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**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 13-40035-01-KES

vs.

**FINAL
INSTRUCTIONS
TO THE JURY**

JAIME CESAR LORA-ANDRES

Defendant.

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VERDICT FORM

FINAL INSTRUCTION NO. 1 – INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of the trial and the oral instructions I gave you during the trial remain in effect. I now give you some additional instructions.

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

FINAL INSTRUCTION NO. 2 – CONSPIRACY TO DISTRIBUTE
METHAMPHETAMINE

For you to find Jaime Cesar Lora-Andres guilty of the “conspiracy” offense charged in Count 1 the Superseding Indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

One, beginning on or about November 2009, and continuing until on or about April 2, 2013, two or more people reached an agreement or came to an understanding to distribute a mixture or substance containing methamphetamine;

A conspiracy is an agreement of two or more persons to commit one or more crimes. It makes no difference whether any co-conspirators are defendants or named in the Superseding Indictment. For this element to be proved,

- Lora-Andres may have been, but did not have to be, one of the original conspirators
- The crime that the conspirators agreed to commit did not actually have to be committed
- The agreement did not have to be written or formal
- The agreement did not have to involve every detail of the conspiracy
- The conspirators did not have to personally benefit from the conspiracy

Here, the conspirators allegedly agreed to commit the crime of distribution of a mixture or substance containing methamphetamine. The elements of distribution of a mixture or substance containing methamphetamine are the following:

- *One, that a person intentionally transferred a mixture or substance containing methamphetamine to another; and*

- *Two*, that at the time of the transfer, the person knew that what he was transferring was a controlled substance.

Remember that the prosecution does not have to prove that distribution of a mixture or substance containing methamphetamine actually occurred for this element of the “conspiracy” offense to be proved.

***Two*, that the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;**

Lora-Andres must have joined in the agreement, but he may have done so at any time during its existence. Lora-Andres may have joined the agreement even if he agreed to play only a minor role in it.

Lora-Andres did not have to do any of the following to join the agreement:

- join the agreement at the same time as all the other conspirators
- know all of the details of the conspiracy, such as the names, identities, or locations of all the other members, or
- conspire with every other member of the conspiracy

On the other hand, each of the following, alone, is not enough to show that Lora-Andres joined the agreement:

- evidence that a person was merely present at the scene of an event
- evidence that a person merely acted in the same way as others
- evidence that a person merely associated with others
- evidence that a person was friends with or met socially with individuals involved in the conspiracy

- evidence that a person who had no knowledge of a conspiracy happened to act in a way that advanced an objective of the conspiracy
- evidence that a person merely knew of the existence of a conspiracy
- evidence that a person merely knew that an objective of the conspiracy was being considered or attempted, or
- evidence that a person merely approved of the objectives of the conspiracy

Rather, the prosecution must prove that Lora-Andres had some degree of knowing involvement in the agreement.

In deciding whether an alleged conspiracy existed, you may consider the acts and statements of each person alleged to be part of the agreement. In deciding whether the defendant joined the agreement, you may consider only the acts and statement of the defendant.

And, *Three*, that at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

A person knows the purpose of the agreement if he is aware of the agreement and does not participate in it through ignorance, mistake, carelessness, negligence, or accident. It is seldom, if ever, possible to determine directly what was in the defendant's mind. Thus the defendant's knowledge of the agreement and its purpose can be proved like anything else, from reasonable conclusions drawn from the evidence.

It is not enough that the defendant and other alleged participants in the agreement to commit the crime of distribution of methamphetamine simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. The defendant must have known of the existence and purpose of the agreement.

Without such knowledge, the defendant cannot be guilty of conspiracy, even if his acts furthered the conspiracy.

For you to find the defendant guilty, the prosecution must prove all of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find the defendant not guilty.

Quantity of Methamphetamine

If you find Lora-Andres guilty of the “conspiracy” offense alleged in the Superseding Indictment, you must also determine beyond a reasonable doubt the quantity of methamphetamine involved in the conspiracy for which Lora-Andres can be held responsible. The prosecution does not have to prove that the offense involved the amount or quantity of methamphetamine charged in the Superseding Indictment, although the prosecution must prove beyond a reasonable doubt the quantity of methamphetamine actually involved in the offense for which the defendant can be held responsible. Therefore, you must ascertain whether or not the controlled substance in question was in fact methamphetamine, as charged in the Superseding Indictment, and you must determine beyond a reasonable doubt the amount of methamphetamine involved in the offense for which the defendant can be held responsible. In so doing, you may consider all of the evidence in the case that may aid in the determination of these issues.

A defendant guilty of conspiracy to distribute methamphetamine, as charged in the Superseding Indictment, is responsible for quantities of methamphetamine that he actually distributed or agreed to distribute. Such a defendant is also responsible for those quantities of methamphetamine that fellow conspirators distributed or agreed to distribute, if you find that the defendant could have reasonably foreseen, at the time he joined the conspiracy or while the conspiracy

lasted, that those prohibited acts were a necessary or natural consequence of the conspiracy.

You must determine the *total quantity* of the controlled substance involved in the conspiracy for which the defendant can be held responsible. You must indicate the *range* within which that *total quantity* falls. You must determine that *total quantity* in terms of grams of a mixture or substance containing a detectable amount of methamphetamine. In making your determination of quantity as required, it may be helpful to remember that one pound is equal to 453.6 grams, that one ounce is equal to 28.35 grams, and that one kilogram is equal to 1000 grams.

Again, you must determine *beyond a reasonable doubt* the quantity of methamphetamine involved in the conspiracy for which the defendant can be held responsible.

FINAL INSTRUCTION NO. 3 – ACTS AND STATEMENTS OF
CO-CONSPIRATORS

If you determined that an agreement existed and the defendant joined the agreement, then you may consider acts knowingly done and statements knowingly made by the defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant even though the acts or statements were done or made in the absence of and without the knowledge of that defendant. This includes acts done or statements made before the defendant joined the conspiracy, because a person who knowingly, voluntarily, and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

FINAL INSTRUCTION NO. 4 – USE OF A COMMUNICATION FACILITY
TO CAUSE AND FACILITATE CONSPIRACY TO DISTRIBUTE A
CONTROLLED SUBSTANCE

For you to find Jaime Cesar Lora-Andres guilty of the offense charged in Count 2 the Superseding Indictment, the prosecution must prove the following essential elements beyond a reasonable doubt:

***One*, that beginning on or about November 2009, and continuing until on or about April 2, 2013, Lora-Andres knowingly used a telephone; and**

***Two*, that Lora-Andres used the telephone with the intent to commit or facilitate the commission of the offense of conspiracy to distribute methamphetamine.**

To facilitate the commission of the offense means to make committing the crime easier or less difficult, or to assist or aid.

For you to find the defendant guilty, the prosecution must prove both of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find the defendant not guilty.

FINAL INSTRUCTION NO. 5 – IMPEACHMENT

In Preliminary Instruction No. 6, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

You have heard Cheryl Pfeffer testify that she viewed a photograph of the defendant which was shown to her by the police. The police collect pictures of many people from many different sources and for many different purposes. The fact that the police had the defendant’s picture does not mean that he committed this or any other crime, and it must not affect on your consideration of this case.

You have heard evidence that Martin Garcia-Huerta, Cheryl Pfeffer, Heather LeClaire and Estanislado Pineda have each been convicted of a crime or crimes. You may use that evidence only to help you decide whether to believe those witnesses and how much weight to give their testimony.

Similarly, you have heard evidence that Martin Garcia-Huerta, Heather LeClaire and Estanislado Pineda have pleaded guilty to a charge that arose out of the same events for which this defendant is now on trial. You cannot consider these

guilty pleas as any evidence of the guilt of this defendant. Rather, you can consider such a witness's guilty plea only for the purpose of determining how much, if at all, to rely upon his or her testimony.

You should treat the testimony of certain witnesses with greater caution and care than that of other witnesses:

1. You have heard evidence that the witness Cheryl Pfeffer has received a promise from the Government that her testimony will not be used against her in a criminal case. Her testimony was received in evidence and may be considered by you. You may give her testimony such weight as you think it deserves. Whether or not her testimony may have been influenced by the Government's promise is for you to determine.

2. You have heard testimony from Martin Garcia-Huerta, Cheryl Pfeffer, Estanislado Pineda, and Heather LeClaire, who stated that they participated in the crime charged against this defendant. Their testimony was received in evidence and may be considered by you. You may give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by their desire to please the government or to strike a good bargain with the government about their own situation is for you to determine.

3. You have heard evidence that Martin Garcia-Huerta and Heather LeClaire have made a plea agreement with the government. The testimony of these witnesses was received in evidence and may be considered by you. You may give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by the plea agreement is for you to determine.

4. You have heard evidence that Heather LeClaire hopes to receive a reduced sentence on criminal charges pending against her in return for her cooperation with the government in this case. This witness entered into an agreement with the government which provides that in return for her assistance, the government will recommend a less severe sentence for the crime or crimes with which she is charged. If the prosecutor handling this witness' case believes she provided "substantial assistance," that prosecutor can file a motion to reduce her sentence. Similarly, you have heard evidence that Heather LeClaire is subject to a mandatory minimum sentence, that is, a sentence that the law provides must be of a certain minimum length. If the prosecutor handling this witness' case believes she provided "substantial assistance," that prosecutor can file a motion to reduce her sentence below the statutory minimum. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it. You may give the testimony of this witness such weight as you think it deserves. Whether or not testimony of this witness may have been influenced by her hope of receiving a reduced sentence is for you to decide.

5. You have heard evidence that Martin Garcia-Huerta has been sentenced. If the prosecutor handling the witness' case believes the witness provided "substantial assistance," that prosecutor can file a motion to reduce his sentence. The judge has no power to reduce a sentence for substantial

assistance unless the government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it. You may give the testimony of the witness such weight as you think it deserves. Whether or not testimony of the witness may have been influenced by his hope of receiving a reduced sentence is for you to decide.

6. You have heard evidence that Estanislado Pineda has an arrangement with the government under which he received a reduced sentence for providing information to the government. His testimony was received in evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not his information or testimony may have been influenced by such benefit is for you to determine.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness's testimony whatever weight you think it deserves.

Your decision on the facts of this case should not be determined by the number of witnesses testifying for or against a party. You should consider all the facts and circumstances in evidence to determine which of the witnesses you choose to believe or not believe. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

FINAL INSTRUCTION NO. 6 – SILENCE IN THE FACE OF ACCUSATION

Evidence has been introduced that a statement accusing the defendant of the crime charged in the Superseding Indictment was made, and that the defendant did not deny the accusation. If you find that the defendant was present and actually heard and understood the statement, and that it was made under such circumstances that the defendant would be expected to deny it if it was not true, then you may consider whether the defendant's silence was an admission of the truth of the statement.

FINAL INSTRUCTION NO. 7 – PRESUMPTION OF INNOCENCE AND
BURDEN OF PROOF

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charges, or the fact that he is here in court.
- This presumption remains with the defendant throughout the trial.
- This presumption is enough, alone, for you to find the defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of an offense charged against him.

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence.
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.
- This burden means that you must find the defendant not guilty of an offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense.

FINAL INSTRUCTION NO. 8 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence.
- A reasonable doubt may arise from the prosecution's lack of evidence.

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all the evidence in the case before making a decision.
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs.

The prosecution's burden is heavy, but it does not require proof beyond all possible doubt.

FINAL INSTRUCTION NO. 9 – DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. Before you make that judgment, you must consult with one another and try to reach agreement if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty, say so.
- Do not give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is wrong.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence, reason, your common sense, and these Instructions.
- You must consider all of the evidence bearing on each element before you.
- Take all the time that you feel is necessary.

- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case.

FINAL INSTRUCTION NO. 10 – DUTY DURING DELIBERATIONS

You must follow certain rules while conducting your deliberations and returning your verdict:

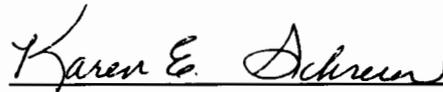
- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty, I will decide what his sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these Instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- If any reference by the court or counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the court or counsel.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs,

national origin, or sex.

- Complete the Verdict Form. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

Dated December 4, 2015.



Karen E. Schreier

United States District Judge