope or expectation of either financial gain or other benefit to one's self, or some aid or profit to another.

The fifth element the government must prove is that the value of the business or transaction or series of transactions of ADL to which the payment was related was at least \$5,000. To establish this element, the government must prove that defendant SALLY LOPEZ intended to be influenced in connection with any business or transaction or series of transactions of ADL involving anything of value of \$5,000 or more. If you find that the business or transaction or series of transactions in question had a value of at least \$5,000, this element is satisfied.

In evaluating this element, keep in mind, the government is not required to prove that defendant SALLY LOPEZ received at least \$5,000. It is the value of the business or transaction or series of transactions of ADL that the bribe was intended to influence that is important for the purposes of this element. The Government is not required to show that any action or series of

actions actually performed by the defendant was, or were, unlawful, undesirable, or not beneficial to the citizens of Puerto Rico. Nor is the Government required to prove that the defendant's conduct directly affected the agency's federal benefits.

Regarding the sixth element, the government must prove that, at times relevant to this indictment, ADL was an agency of the Commonwealth of Puerto Rico.

**JURY INSTRUCTION #10. Count 6.**

**Count 6: Conspiracy to Commit Honest Services Wire Fraud**

Defendant IVONNE FALCON NIEVES is accused in Count Six of the Indictment of conspiracy to commit honest services wire fraud. To find the defendant guilty of this crime, you must be convinced that the Government has proven each of the following elements beyond a reasonable doubt.

**First**, that in or about 2012, two or more people reached an agreement to commit the crime of honest services wire fraud;

**Second**, that IVONNE FALCON NIEVES willfully joined in that agreement; and

**Third**, that one of the conspirators committed an overt act during the period of the conspiracy in an effort to further the purpose of the conspiracy.

I already explained to you the elements to prove a conspiracy to commit honest services wire fraud. You must follow those instructions when evaluating the evidence as to Count 6.

**JURY INSTRUCTION #11. Counts 7-9.****Counts 7-9: Honest Services Wire Fraud**

Counts Seven, Eight and Nine charge defendant IVONNE FALCON NIEVES with honest services wire fraud. To find the defendant guilty of this crime, you must be convinced that the Government has proven each of the following elements beyond a reasonable doubt.

**First**, that IVONNE FALCON NIEVES knowingly and voluntarily participated in a scheme or artifice to defraud the public of Puerto Rico of its right to honest services from public officials;

**Second**, that IVONNE FALCON NIEVES did so with the intent to defraud;

**Third**, that the scheme to defraud involved a material false representation or concealment of fact; and

**Fourth**, that IVONNE FALCON NIEVES used or caused to be used, wire communications in interstate commerce, in furtherance of, or in an attempt to carry out, some essential step in the scheme.

The first element the Government must prove is a scheme to defraud. Such a scheme means any plan or course of action intended to deceive or cheat the public out of its right to honest services by providing a thing of value with the intent that official action be taken or an official act performed. Things of value may involve a stream of benefits provided in exchange for some official action, even if no action is identified at the time the thing of value is provided.

The official and the payor do not have to state the quid pro quo in express terms. The government must do more than prove that a thing of value was provided only to cultivate a friendship or express gratitude for something given, without the expectations that something be given in return. A gratuity is the receipt of something of value by a public official without the expectation that the public official perform an official act. People at times act with a mixture of motives. If the government proves beyond a reasonable doubt that a thing of value was

exchanged for an official act, it is not required to prove that this was the only reason for the payment.

An official act is a decision or action on a question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in the public official's capacity, or in the official's place of trust or profit. The question, matter, cause, suit, proceeding or controversy must be specific and focused and involve a formal exercise of governmental power that is similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee.

To qualify as an official act, the public official must make a decision or take an action on that question, matter, cause, suit, proceeding or controversy, or agree to do so. That decision or action may include using her official position to exert pressure on another official to perform an official act, or advise another official, knowing or intending that such advice will form the basis for an official act by another official.

The second element the Government must prove is an act with intent to defraud. This means to act knowingly and with the intent to deceive someone for the purpose of causing some loss of the public's right to honest services. It is not a defense that the official act is lawful, or even beneficial to the public or that the scheme to defraud actually succeeded.

The third element the Government must prove is a material false representation or concealment of fact. Such representation or concealment is material if it has a natural tendency to influence, or is capable of influencing, the decision of a reasonable person in deciding whether or not to engage in a particular transaction. Whether the false representation or concealment of fact was material does not depend on whether the person was actually deceived.

The fourth element the Government must prove is interstate wire communication. It is sufficient if an interstate wire communication was in fact used to carry out the scheme and the use of an interstate wire communication by someone was reasonably foreseeable. 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 Ivonne Falcón herself was 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. Each separate use of an interstate wire communication in furtherance of the scheme to defraud constitutes a separate offense.

It is not a defense that the official act is lawful, desirable, or even beneficial to the public or that the scheme to defraud actually succeeded.



**JURY INSTRUCTION #12. Count 13.****Count 13: Receipt of a Bribe by Agent of an Organization Receiving Federal Funds**

As relevant, in Count 13 of the Indictment, IVONNE FALCON NIEVES is accused of corruptly soliciting, demanding, accepting and agreeing to accept a thing of value from a person with the intent to be influenced in connection with a transaction or series of transactions of AAA.

In order to find the defendant guilty of this offense, you must find that the Government proved each of the following elements beyond a reasonable doubt:

**First:** That at the time alleged in the indictment, IVONNE FALCON NIEVES was an agent of AAA or the Commonwealth of Puerto Rico;

**Second:** That AAA received federal benefits in excess of \$10,000 in a one-year period. The one-year period of Federal assistance was within twelve months before or after the commission of the offense;

**Third:** That IVONNE FALCON NIEVES knowingly accepted, agreed to accept, solicited or demanded something of value from Anaudi Hernández Pérez or his co-conspirators;

**Fourth:** That IVONNE FALCON NIEVES, in her official capacity, acted corruptly with the intent to be influenced in connection with the business, a transaction or a series of transactions of AAA;

**Fifth:** That the value of the business, a transaction or a series of transactions to which the payment related was at least \$5,000; and

**Sixth:** that AAA is an agency of the Commonwealth of Puerto Rico.

The first element the government must prove is that at the time alleged in the indictment, defendant IVONNE FALCON NIEVES was an agent of AAA. An “agent” is a person authorized to act on behalf of another person, organization or government. Employees, partners, directors, officers, managers, and representatives are all agents of the organization or

government with which they are associated. An agent does not necessarily have any control over the federal funds received by the government.

The second element the government must prove beyond a reasonable doubt is that in a one-year period, the AAA received federal benefits in excess of \$10,000. The one-year period of federal assistance was within the twelve months before or after the commission of the offense. To prove this element, the government must establish that AAA received, during a one year period, benefits in excess of \$10,000 under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or some other form of federal assistance.

The third element that the government must prove beyond a reasonable doubt is that defendant IVONNE FALCON NIEVES knowingly accepted, agreed to accept, solicited, or demanded something of value. The thing of value may be tangible property, intangible property, or services, of any dollar value, so long as it has value.

The government is not required to prove that the thing of value that the defendant allegedly illegally accepted, agreed to accept, solicited, or demanded or accepted was “federal benefits”, or that the illegal acts directly affected the federal benefits that the entity received. Rather, the government is required to prove, only that the defendant illegally solicited or demanded or accepted a thing of value while she was an agent of an entity that received in excess of \$10,000 in federal benefits. Finally, the government is not required to prove that the defendant knew that the entity received in excess of \$10,000 in federal benefits.

The Government is not required to prove that the defendant solicited, demanded, accepted, or agreed to accept a thing of value in exchange for intending to be influenced for a specific official act. Instead, it is sufficient if the Government prove that the defendant solicited,

demanded, accepted, or agreed to accept the thing of value in exchange for intending to be influenced in a specific course of conduct. Therefore, the Government has met its burden if you find beyond a reasonable doubt that the defendant solicited, demanded, accepted, or agreed to accept anything of value corruptly with the intent to be influenced for one or several official acts taken by defendant with respect to matters pertaining to Anaudi Hernandez and his partners.

The fourth element the government must prove that defendant IVONNE FALCON NIEVES accepted, agreed to accept, solicited, or demanded something of value corruptly and with the intent to be influenced in connection with a transaction and series of transactions of AAA.

To act corruptly simply means to act knowingly and intentionally with the purpose either of accomplishing an unlawful end or unlawful result or of accomplishing some otherwise lawful end or lawful result influenced by the receipt of the thing of value. Corrupt acts are ordinarily motivated by hope or expectation of either financial gain or other benefit to one's self, or some aid or profit to another.

The fifth element the government must prove is that the value of the business or transaction or series of transactions of AAA to which the payment was related was at least \$5,000. To establish this element, the government must prove that defendant IVONNE FALCON NIEVES intended to be influenced in connection with any business or transaction or series of transactions of AAA involving anything of value of \$5,000 or more. If you find that the business or transaction or series of transactions in question had a value of at least \$5,000, this element is satisfied.

In evaluating this element, keep in mind, the government is not required to prove that defendant IVONNE FALCON NIEVES received at least \$5,000. It is the value of the business or transaction or series of transactions of AAA that the bribe was intended to influence that is important for the purposes of this element. The Government is not required to show that any action or series of actions actually performed by the defendant was, or were, unlawful, undesirable, or not beneficial to the citizens of Puerto Rico. Nor is the Government required to prove that the defendant's conduct directly affected the agency's federal benefits.

Regarding the sixth element, the government must prove that AAA is an agency of the Commonwealth of Puerto Rico.

**JURY INSTRUCTION #13. Count 17.****Count 17: Extortion Through Fear of Economic Harm**

Defendants IVONNE M. FALCON NIEVES and MARIELIS FALCON NIEVES are accused with aiding and abetting each other by obstructing, delaying and affecting commerce by committing extortion. For you to find IVONNE M. FALCON NIEVES and/or MARIELIS FALCON NIEVES guilty of this crime, you must be convinced that the government has proven each of the following elements beyond a reasonable doubt:

**First**, that defendants IVONNE M. FALCON NIEVES and/or MARIELIS FALCON NIEVES knowingly and willfully obtained property from Ramón Crespo (identified in the Indictment as Contractor A) or his employees;

**Second**, that defendants IVONNE M. FALCON NIEVES and/or MARIELIS FALCON NIEVES did so by means of extortion; and

**Third**, that the extortion affected commerce.

As to the first element, to act knowingly and “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 property extorted must therefore be transferable—that is, capable of passing from one person to another.

As the second element, “Extortion” means obtaining property from another with his or her consent, but where that consent is obtained by the wrongful use of fear. The government must show: (1) that the victim believed that economic loss would result from failing to comply with the defendant’s demands and (2) that the circumstances made the fear reasonable. Economic loss may include the possibility of lost business opportunities. But the loss feared must be a particular economic loss, not merely the loss of a potential benefit.

“Fear” may include fear of economic loss. To establish extortion through fear of economic loss, the government must show that the victim believed that economic loss would result from his or her failure to comply with the alleged extortionist’s terms, and that the circumstances rendered that fear reasonable. A fear is “reasonable” if the defendant had the power to harm the victim, and would exploit that power to the victim’s detriment. As used in these instructions, the term “wrongful” means that the defendant did not have a claim of right to the property and that the defendant knew was not legally entitled to the property obtained.

As to the third element, “commerce” means commerce between any point in Puerto Rico and any point in the United States, but outside of Puerto Rico. It is only necessary that the government prove beyond a reasonable doubt that there is a realistic probability that the acts committed by the defendants as charged in the indictment had some slight or minimal effect on commerce. It is not necessary for you to find that the defendants knew or intended that their actions would affect commerce. The government need show only that the conduct created a realistic probability of a minimal, or *de minimus*, effect on commerce. “Minimal” or “*de minimus*” means some slight impact on commerce, as it has been defined in these instructions.

To “aid and abet” means intentionally to help someone else commit the charged crime. To establish aiding and abetting, the government must prove beyond a reasonable doubt:

First, that the crime of extortion through fear of economic harm was actually committed by someone;

Second, that IVONNE M. FALCON NIEVES and/or MARIELIS FALCON NIEVES took an affirmative act to help or cause extortion through fear of economic harm; and

Third, that IVONNE M. FALCON NIEVES and/or MARIELIS FALCON NIEVES intended to help or cause the commission of extortion through fear of economic harm.

**JURY INSTRUCTION #14. Count 24.****Count 24: Conspiracy to Commit Wire Fraud**

Defendant GLENN O. RIVERA is accused of conspiring to commit a federal crime, specifically, using wire communications in interstate commerce, certain writings and signals, for the purpose of executing a scheme and artifice to defraud. It is against federal law to conspire with someone to commit this crime.

For you to find defendant GLENN O. RIVERA guilty of this crime, you must be convinced that the government has proven each of the following elements beyond a reasonable doubt:

**First**, that two or more persons agreed to defraud the United States as charged in the indictment.

**Second**, that GLENN O. RIVERA, knowingly and willfully joined in that agreement; and

**Third**, that one of the conspirators committed an overt act during the period of the conspiracy in an effort to further the purpose of the conspiracy.

As I discussed earlier, a conspiracy is an agreement by two or more people to commit an unlawful act. In other words, it is a kind of “partnership” for criminal purposes. Every member of a conspiracy becomes the agent or partner of every other member. Because the evidence must be evaluated as to each defendant individually, I will cover again the elements needed to establish a conspiracy.

The first element of the conspiracy that must be established is an agreement. The agreement may be spoken or unspoken. It 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.

A person may be a conspirator without knowing all the details of the unlawful plan or the names and identities of all the other alleged conspirators. If the Defendant played only a minor part in the plan but had a general understanding of the unlawful purpose of the plan and willfully joined in the plan on at least one occasion, that's sufficient for you to find that Defendant guilty.

Simply being present at the scene of an event or merely associating with certain people and discussing common goals and interests does not establish proof of a conspiracy. 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.

The second element of a conspiracy is to act knowingly and “willfully.” This 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 defendant can be said to have knowingly and willfully joined the conspiracy: an intent to agree and an intent that the underlying crime be committed. Intent may be inferred from the surrounding circumstances.

Proof that the willfully joined in the agreement must be based upon evidence of the defendant’s own words and/or actions. You need not find that he agreed specifically to or knew about all the details of the crime, or knew every other co-conspirator or that he participated in each act of the agreement or played a major role, but the government must prove beyond a

reasonable doubt that he knew the essential features and general aims of the venture. Even if he was not part of the agreement at the very start, he can be found guilty of conspiracy if the government proves that he 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. Knowledge may be inferred from what the defendants say or do: their words, their actions, and their conduct as of the time of the events and reasonable inferences to be drawn from them.

The third element of a conspiracy is an overt act. This is any act knowingly committed by one or more of the conspirators in an effort to accomplish some purpose of the conspiracy. Only one overt act has to be proven. The government is not required to prove that defendant personally committed or knew about the overt act. It is sufficient if one conspirator committed one overt act at some time during the period of the conspiracy. The government does not have to prove that the conspiracy succeeded or was achieved. The crime of conspiracy is complete upon the agreement, spoken or unspoken, to commit the underlying crime and the commission of one overt act in furtherance of the conspiracy by a member of the conspiracy. The conspiracy may be proved by direct and/or circumstantial evidence.

Now, conspiracies exist with respect to particular crimes. As has been charged here, the conspiracy was to use wire communications in interstate commerce for the purpose of executing a scheme and artifice to defraud. And even though the government is not required to prove the elements of wire fraud to sustain a conviction for conspiracy, I am providing you with the elements of this offense because it is the underlying crime alleged in this count. The elements of wire fraud are as follows:

First, that there was a scheme to defraud as charged in the indictment. A scheme includes any plan, pattern, or course of action;

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

Third, GLENN O. RIVERA knowingly and willfully participated in this scheme. He acted knowingly if he was conscious and aware of his actions, realized what he was doing or what was happening around him and did not act because of ignorance, mistake or accident; and

Fourth, that for the purpose of executing the scheme or in furtherance of the scheme, GLENN O. RIVERA caused an interstate wire communication to be used, or it was reasonably foreseeable that for the purpose of executing the scheme or in furtherance of the scheme, an interstate wire communication would be used.

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 GLENN O. RIVERA himself was 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.

As I indicated earlier, whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed, and that a defendant was one of the members, then statements made and acts done by any person likewise found to be a member may be considered as evidence in the case as to a defendant found to have been a member, even though the statements and acts may occurred before the defendant joined the conspiracy or in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly

made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy. Any admission, incriminatory statement or act, by one person, not designed to further some object or purpose of the conspiracy, may not be considered as evidence against another person who was not present and did not hear the statement made, or see the act done.

**JURY INSTRUCTION #15. Count 25.****Count 25: Intentional Misapplication of Property by Agent of an Organization Receiving Federal Funds**

Defendant GLENN O. RIVERA is accused of intentional misapplication of property while acting as agents of an organization receiving federal funds, which is a violation of federal law. In order to find the defendant guilty of this crime, you must find that the government proved each of the following elements beyond a reasonable doubt:

**First:** That at the time alleged in the indictment, GLENN O. RIVERA was an agent of the Commonwealth of Puerto Rico;

**Second:** That in a one-year period the Commonwealth of Puerto Rico received federal benefits in excess of \$10,000;

**Third:** That GLENN O. RIVERA intentionally misapplied property;

**Fourth:** That the property intentionally misapplied was in the care, custody or control of the House of Representatives of the Commonwealth of Puerto Rico; and

**Fifth:** That the value of the property intentionally misapplied was at least \$5,000.

The first element the government must prove is that at the time alleged in the indictment, defendant GLENN O. RIVERA was an agent of the Commonwealth of Puerto Rico. An “agent” is a person authorized to act on behalf of another person, organization or government. Employees, partners, directors, officers, managers, and representatives are all agents of the organization or government with which they are associated. An agent does not necessarily have any control over the federal funds received by the government.

The second element the government must prove is that in a one-year period, the Commonwealth of Puerto Rico received federal benefits in excess of \$10,000. The one-year period of federal assistance was within twelve-months before or after the commission of the offense. To prove this element, the government must establish that the Commonwealth of Puerto

Rico received, during a one year period, benefits in excess of \$10,000 under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or some other form of federal assistance.

As to the third element, to intentionally misapply money or property means to intentionally use the money or property of the organization, government, or agency knowing that such use is unauthorized or unjustifiable or wrongful. Misapplication includes the wrongful use of the money or property for an unauthorized purpose, even if such use benefitted Puerto Rico or its House of Representatives. Property includes other things of value besides money and tangible objects. It also includes intangible things like the value of an employee's time and services.

The government does not have to prove that the property intentionally misapplied by the defendant was received by the organization, government or agency as federal benefits or derived from the federal benefits received by the organization, government or agency. What the government must prove beyond a reasonable doubt is that the defendant intentionally misapplied from the organization, government, or agency at the same time that the organization, government, or agency received federal benefits in excess of \$10,000 during a one-year period. In other words, the government does not need to establish a connection between the criminal activity and the federal funds.

As to the fourth element, the words “care,” “custody,” and “control” have slightly different meanings. But for the purposes of this element they express a similar idea; that is, the relevant organization, government or agency had control over, and responsibility for, the

property, even though it was not the actual owner of the property at the time of the defendant's actions.

As for the fifth element, the word "value" means face, par or market value, or cost price, either wholesale or retail, whichever is greater. "Market value" means the price a willing buyer would pay a willing seller at the time the property was stolen. Property does not include legitimate salary, wages, fees, or other compensation paid or expenses paid or reimbursed in the ordinary course of business.

These are the charges against the defendants, which you must evaluate separately and individually as to each of them. You will do this considering the evidence as explained in these instructions.

**JURY INSTRUCTION #16**

**“On or About” Explained**

The Indictment charges that the offenses were committed “on or about” certain dates. Although it is necessary for the government to prove beyond a reasonable doubt that the offenses were committed on a date reasonably near the date alleged in the Indictment, it is not necessary for the government to prove that the offenses were committed precisely on the date charged.



**JURY INSTRUCTION #17**

**Duty to Deliberate**

Any verdict must represent the considered judgment of each one of you. In order to return a verdict it is necessary that each juror agree to it. In other words, your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate in an effort to reach agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction 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 that you are not partisans. You are judges – judges of the facts. Your sole interest is to determine from the evidence in this case whether the Government has proven its case beyond a reasonable doubt.

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**JURY INSTRUCTION #18**  
**Communication with the Court**

If it becomes necessary during your deliberations to communicate with me, you may send a note through the court security 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. 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.

**JURY INSTRUCTION #19**  
**Return of Verdict Form**

Upon retiring to the jury room you should first select one member of the jury to act as your foreperson to preside over the deliberations and to be your spokesperson here in court.

I want to read to you now what is called the verdict form. This is simply the written notice of the decisions you will reach in this case.

[Read Verdict form]

After you have reached a unanimous verdict, your foreperson will fill in the verdict form, sign and date it. You will then advise the court security officer outside your door that you are ready to return to the courtroom. After you return to the courtroom, your foreperson will deliver the completed verdict form as directed in open court.

**JURY INSTRUCTION #20**  
**Communication About the Case**

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 medium, 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 may only discuss the case in the jury room with your fellow jurors during deliberations. Please inform me immediately if you become aware if any juror disregards 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 your fellow jurors or the parties in the case. This would unfairly and adversely impact the judicial process.