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**INSTRUCTION NO. 1**

If you are selected as a juror in this case, you cannot talk about the case or communicate with anyone else about the case until I tell you that such discussions are allowed. You cannot even discuss the case with your fellow jurors until I tell you to begin deliberations at the end of the trial. When I say you cannot communicate with anyone about the case in any way, this includes communications in writing, through email, via text messaging, on blogs, via comments, posts, or by accessing any social media websites and apps such as Twitter, Facebook, Instagram, LinkedIn, YouTube, WhatsApp, Snapchat, Tiktok, and NextDoor. Similarly, you cannot post your own thoughts on any aspect of the trial. The point is that you must not access or allow any app or communication of any kind to expose you to outside information or opinions about this case, or to expose others to your opinions about the case, during the trial. Many of the tools you use to access email, social media, and the internet display third-party notifications, pop-ups, or ads while you are using them. These communications may be intended to persuade you or your community on an issue and could influence you in your service as a juror in this case. For example, while accessing your email, social media, or the internet, through no fault of your own, you might see popups containing information about this case or the matters, legal principles, individuals or other entities involved in this case. This means you will need to stay off all social media platforms for the duration of the trial. These are only examples. The sole exception to this rule about communications will occur during deliberations, when I will direct you to discuss the case with the other jurors.

Throughout the trial, and even during deliberations, you also cannot conduct any type of independent or personal research or investigation regarding any matters related to this case. Therefore, you cannot use your cellphones, iPads, notebooks, tablets, computers or any other device to do any research or investigation regarding this case, the matters in the case, the legal

issues in the case, or the individuals or other entities involved in the case. This includes accessing sites such as Google Maps, Google Earth, PACER, or any other internet search engines. You must also ignore any and all information about the case you might see, even accidentally, while using your phone, browsing online, or accessing online or electronic apps. This prohibition is mandatory because you must base the decisions you will make in this case solely on what you hear and see in this courtroom.

I understand you may want to tell your family, close friends and other people about your participation in this trial so that you can explain when you are required to be in court. While you can tell them about these sort of logistical issues, you should warn them that you cannot speak about the details of the case and they should not ask you about this case, tell you anything they know or think they know about it, or discuss this case in your presence. If you discuss the case with someone other than the other jurors during deliberations, you may be influenced in your verdict by their opinions. That would not be fair to the parties and it would result in a verdict that is not based on the evidence and the law.

The parties have a right to have this case decided only on evidence they know about and that has been presented here in court. If you do some research, investigation, or experiment that we don't know about, then your verdict may be influenced by inaccurate, incomplete, or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. Each of the parties is entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this country and you will have done an injustice. It is

very important that you abide by these rules. Failure to follow these instructions could result in the case having to be retried.

It is also important that you discharge your duties without discrimination, meaning that bias regarding the race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, disability, or economic circumstances of the defendant, any witnesses, or other participant(s) associated with the trial should play no part in the exercise of your judgment throughout the trial.

Because personal opinions, biases, and other beliefs, whether conscious or unconscious, favorable or unfavorable, can affect your thoughts, how you remember, what you see and hear, whom you believe or disbelieve, and how you make important decisions, the attorneys may ask you some questions related to these issues. Your answers must not only be truthful, but they must be full and complete. Some biases we are aware or conscious of and others we might not be fully aware of, which is why they are called "implicit biases" or "unconscious biases." Unconscious biases are stereotypes, attitudes, or preferences that people may consciously reject but may express without conscious awareness, control, or intention. Like conscious bias, unconscious bias, too, can affect how we evaluate information and make decisions.

I may not repeat these things to you before every recess but keep them in mind until you are discharged.

**INSTRUCTION NO. 2**

During this recess, and every other recess, do not discuss this case among yourselves or with anyone else, including your family and friends. Do not allow anyone to discuss the case with you or within your hearing. "Do not discuss" also means do not e-mail, send text messages, blog, post on social media or engage in any other form of written, oral, or electronic communication, as I instructed you before.

The Sixth Amendment of our Constitution guarantees a trial by an impartial jury. This means that, as jurors, you must decide this case based solely on the evidence and law presented to you here in this courtroom. Until all the evidence and arguments have been presented and you begin to deliberate, you may not discuss this case with anyone, even your fellow jurors. After you start to deliberate, you may discuss the case, the evidence, and the law as it has been presented, but only with your fellow jurors. You cannot discuss it with anyone else until you have returned a verdict and the case has come to an end.

### INSTRUCTION NO. 3

Ladies and gentlemen: I will take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions—both those I give you now and those I give you later—are equally binding on you and must be followed.

This is a criminal case, brought against the defendant by the United States government. The defendant is charged with two counts of enticement of a minor using the internet and two counts of commercial sex trafficking. Those charges are set forth in what is called an indictment, which reads as follows:

On or about between August 1, 2020, and August 4, 2020, in the District of South Dakota, the defendant, Gordon Weston, did use a facility and means of interstate commerce, that is, a cellular phone connected to the internet, to attempt to knowingly persuade, induce, entice, and coerce an individual namely, E.B.B.H., a child under 18 years of age, to engage in prostitution and any sexual activity for which the defendant could be charged with a criminal offense, all in violation of 18 U.S.C. § 2422(b).

On or about between February 1, 2021, and February 15, 2021, in the District of South Dakota, the defendant, Gordon Weston, did use a facility and means of interstate commerce, that is, a cellular phone connected to the internet, to attempt to knowingly persuade, induce, entice, and coerce an individual namely, E.B.B.H., a child under 18 years of age, to engage in prostitution and any sexual activity for which the defendant could be charged with a criminal offense, all in violation of 18 U.S.C. § 2422(b).

On or about between August 1, 2020, and August 4, 2020, in the District of South Dakota and elsewhere, the defendant, Gordon Weston, in and affecting interstate commerce, did knowingly recruit, entice, harbor, transport, provide, obtain, advertise, maintain, patroanize and solicit by any means, E.B.B.H., and knowing that in reckless disregard of the fact that E.B.B.H. had not attained the age of 18 years and would be caused to engage in a commercial sex act, all in violation of 18 U.S.C. §§ 1591(a)(1) and 1591(b)(2).

On or about between February 1, 2021, and February 15, 2021, in the District of South Dakota and elsewhere, the defendant, Gordon Weston, in, and affecting interstate commerce, did knowingly recruit, entice, harbor, transport, provide, obtain, advertise, maintain, patronize and solicit by any means, E.B.B.H., and knowing and in reckless disregard of the fact that E.B.B.H. had not attained the age of 18 years and would be caused to engage in a commercial sex act, all in violation of 18 U.S.C. §§ 1591(a)(1) and 1591(b)(2).

You should understand that an indictment is simply an accusation. It is not evidence of anything. The defendant has pleaded not guilty, and is presumed to be innocent unless and until proved guilty beyond a reasonable doubt.

It will be your duty to decide from the evidence whether the defendant is guilty or not guilty of the crimes charged. From the evidence, you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdict. You are the sole judges of the facts, but you must follow my instructions, whether you agree with them or not. You have taken an oath to do so.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

Finally, please remember that only this defendant, not anyone else, is on trial here, and that this defendant is on trial only for the crimes charged, not for anything else.

#### INSTRUCTION NO. 4

In order to help you follow the evidence, I will now give you a brief summary of the elements of the crimes charged, which the government must prove beyond a reasonable doubt to make its case:

As to the crime of enticement of a minor using the internet, as charged in Count One of the Indictment, the government must prove beyond a reasonable doubt to make its case:

*One*, on or about between August 1, 2020, and August 4, 2020, the defendant knowingly used a cellular phone connected to the internet to attempt to knowingly persuade, induce, entice, or coerce anyone under eighteen years of age to engage in prostitution or any sexual activity for which the defendant could be charged with a criminal offense;

*Two*, the defendant believed that such individual was less than eighteen years of age; and

*Three*, that if the prostitution or sexual activity had occurred, the defendant could have been charged with a criminal offense under the laws of the United States or the State of South Dakota.

As to the crime of enticement of a minor using the internet, as charged in Count Two of the Indictment, the government must prove beyond a reasonable doubt to make its case:

*One*, on or about between February 1, 2021, and February 15, 2021, the defendant knowingly used a cellular phone connected to the internet to attempt to knowingly persuade, induce, entice, or coerce anyone under eighteen years of age to engage in prostitution or any sexual activity for which the defendant could be charged with a criminal offense;

*Two*, the defendant believed that such individual was less than eighteen years of age; and

*Three*, that if the prostitution or sexual activity had occurred, the defendant could have been charged with a criminal offense under the laws of the United States or the State of South Dakota.

As to the crime of commercial sex trafficking, as charged in Count Three of the Indictment, the government must prove beyond a reasonable doubt to make its case:



*One*, on or about between August 1, 2020, and August 4, 2020, the defendant knowingly recruited, enticed, harbored, transported, provided, obtained, advertised, maintained, patronized, or solicited by any means E.B.B.H.;

*Two*, the defendant knew or recklessly disregarded the fact that E.B.B.H. was under eighteen years of age and would be caused to engage in a commercial sex act; and

*Three*, the offense was in or affected interstate or foreign commerce.

As to the crime of commercial sex trafficking, as charged in Count Four of the Indictment, the government must prove beyond a reasonable doubt to make its case:

*One*, on or about between February 1, 2021, and February 15, 2021, the defendant knowingly recruited, enticed, harbored, transported, provided, obtained, advertised, maintained, patronized, or solicited by any means E.B.B.H.;

*Two*, the defendant knew or recklessly disregarded the fact that E.B.B.H. was under eighteen years of age and would be caused to engage in a commercial sex act; and

*Three*, the offense was in or affected interstate or foreign commerce.

You should understand, however, that what I have just given you is only a preliminary outline. At the end of the trial I will give you a final instruction on these matters. If there is any difference between what I just told you, and what I tell you in the instructions I give you at the end of the trial, the instructions given at the end of the trial must govern you.

### INSTRUCTION NO. 5

I have mentioned the word “evidence.” “Evidence” includes the testimony of witnesses, documents and other things received as exhibits, any facts that have been stipulated—that is, formally agreed to by the parties, and any facts that have been judicially noticed—that is, facts which I say you may, but are not required to, accept as true, even without evidence.

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

Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.

Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.

Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

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

Finally, some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that you should not be concerned with those terms. The law makes

no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

**INSTRUCTION NO. 6**

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony of any witness to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with other evidence that you believe.

Again you must avoid bias, conscious or unconscious, based on a witness's race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, disability, or economic circumstances in your determination(s) of credibility.

**INSTRUCTION NO. 7**

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and it may not be practical for the court reporter to read back lengthy testimony. You must pay close attention to the testimony as it is given.

If you wish, however, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. And do not let note-taking distract you so that you do not hear other answers by the witness.

When you leave at night, your notes will be secured and not read by anyone.

**INSTRUCTION NO. 8**

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

### INSTRUCTION NO. 9

To ensure fairness, you as jurors must obey the following rules:

*First*, do not talk or communicate among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

*Second*, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended, and you have been discharged as jurors.

*Third*, when you are outside the courtroom do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended, and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to the courtroom deputy.

*Fourth*, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case—you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side—even if it is simply to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk to or visit with you.

*Fifth*, it may be necessary for you to tell your family, close friends, teachers, coworkers, or employer about your participation in this trial. You can explain when you are required to be in court and can warn them not to ask you about this case, tell you anything they know or think they know about this case, or discuss this case in your presence. You must not communicate with anyone or post information about the parties, witnesses, participants, charges, evidence, or anything else related to this case. You must not tell anyone anything about the jury's deliberations in this case until after I accept your verdict or until I give you specific permission to do so. If you discuss

the case with someone other than the other jurors during deliberations, it could create the perception that you have clearly decided the case or that you may be influenced in your verdict by their opinions. That would not be fair to the parties and it may result in the verdict being thrown out and the case having to be retried. During the trial, while you are in the courthouse and after you leave for the day, do not provide any information to anyone by any means about this case. Thus, for example, do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, computer, any online service, any text or instant messaging service, any Internet chat room, blog, or Website such as Facebook, Tiktok, Instagram, YouTube, Twitter, or any other way to communicate to anyone any information about this case until I accept your verdict.

*Sixth*, do not do any research—on the Internet, via electronic devices, in libraries, in the newspapers, or in any other way—or make any investigation about this case on your own. Do not visit or view any place discussed in this case and do not use any computerized devices or phones to electronically search online for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge.

*Seventh*, do not read anything about this case, whether it is a news story, an article in print, something online, something on social media, or in any blog or app about this case or anyone involved with it. Do not listen to any radio, television, online, video, or other types of reports about the case or about anyone involved with it. I can assure you, however, that by the time you have heard the evidence in this case, you will know what you need to return a just verdict.

The parties have a right to have the case decided only on evidence they know about and that has been introduced here in court. If you do any research or investigation or experiment that



we don't know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this country and you will have done an injustice. It is very important that you abide by these rules. Remember, you have taken an oath to abide by these rules and you must do so.

*Eighth*, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

*Ninth*, faithful performance by you of your duties as jurors is vital to the administration of justice. You should perform your duties without prejudice or fear, and solely from a fair and impartial consideration of the whole case.

Our system of justice depends on jurors like you being able and willing to make careful and fair decisions. A first response is often like a reflex; it may be quick and automatic. Even though a quick response may not be the result of conscious thought, it may influence how we judge people or even how we remember or evaluate evidence. You must not decide this case based on personal likes or dislikes, sympathy, prejudice, fear, public opinion, or biases, including unconscious biases such as stereotypes, attitudes, or preferences that people may consciously reject but may express without conscious awareness, control, or intention. Take the time to reflect carefully and consciously about the evidence.

**INSTRUCTION NO. 10**

The trial will proceed in the following manner:

First, the government will make an opening statement. Next the defendant's attorney may, but does not have to, make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The government will then present its evidence and counsel for the defendant may cross-examine. Following the government's case, the defendant may, but does not have to, present evidence, testify or call other witnesses. If the defendant calls witnesses, the government may cross-examine them.

After presentation of evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. The court will instruct you further on the law. After that you will retire to deliberate on your verdict.

**INSTRUCTION NO. 11**

During this recess, and every other recess, you must not discuss this case with anyone, including the other jurors, members of your family, people involved in the trial, or anyone else. Do not allow anyone to discuss the case with you or within your hearing. Only you have been chosen as jurors in this case, and only you have sworn to uphold the law—no one else has been chosen to do this. You should not even talk among yourselves about the case before you have heard all the evidence and the case has been submitted to you by me for deliberations, because it may affect your final decision. If anyone tries to talk to you about the case, please let me know about it immediately.

When I say, “you must not discuss the case with anyone,” I also mean do not e-mail, send text messages, blog or engage in any other form of written, oral or electronic communication, as I instructed you before.

Do not read any newspaper or other written account, watch any televised account, or listen to any radio program about this trial. Do not conduct any Internet research or consult with any other sources about this case, the people involved in the case, or its general subject matter. You must keep your mind open and free of outside information. Only in this way will you be able to decide the case fairly, based solely on the testimony, evidence presented in this courtroom, and my instructions on the law. If you decide this case on anything else, you will have done an injustice. It would be a violation of your oath for you to base your decision on some reporter’s view or opinion, or upon other information you acquire outside the courtroom. It is very important that you follow these instructions.

I may not repeat these things to you before every recess, but keep them in mind throughout the trial.

**INSTRUCTION NO. 12**

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

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now as well as those I gave you earlier are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, *all* instructions, whenever given and whether in writing or not, must be followed.

**INSTRUCTION NO. 13**

As you have heard, there is a transcript of the recording you heard earlier. That transcript also undertakes to identify the speakers engaged in the conversation.

The transcript is for the limited purpose of helping you follow the conversation as you listen to the recording, and also to help you keep track of the speakers. Differences in meaning between what you hear in the recording and read in the transcript may be caused by such things as the inflection in a speaker's voice. It is what you hear, however, and not what you read, that is the evidence.

Whether the transcript correctly or incorrectly reflects the conversation or the identity of the speakers is entirely for you to decide based upon what you hear on the recording and what you have heard here about the preparation of the transcript, and upon your own examination of the transcript in relation to what you hear on the recording. If you decide that the transcript is in any respect incorrect or unreliable, you should disregard it to that extent.

**INSTRUCTION NO. 14**

You have heard testimony that the defendant made a statement to Special Agent Myers. It is for you to decide:

*First*, whether the defendant made the statement; and

*Second*, if so, how much weight you should give to it.

In making these two decisions you should consider all of the evidence, including the circumstances under which the statement may have been made.

**INSTRUCTION NO. 15**

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

You should not be influenced by any person's race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, disability, or economic circumstances. You must decide the case solely on the evidence and the law before you and must not be influenced by any personal likes or dislikes, opinions, prejudices, sympathy, or biases, including unconscious bias. Unconscious biases are stereotypes, attitudes, or preferences that people may consciously reject but may express without conscious awareness, control, or intention. Like conscious bias, unconscious bias, too, can affect how we evaluate information and make decisions.

The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

**INSTRUCTION NO. 16**

I have mentioned the word "evidence." The "evidence" in this case consists of the testimony of witnesses, the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

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

1. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.

2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.



**INSTRUCTION NO. 17**

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness' intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness' memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

### INSTRUCTION NO. 18

The Indictment in this case charges the defendant with four different crimes. Counts 1 and 2 charge that the defendant committed the crime of enticement of a minor using the internet. Counts 3 and 4 charge that the defendant committed the crime of commercial sex trafficking. The defendant has pleaded not guilty to each of those charges.

The Indictment is simply the document that formally charges the defendant with the crime for which he is on trial. The Indictment is not evidence. At the beginning of the trial, I instructed you that you must presume the defendant to be innocent. Thus, the defendant began the trial with a clean slate, with no evidence against him.

The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proved during the trial, beyond a reasonable doubt, each element of a crime charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

There is no burden upon a defendant to prove that he is innocent. Instead, the burden of proof remains on the government throughout the trial. The fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

**INSTRUCTION NO. 19**

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

**INSTRUCTION NO. 20**

The government must prove it is more likely true than not true that the offenses charged began, continued or completed in the District of South Dakota. You decide these facts by considering all of the evidence and deciding what evidence is more believable. This is a lower standard than proof beyond a reasonable doubt. The requirement of proof beyond a reasonable doubt applies to all other issues in the case.

**INSTRUCTION NO. 21**

The indictment charges that the offenses were committed “on or about between” specific dates. The government must prove that the offenses happened reasonably close to those dates, but is not required to prove the alleged offenses happened on those exact dates.

## INSTRUCTION NO. 22

The crime of using a facility or means of interstate commerce to persuade, induce, entice, or coerce anyone under eighteen (18) years of age to engage in prostitution, or any sexual activity for which any person can be charged with a criminal offense, as charged in Count 1 of the indictment has three essential elements, which are:

*One*, that on or about between August 1, 2020, and August 4, 2020, in the District of South Dakota and elsewhere, the defendant knowingly used a facility or means of interstate commerce, that is, Facebook, to attempt to persuade or induce or entice or coerce an individual under the age of eighteen years of age to engage in prostitution, or other sexual activity charged in the Indictment;

*Two*, the defendant believed that such individual was less than eighteen (18) years of age; and

*Three*, that based upon the sexual activity that occurred, the defendant could have been charged with a criminal offense under South Dakota law.

Prostitution is a crime under the laws of the State of South Dakota.

Under South Dakota law, a person commits the crime of prostitution when he hires or attempts to hire another person for a fee or other compensation to engage in sexual activity. Sexual activity includes sexual penetration and sexual contact. Sexual penetration means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body into the genital opening of another person's body. Sexual contact means any touching, whether or not through clothing or other covering, of the breasts of a female or genitalia of any person with the intent to arouse or gratify the sexual desire of either party.

The phrase “interstate commerce” means commerce between any combination of states, territories, and possessions of the United States, including the District of Columbia. The term “commerce” includes, among other things, travel, trade, transportation, and communication.

In determining whether the defendant’s conduct was “in or affecting interstate commerce,” you may consider whether the defendant used means or facilities of interstate commerce, such as telephones, the internet, or hotels that serviced interstate travelers, or whether the defendant’s conduct substantially affected interstate commerce by virtue of the fact that the defendant purchased items that had moved in interstate commerce.

If you find these three elements unanimously and beyond a reasonable doubt, then you must find the defendant guilty of the crime of enticement of a minor using the internet as charged in Count 1 of the Indictment. Record your determination on the Verdict Form which will be submitted to you with these instructions.

### INSTRUCTION NO. 23

The crime of using a facility or means of interstate commerce to persuade, induce, entice, or coerce anyone under eighteen (18) years of age to engage in prostitution, or any sexual activity for which any person can be charged with a criminal offense, as charged in Count 2 of the indictment has three essential elements, which are:

*One*, that on or about between February 1, 2021, and February 15, 2021, in the District of South Dakota and elsewhere, the defendant knowingly used a facility or means of interstate commerce, that is, Facebook, to attempt to persuade or induce or entice or coerce an individual under the age of eighteen years of age to engage in prostitution, or other sexual activity charged in the Indictment;

*Two*, the defendant believed that such individual was less than eighteen (18) years of age; and

*Three*, that based upon the sexual activity that occurred, the defendant could have been charged with a criminal offense under South Dakota law.

Prostitution is a crime under the laws of the State of South Dakota.

Under South Dakota law, a person commits the crime of prostitution when he hires or attempts to hire another person for a fee or other compensation to engage in sexual activity. Sexual activity includes sexual penetration and sexual contact. Sexual penetration means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body into the genital opening of another person's body. Sexual contact means any touching, whether or not through clothing or other covering, of the breasts of a female or genitalia of any person with the intent to arouse or gratify the sexual desire of either party.



The phrase “interstate commerce” means commerce between any combination of states, territories, and possessions of the United States, including the District of Columbia. The term “commerce” includes, among other things, travel, trade, transportation, and communication.

In determining whether the defendant’s conduct was “in or affecting interstate commerce,” you may consider whether the defendant used means or facilities of interstate commerce, such as telephones, the internet, or hotels that serviced interstate travelers, or whether the defendant’s conduct substantially affected interstate commerce by virtue of the fact that the defendant purchased items that had moved in interstate commerce.

If you find these three elements unanimously and beyond a reasonable doubt, then you must find the defendant guilty of the crime of enticement of a minor using the internet as charged in Count 2 of the indictment. Record your determination on the Verdict Form which will be submitted to you with these instructions.

#### INSTRUCTION NO. 24

The crime of commercial sex trafficking, as charged in Count 3 of the Indictment, has three elements:

*One*, that on or about between August 1, 2020, and August 4, 2020, the defendant knowingly recruited, enticed, harbored, transported, obtained, patronized, or solicited by any means E.B.B.H.

*Two*, the defendant knew, or recklessly disregarded the fact that E.B.B.H. was under eighteen years of age and would be caused to engage in a commercial sex act; and

*Three*, the offense affected interstate commerce.

The government is not required to prove that the defendant knew, or recklessly disregarded the fact that E.B.B.H. was under eighteen years of age if the defendant had a reasonable opportunity to observe E.B.B.H.

The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.

The phrase "interstate commerce" means commerce between any combination of states, territories, and possessions of the United States, including the District of Columbia. The term "commerce" includes, among other things, travel, trade, transportation, and communication.

In determining whether the defendant's conduct was "in or affecting interstate commerce," you may consider whether the defendant used means or facilities of interstate commerce, such as telephones, the internet, or hotels that serviced interstate travelers, or whether the defendant's conduct substantially affected interstate commerce by virtue of the fact that the defendant purchased items that had moved in interstate commerce.

If you find these three elements unanimously and beyond a reasonable doubt, then you must find the defendant guilty of the crime commercial sex trafficking as charged in Count 3 of the indictment. Record your determination on the Verdict Form which will be submitted to you with these instructions.

### INSTRUCTION NO. 25

The crime of commercial sex trafficking, as charged in Count 4 of the Indictment, has three elements:

*One*, that on or about between February 1, 2021, and February 15, 2021, the defendant knowingly recruited, enticed, harbored, transported, obtained, patronized, or solicited by any means E.B.B.H.

*Two*, the defendant knew, or recklessly disregarded the fact that E.B.B.H. was under eighteen years of age and would be caused to engage in a commercial sex act; and

*Three*, the offense affected interstate commerce.

The government is not required to prove that the defendant knew, or recklessly disregarded the fact that E.B.B.H. was under eighteen years of age if the defendant had a reasonable opportunity to observe E.B.B.H.

The term “commercial sex act” means any sex act, on account of which anything of value is given to or received by any person.

The phrase “interstate commerce” means commerce between any combination of states, territories, and possessions of the United States, including the District of Columbia. The term “commerce” includes, among other things, travel, trade, transportation, and communication.

In determining whether the defendant’s conduct was “in or affecting interstate commerce,” you may consider whether the defendant used means or facilities of interstate commerce, such as telephones, the internet, or hotels that serviced interstate travelers, or whether the defendant’s conduct substantially affected interstate commerce by virtue of the fact that the defendant purchased items that had moved in interstate commerce.

If you find these three elements unanimously and beyond a reasonable doubt, then you must find the defendant guilty of the crime of commercial sex trafficking as charged in Count 4 of the indictment. Record your determination on the Verdict Form which will be submitted to you with these instructions.

**INSTRUCTION NO. 26**

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of the defendant's knowledge or intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

### INSTRUCTION NO. 27

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I will list those rules for you now.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

*Third*, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

*Fourth*, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

*Fifth*, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict whether guilty or not guilty must be unanimous. Nothing I

have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

*Finally*, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.



### INSTRUCTION NO. 28

Throughout your deliberations, you can and should discuss with each other the evidence and the law that was presented in this case, but you must still not communicate with anyone else by any means about the case. You also cannot learn anything from outside sources about the case, the matters in the case, the legal issues in the case, or individuals or other entities involved in the case. This means you may still not use any electronic device or media such as a phone, computer, or tablet, the internet, any text or instant messaging service, or any social media apps such as Twitter, Facebook, Instagram, LinkedIn, YouTube, WhatsApp, Snapchat, Tiktok, and NextDoor to research or communicate about what you've seen and heard in this courtroom.

These restrictions continue during deliberations because it is essential, under our Constitution, that you decide this case based solely on the evidence and law presented in this courtroom. Information you find electronically might be incomplete, misleading, or inaccurate. And, as I noted in my instructions at the start of the trial, even using your smartphones, tablets, and computers - and the news and social media apps on those devices - may inadvertently expose you to certain notices, such as pop-ups or advertisements, that could influence your consideration of the matters you've heard about in this courtroom.

You are permitted to discuss the case with only your fellow jurors during deliberations because they have seen and heard the same evidence and instructions on the law that you have, and it is important that you decide this case solely on the evidence presented during the trial, without undue influence by anything or anyone outside of the courtroom. For this reason, I expect you to inform me at the earliest opportunity, should you learn about or share any information about this case outside of this courtroom or the jury room, or learn that another juror has done so.