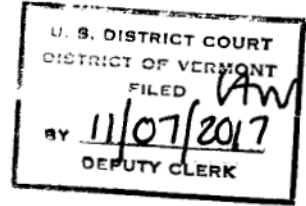


UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT



UNITED STATES OF AMERICA, )

v. )

Case No. 2:16-cr-0084-1

ALISON GU, )

Defendant. )

**JURY CHARGE**

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them.

This case is a criminal prosecution brought by the United States against the defendant ALISON GU. The Superseding Indictment ("the indictment") charges ALISON GU in three counts.

The first count of the indictment charges the defendant with bank fraud. Count I alleges:

1. At all relevant times, Bank of Bennington, First National Bank of America, Prime Lending/Colonial Savings Bank, Discover Home Loans, and Emigrant Mortgage Company were financial institutions whose deposits were insured by the Federal Deposit Insurance Corporation. As financial institutions, they offered customers mortgages and other loans, which customers could use to finance, re-finance, or improve real property.
2. Between in or about 2013 and September 2015, defendant Alison Gu, a/k/a "Ally Koo," "Ai J. Chen," "Ai Jen Chen," "Ai Chen," "Jing Shao," . . . devised and executed a scheme to defraud Bank of Bennington, First National Bank of America, Prime Lending/Colonial Savings Bank,

Discover Home Loans, and Emigrant Mortgage Company to obtain funds through submission of mortgage loan applications and re-financing applications containing false information to Bank of Bennington, First National Bank of America, Prime Lending/Colonial Savings Bank, Discover Home Loans, and Emigrant Mortgage Company.

3. It was part of the scheme that on or about August 13, 2013, Matthew Abel incorporated "Ramps Unlimited, Inc." in Connecticut, which corporation purchased real property located at 7 Edith Place, Cheshire, Connecticut on or about August 21, 2013.

4. It was further part of the scheme that between approximately August 2014 and January 2015, Alison Gu, a/k/a "Ally Koo," "Ai J. Chen," "Ai Jen Chen," "Ai Chen," "Jing Shao" attempted to purchase 7 Edith Place, Cheshire, Connecticut by submitting a financing application to NorthEast Financial using the identity of "Ai J. Chen." The financing application to NorthEast Financial also falsely represented that "Ai J. Chen" was currently employed at Alexion Pharmaceuticals in Cheshire, Connecticut.

5. It was further part of the scheme that on or about February 26, 2015, Matthew Abel, acting as the agent of Ramps Unlimited, Inc., transferred 7 Edith Place, Cheshire, Connecticut to "Aijen Chen" and "Jing Shao" by quitclaim deed for no consideration.

6. It was further part of the scheme that Alison Gu, a/k/a "Ally Koo," "Ai J. Chen," "Ai Jen Chen," "Ai Chen," "Jing Shao" established false identities using the Social Security Number of a deceased individual and applied with Matthew Abel for loans from Bank of Bennington, Discover Home Loans, and First National Bank of America.

7. It was further part of the scheme that in or about June 2015, Matthew Abel initiated a mortgage application to Bank of Bennington and subsequently substituted "Ai J. Chen" as the record purchaser for property at 389 Read Farm Road, Dorset, Vermont.

8. It was further part of the scheme that in or about September 2015, Alison Gu, a/k/a "Ally Koo," "Ai J. Chen," "Ai Jen Chen," "Ai Chen," "Jing Shao," submitted to Bank of Bennington altered bank statements, forged employment identification forms, forged pay statements, and a forged IRS W-2 form.

9. It was further part of the scheme that on or about September 28, 2015, Alison Gu, a/k/a "Ally Koo," "Ai J. Chen," "Ai Jen Chen," "Ai Chen," "Jing Shao" obtained a mortgage loan of approximately \$417,000 from the Bank of Bennington.

10. It was further part of the scheme that in or about July and August 2015, Alison Gu, a/k/a "Ally Koo," "Ai J. Chen," "Ai Jen Chen," "Ai Chen," "Jing Shao," and Matthew Abel submitted to First National Bank of America altered bank statements, forged employment identification forms, forged pay statements, and a forged IRS W-2 form in the application to finance the purchase of property at 385 Cedar Avenue, Cocoa Beach, Florida.

11. It was further part of the scheme that on or about August 7, 2015, Alison Gu, a/k/a "Ally Koo," "Ai J. Chen," "Ai Jen Chen," "Ai Chen," "Jing Shao," and Matthew Abel obtained a mortgage loan of approximately \$230,250 from First National Bank of America.

12. It was further part of the scheme that between in or about March and May 2015, Alison Gu, a/k/a "Ally Koo," "Ai J. Chen," "Ai Jen Chen," "Ai Chen," "Jing Shao," submitted to Emigrant Mortgage Company an application in the names of "Aijen Chen" and "Jing Shao" for a cash-out re-financing of property

located at 7 Edith Place, Cheshire, Connecticut. The application contained false information with respect to the actual identities of the loan applicants, a forged signature of a United States consular official in Beijing, China purporting to vest power of attorney in the name of one of the loan applicants, false visa identification information, and a false certification of a non-existent accountant in China purporting to verify "Aijen Chen's" income.

13. It was further part of the scheme that on or about May 29, 2015, Alison Gu, a/k/a "Ally Koo," "Ai J. Chen," "Ai Jen Chen," "Ai Chen," "Jing Shao," obtained a loan from Emigrant Mortgage Company of approximately \$392,000.

14. It was further part of the scheme that on or about April 11, 2015, "Ai Chen" submitted a purchase contract to Discover Home Loans to finance the purchase of property at 2406 Riverside Farms Road, Austin Texas. It was further part of the scheme that on or about April 21, 2015, the purchase contract was amended to change the purchaser from "Ai Chen" to Matthew Abel. It was further part of the scheme that Matthew Abel failed to disclose to Discover Home Loans that he was undergoing the financing process to purchase a property at 184 South Sea Avenue, Unit 1, Yarmouth, Massachusetts.

15. It was further part of the scheme that on or about May 19, 2015, Matthew Abel obtained a mortgage loan of approximately \$336,996 from Discover Home Loans.

16. It was further part of the scheme that, between July and December 2015, monthly mortgage payments were made in connection with the property at 2406 Riverside Farms Road, Austin, Texas from a bank account maintained by "Ai J Chen" at Citizens Bank.

17. It was further part of the scheme that on or about April and May 2015, Matthew Abel applied for financing with Prime Lending/Colonial Savings to



purchase a property at 184 South Sea Avenue, Unit 1, Yarmouth, Massachusetts. It was further part of the scheme that Matthew Abel failed to disclose to Prime Lending/Colonial Savings the existence of the prior mortgage debt obligation regarding the property at 2406 Riverside Farms Road, Austin, Texas.

18. It was further part of the scheme that on or about May 22, 2015, Matthew Abel obtained a mortgage loan of approximately \$266,750 from Prime Lending/Colonial Savings.

19. It was further part of the scheme that, between August and December 2015, monthly mortgage payments were made in connection with the property at 184 South Sea Avenue, Unit 1, Yarmouth, Massachusetts from a bank account maintained by "Ai J Chen" at Citizens Bank.

This count charges the defendant with violating Section 1344 of Title 18 of the United States Code, as well as Section 2 of Title 18 of the United States Code. Section 1344 of Title 18 makes it a crime to "knowingly execute[], or attempt[] to execute, a scheme or artifice . . . to defraud a financial institution[.]" Section 2 of Title 18 states that "whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

Count II of the indictment charges the defendant with knowingly making a false statement in an application for a passport. Count II alleges:

On or about March 27, 2015, in the District of Vermont, the defendant, Alison Gu, a/k/a "Ally Koo," willfully and knowingly made a false statement in an application for a passport with intent to induce and secure for her own use the issuance of a passport under the authority of the United States, contrary to the laws regulating the issuance of such passports and the rules prescribed pursuant to such laws.

This count charges the defendant with violating Section 1542 of Title 18 of the United States Code. Section 1542 of Title 18 makes it a crime to "willfully and

knowingly make[] any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for [her] own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws[.]”

Count III, the final count of the indictment, charges the defendant with aggravated identity theft. Count III alleges:

On or about March 27, 2015, in the District of Vermont, the defendant, Alison Gu, a/k/a “Ally Koo,” knowingly possessed or used, without lawful authority, a means of identification of another person during and in relation to making a false statement in an application for a passport, as alleged in Count Two, knowing that the means of identification belonged to another actual person.

This count charges the defendant with violating Section 1028A of Title 18 of the United States Code. Section 1028A makes it a crime to “knowingly transfer[], possess[], or use[], without lawful authority, a means of identification of another person” “during and in relation to” making a false statement in an application for a passport.

### **ROLE OF INDICTMENT**

At this time, I would like to remind you of the function of an indictment. An indictment is merely a formal way to accuse a defendant of a crime before trial. An indictment is not evidence. An indictment does not create any presumption of guilt or permit an inference of guilt. It should not influence your verdict in any way other than to inform you of the charges against the defendant. The defendant has pleaded not guilty to the counts in the indictment. You have been chosen and sworn as jurors in this case to determine the issues of fact that have been raised by the allegations in the indictment and the denial made by the not guilty plea of the defendant. You are to perform this duty without bias or prejudice against the defendant or the government.

### **REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE**

The government must prove the defendant guilty beyond a reasonable doubt. The question is what is a reasonable doubt? The words almost define themselves. It is a

doubt based upon reason and common sense. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. A reasonable doubt is not a whim, speculation, or suspicion. However, a reasonable doubt may arise from a lack of evidence. It is not an excuse to avoid the performance of an unpleasant duty and it is not sympathy.

In a criminal case, the burden is at all times upon the government to prove guilt beyond a reasonable doubt. The law does not require the government to prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to a defendant, which means that it is always the government's burden to prove each element of the crime charged beyond a reasonable doubt. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government.

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

The law presumes the defendant is innocent of the charges against her. The presumption of innocence is a piece of evidence that lasts throughout the trial and during your deliberations. The presumption of innocence ends only if you, the jury, find beyond a reasonable doubt that the defendant is guilty. Should the government fail to prove the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

### **EVIDENCE**

You have seen and heard the evidence produced in this trial, and it is the sole province of the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses and any exhibits that have been admitted into evidence. I would now like to call your attention to certain guidelines by which you are to evaluate the evidence.

There are two types of evidence that you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about something he or she knows by virtue of his or her own senses—something he or she has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit.

Circumstantial evidence is evidence that tends to prove a disputed fact by proof of other facts. You infer on the basis of reason, experience, and common sense from one established fact, the existence or non-existence of some other fact. For example, if you were to see cow tracks in a pasture, that would be circumstantial evidence that there are or were cows in the pasture.

Circumstantial evidence is of no less value than direct evidence. Circumstantial evidence alone may be sufficient evidence of guilt.

You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the defendant's guilt beyond a reasonable doubt, then you must find her not guilty. Your verdict must be based solely on the evidence introduced at trial, or the lack thereof.

### **EVIDENCE OBTAINED BY SEARCH**

You have heard testimony about evidence seized in connection with certain searches conducted by law enforcement officers. Searches are appropriate law enforcement actions. Whether you approve or disapprove of how the evidence was obtained should not enter into your deliberations.

You must, therefore, regardless of your personal opinions, give this evidence full consideration along with all the other evidence in the case in determining whether the government has proven the defendant's guilt beyond a reasonable doubt.

### **GOVERNMENT NOT REQUIRED TO UTILIZE PARTICULAR INVESTIGATIVE METHODS**

The government is not required to pursue any particular investigative method or methods in the investigation or prosecution of a crime. I remind you, however, that the government is always required to prove the defendant's guilt beyond a reasonable doubt.



**STRICKEN TESTIMONY, ATTORNEYS' STATEMENTS AND OBJECTIONS,  
AND THE COURT'S RULINGS**

I caution you that you should entirely disregard any testimony or exhibit that has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked by the attorneys are not evidence in the case. By the rulings the court made in the course of the trial, I did not intend to indicate to you any of my own preferences, or to influence you in any manner regarding how you should decide the case. The attorneys have a duty to object to evidence they believe is not admissible. You must not hold it against either side if an attorney made an objection.

**CREDIBILITY OF WITNESSES**

You, as jurors, are the sole judges of the credibility of the witnesses and the weight of their testimony. You do not have to accept all the evidence presented in this case as true or accurate. Instead, it is your job to determine the credibility or believability of each witness. You do not have to give the same weight to the testimony of each witness, because you may accept or reject the testimony of any witness, in whole or in part. In weighing the testimony of the witnesses you have heard, you should consider: their interest, if any, in the outcome of the case; their manner of testifying; their candor; their bias, if any; their resentment or anger, if any, toward the defendant; the extent to which other evidence in the case supports or contradicts their testimony; and the reasonableness of their testimony. You may believe as much or as little of the testimony of each witness as you think proper. You may accept all of it, some of it, or reject it altogether.

The weight of the evidence is not determined by the number of witnesses testifying. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a larger number of witnesses. The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses or the most evidence. Remember, a defendant in a criminal prosecution has no obligation to present any evidence or call any witnesses.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons may hear or see things differently, or may have a different point of view regarding various occurrences. It is for you to weigh the effect of any discrepancies in testimony, considering whether they pertain to matters of importance, or unimportant details, and whether a discrepancy results from innocent error or intentional falsehood. You should attempt to resolve inconsistencies if you can, but you also are free to believe or disbelieve any part of the testimony of any witness as you see fit.

### **LAW ENFORCEMENT WITNESSES**

You have heard the testimony of law enforcement officials. The fact that a witness may be employed by the federal, state, or local government as a law enforcement official does not mean that his or her testimony is deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

At the same time, it is proper for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that his or her testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all the evidence, whether to accept the testimony of a law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

### **JURORS' EXPERIENCE OR SPECIALIZED KNOWLEDGE**

Anything you have seen or heard outside the courtroom is not evidence, and must be disregarded entirely. It would be a violation of your oath as jurors to consider anything outside the courtroom in your deliberations. But in your consideration of the evidence, you do not leave behind your common sense and life experiences. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in light of the evidence. However, if any juror has specialized knowledge, expertise, or information with regard to the facts and

circumstances of this case, he or she may not rely upon it in deliberations or communicate it to other jurors.

**JURORS' SYMPATHY, PASSION, OR PREJUDICE**

In arriving at a verdict, you must not permit yourselves to be influenced in the slightest degree by sympathy, passion, or prejudice, or any other emotion in favor of or against either party. The law forbids you to be governed by mere sentiment, conjecture, sympathy, passion, or prejudice.

**DEFENDANT TESTIFYING**

The defendant in a criminal case never has any duty or obligation to testify or come forward with any evidence. This is because the burden of proof beyond a reasonable doubt remains on the government at all times, and the defendant is presumed innocent.

In this case the defendant did testify and she was subject to cross-examination, like any other witness. You learned during her testimony that the defendant was previously convicted of a crime. This prior conviction was received into evidence for the sole purpose of helping you to decide how much of her testimony to believe. I want to caution you that you may not consider the defendant's prior conviction in any way, except for the limited purpose of helping you decide how much of her testimony to believe and what weight, if any, to give it. You are specifically instructed that you may not consider the defendant's prior conviction as any evidence of her guilt in this case.

**WRONGFUL CONDUCT OF OTHER PEOPLE**

You have heard evidence that other people were involved in criminal activity. You may not infer that the defendant is guilty of participating in criminal conduct merely from the fact that she associated with other people who were guilty of wrongdoing. Similarly, you may not infer that the defendant is guilty of participating in criminal conduct merely from the fact that she was present at the time the crime was being committed and had knowledge that it was being committed. •

Except for aiding and abetting, on which I will instruct you later, the defendant is not responsible for the wrongful conduct of other people. Matthew Abel, who is named

in the indictment, is not on trial, and you are not being asked to reach a verdict as to him. You may not make any inference, one way or the other, from the fact that Matthew Abel is not present. You are not to speculate about the reason why he is not part of this case, and this fact should not affect or influence your verdict with respect to the defendant on trial.

**RACE, RELIGION, NATIONAL ORIGIN, SEX, OR AGE**

You may not consider the race, religion, national origin, sex, or age of the defendant or any of the witnesses in your deliberations over the verdict or in the weight given to any evidence.

**BIAS, PREJUDICE, AND EQUALITY BEFORE THE COURT**

You are to perform the duty of finding the facts without bias or prejudice toward any party. You are to perform this duty in an attitude of complete fairness and impartiality. You must not allow any of your personal feelings about the nature of the crimes charged to interfere with your deliberations, or to influence the weight given to any of the evidence.

This case is important to the parties and the court. You must give it the fair and serious consideration that it deserves.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a case. By the same token, it is entitled to no less consideration. All parties, whether government or individuals, stand as equals before the court.

**INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE**

Having explained the general guidelines by which you will evaluate the evidence in this case, I will now instruct you with regard to the law that is applicable to your determinations in this case.

It is your duty as jurors to follow the law as stated to you in these instructions and to apply the rules of law to the facts that you find from the evidence. You will not be faithful to your oath as jurors if you find a verdict that is contrary to the law that I give to you.



However, it is the sole province of the jury to determine the facts in this case. I do not, by any instructions given to you, intend to persuade you in any way as to any question of fact.

The parties in this case have a right to expect that you will carefully and impartially consider all the evidence in the case, that you will follow the law as I state it to you, and that you will reach a just verdict.

### **COUNT I**

Count I of the indictment charges the defendant, Alison Gu, with bank fraud. Title 18, Section 1344, as charged in Count I of the indictment, makes it a crime to knowingly execute a scheme “to defraud a financial institution[.]”

In order to prove the defendant guilty of the crime charged in Count I, the government must establish each of the following elements beyond a reasonable doubt:

First: that there was a scheme to defraud a bank as charged in the indictment;

Second: that the defendant knowingly and willfully executed or attempted to execute the scheme with the specific intent to defraud the bank; and

Third: that at the time of the execution of the scheme, the bank had its deposits insured by the Federal Deposit Insurance Corporation.

### **COUNT I – FIRST ELEMENT – SCHEME TO DEFRAUD**

The first element that the government must prove beyond a reasonable doubt is that there was a scheme to defraud a bank as described in the indictment.

A “scheme to defraud” is defined as a pattern or course of conduct concerning a material matter designed to deceive a federally insured financial institution into releasing property with the intent to cause the financial institution to suffer an actual or potential loss.

A fraudulent representation must relate to a material fact or matter. A material fact is one that would reasonably be expected to be of concern to a reasonable and prudent person in relying upon the representation or statement in making a decision. This means that if you find a particular statement of fact to have been false, you must determine whether that statement was one that a reasonable person might have considered

important in making his or her decision. The same principle applies to fraudulent half-truths or omissions of material facts.

The representations which the government charges were made as a part of the scheme are set forth in the indictment, which I have read to you. It is not required that every misrepresentation charged in the indictment be proved. It is sufficient if the prosecution proves beyond a reasonable doubt that one or more of the alleged material misrepresentations were made in furtherance of the alleged scheme.

Although it is not necessary for the government to prove an actual loss of funds by the bank, the government must prove beyond a reasonable doubt that by executing or attempting to execute the scheme alleged in the indictment, the defendant placed the bank at a risk of loss and that the bank did not knowingly accept such a risk.

#### **COUNT I – SECOND ELEMENT – INTENT TO DEFRAUD**

The second element the government must prove beyond a reasonable doubt is that the defendant executed or attempted to execute the scheme knowingly, willfully, and with specific intent to defraud the bank.

“Knowingly” means to act voluntarily and deliberately, rather than mistakenly or inadvertently.

“Willfully” means to act knowingly and purposely, with an intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

“Intent to defraud” means to act knowingly and with the specific intent to deceive, for the purpose of causing some financial or property loss to another.

The question of whether a person acted knowingly, willfully, and with intent to defraud is a question of fact for you to determine, like any other fact question. This question involves the defendant’s state of mind.

Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case where it could be shown that a person wrote or stated that as of a given time in the past he or she committed an act with fraudulent intent. Such direct proof is not required.

The ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence, based upon a person's outward manifestations, her words, her conduct, her acts and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from them.

Circumstantial evidence, if believed, is of no less value than direct evidence. In either case, the essential elements of the crime must be established beyond a reasonable doubt.

### **COUNT I – THIRD ELEMENT – FEDERALLY INSURED BANK**

The last element the government must prove beyond a reasonable doubt is that the banks named in Count I were insured by the Federal Deposit Insurance Corporation at the time of the execution of the alleged scheme to defraud. It is not necessary for the government to prove that the defendant knew the identity of the particular financial institution or that the defendant knew that the institution was insured by the Federal Deposit Insurance Corporation. It must prove, however, that the defendant intended to defraud a financial institution.

You may find that a scheme which is formally aimed at an uninsured entity, but which in substance may work to defraud its parent company, which is insured, may be prosecuted under the bank fraud statute.

### **COUNT I – AIDING AND ABETTING**

Count I of the indictment charges the defendant with bank fraud and with aiding and abetting that offense. The aiding and abetting statute, Section 2(a) of Title 18 of the United States Code, provides that:

Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

Under the aiding and abetting statute, it is not necessary for the government to show that a defendant herself physically committed the crime with which she is charged in order for the government to sustain its burden of proof. A person who aids and abets another to commit an offense is just as guilty of that offense as if she committed it herself.

Accordingly, you may find the defendant guilty of the offense charged if you find beyond a reasonable doubt that another person actually committed the offense with which the defendant is charged, and that the defendant aided or abetted that person in the commission of the offense.

To find the defendant guilty of aiding or abetting, you must first find that another person has committed the crime charged. No one can be convicted of aiding or abetting the criminal acts of another if no crime was committed by the other person in the first place. But if you do find that a crime was committed, then you must consider whether the defendant aided or abetted the commission of that crime.

In order to aid or abet another in the commission of a crime, it is necessary that the defendant knowingly and willfully associate herself in some way with the crime, and that she participate in the crime by doing some act to help make the crime succeed.

To establish that the defendant willfully participated in the commission of the crime, the government must prove that the defendant engaged in some affirmative conduct or overt act for the specific purpose of bringing about the crime.

The mere presence of the defendant where a crime is being committed, even coupled with knowledge by the defendant that a crime is being committed, or merely associating with others who were committing a crime is not sufficient to establish aiding and abetting. One who has no knowledge that a crime is being committed or is about to be committed but inadvertently does something that aids in the commission of that crime is not an aider and abettor. An aider and abettor must know that the crime is being committed and act in a way which is intended to bring about the success of the criminal venture.

To determine whether a defendant aided or abetted the commission of the crime with which she is charged, ask yourself these questions:

Did she participate in the crime charged as something she wished to bring about?

Did she knowingly and willfully associate herself with the criminal venture?

Did she seek by her actions to make the criminal venture succeed?



If she did, then the defendant is an aider and abettor, and therefore guilty of the offense. If, on the other hand, your answer to any one of these questions is “no,” then the defendant is not an aider or abettor, and you must find her not guilty.

### **COUNT II**

Count II of the indictment charges the defendant, Alison Gu, with passport fraud. Title 18, Section 1542, as charged in Count II of the indictment, makes it a crime to “willfully and knowingly make[] any false statement in an application for [a] passport with [the] intent to induce or secure the issuance of a passport under the authority of the United States, either for [the defendant’s] own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws[.]”

In order to prove the defendant guilty of the crime charged in Count II, the government must establish each of the following elements beyond a reasonable doubt:

First: that the defendant made a false statement in an application for a United States passport;

Second: that the defendant made that false statement with the intent to secure the issuance of the passport for her own use, or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws; and

Third: that the defendant acted knowingly and willfully.

### **COUNT II – FIRST ELEMENT – FALSE STATEMENT ON A PASSPORT APPLICATION**

The first element which the government must prove beyond a reasonable doubt is that the defendant made a false statement in an application for a United States passport.

A statement is false if it was untrue when made, and known at the time to be untrue by the person making it or causing it to be made.

A supporting document submitted as part of the application is part of that application.

**COUNT II – SECOND ELEMENT – INTENT TO INDUCE THE ISSUANCE OF  
A PASSPORT**

The second element which the government must prove beyond a reasonable doubt is that the defendant made that false statement with the intent to secure the issuance of a passport for her own use, or for the use of another.

To establish this element, the government must prove that the defendant made the false statement in the application with the intent that the application would result in the issuance of a passport. The government is not required to prove that defendant intended to use the passport in international travel.

**COUNT II – THIRD ELEMENT – KNOWING AND WILLFUL CONDUCT**

The third element which the government must prove beyond a reasonable doubt is that the defendant acted knowingly and willfully.

To act knowingly and willfully means to act deliberately and with knowledge and not in a way that is merely careless, negligent, or inadvertent. Thus, to satisfy this element, the government must prove that the defendant intentionally made the false statement knowing it was false.

If you find the defendant not guilty with regard to Count II, do not proceed to consider Count III. However, if you find the defendant guilty with regard to Count II, you must then consider Count III.

**COUNT III**

Count III of the indictment charges the defendant, Alison Gu, with aggravated identity theft. Title 18, Section 1028A of the United States Code, as charged in Count III of the indictment, makes it a crime to “knowingly transfer[], possess[], or use[], without lawful authority, a means of identification of another person” “during and in relation to” making a false statement in an application for a passport.

In order to prove the defendant guilty of the crime charged in Count III, the government must prove the following elements beyond a reasonable doubt:

First: that the defendant knowingly used or possessed a “means of identification” of another person;

Second: that the defendant did so during and in relation to making the false statement in an application for a passport, the offense charged in Count II; and  
Third: that the defendant acted without lawful authority.

**COUNT III – FIRST ELEMENT – MEANS OF IDENTIFICATION**

The first element that the government must prove beyond a reasonable doubt under Count III is that the defendant knowingly used or possessed a means of identification of another person.

“Knowingly” means to act voluntarily and intentionally and not by mistake or accident.

The terms “possess” and “use” have their common sense meaning. The government need only prove one of these.

“Means of identification” is defined in the statute as “any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including . . . any name, social security number, date of birth, official State or government issued driver’s license or identification number; or unique electronic identification number, address, or routing code; or access device.”

In addition, the government must prove beyond a reasonable doubt both that the “means of identification” was that of another, actual person, living or dead, and that the defendant knew that the means of identification was that of another, actual person.

**COUNT III – SECOND ELEMENT – DURING AND IN RELATION TO THE FALSE STATEMENT IN A PASSPORT APPLICATION**

The second element the government must prove beyond a reasonable doubt under Count III is that the defendant used or possessed the means of identification of another person during and in relation to the false statement offense charged in Count II.

“During and in relation to” means that the defendant’s use or possession of a means of identification of another person had a role in or facilitated, or had the potential of facilitation of the commission of another offense.

**COUNT III – THIRD ELEMENT – WITHOUT LAWFUL AUTHORITY**

The third element the government must prove beyond a reasonable doubt is that the defendant acted without lawful authority.

To act “without lawful authority” means to use or possess a means of identification without authorization from someone who has authority to give such authorization.

**UNANIMOUS VERDICT REQUIRED**

To return a verdict, it is necessary that every juror agree to the verdict. In other words, your verdict must be unanimous regarding each essential element of each count.

**MULTIPLE COUNTS**

The indictment contains multiple counts. Each count charges the defendant with a different crime. You must consider each count separately and return a separate verdict of guilty or not guilty for each. Whether you find the defendant guilty or not guilty as to one offense should not control your verdict as to the other offenses charged.

**DISCREPANCIES BETWEEN THE SPECIAL VERDICT FORM  
AND THESE INSTRUCTIONS**

If you find that there are any discrepancies between the special verdict form I will provide you with and any of the instructions I give to you now, my instructions must govern your deliberations.

**JUROR NOTE TAKING**

During this trial, you have been provided with pencil and paper, and some of you have taken notes. As I explained at the beginning of the trial, all jurors should be given equal attention during the deliberations regardless of whether they have taken notes. Any notes you have taken may only be used to refresh your memory during deliberations. You may not use your notes as authority to persuade your fellow jurors as to what a witness did or did not say. In your deliberations you must rely upon your collective memory of the evidence in deciding the facts of the case. If there is any difference between your memory of the evidence and your notes, you may ask that the record of the



proceedings be read back. If a difference still exists, the record must prevail over your notes.

### **RECOLLECTION OF EVIDENCE**

Let me remind you that in deliberating upon your verdict, you are to rely solely and entirely upon your own memory of the testimony.

If, during your deliberations, you are unable to recall with any degree of accuracy, a particular part of the testimony, or a part of these instructions, you may do the following:

- (1) Write out your question, and have the foreperson sign it;
- (2) Knock on the door of the jury room; and
- (3) Deliver your note to the Court Officer to give to me.

After the attorneys have been consulted, and the record has been reviewed, I will decide what action to take, and I will tell you my ruling.

### **CONCLUSION**

I caution you, members of the jury, that you are here to determine whether the defendant before you today is not guilty or guilty solely from the evidence in this case. I remind you that the mere fact that a defendant has been indicted is not evidence against her. Also, a defendant is not on trial for any act or conduct or offense not alleged in the indictment. Nor are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

You should not consider the consequences of a guilty or not guilty determination. The punishment provided by law for the offense charged in the indictment is a matter exclusively within the responsibility of the judge, and should never be considered by the jury in any way in arriving at an impartial verdict.

It is your duty as jurors to consult with one another and to deliberate. 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. Do not hesitate to re-examine your own views and change your opinion if you think that you were wrong. Do not, however,

surrender your honest convictions about the case solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

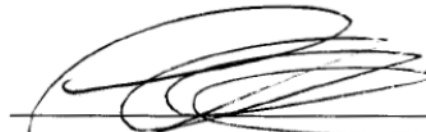
Upon retiring to the jury room, your foreperson will preside over your deliberations and will be your spokesperson here in court. If a vote is to be taken, your foreperson will ensure that it is done.

After you have reached an agreement, the foreperson will record a verdict of guilty or not guilty. Your foreperson will then sign and date the verdict form and you will return to the courtroom. In all other respects, a foreperson is the same as any other juror. His or her vote does not count more than any other member of the jury.

If, during your deliberations you should desire to communicate with the court, please put your message or question in writing signed by the foreperson, and pass the note to the Court Officer who will bring it to my attention. I will then confer with the attorneys and I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I can speak with you. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time. You should also never communicate the subject matter of your note or your deliberations to any member of the court's staff.

I appoint [REDACTED] as your foreperson.

Dated at Burlington, in the District of Vermont, this 7 day of November, 2017.

  
Christina Reiss, Chief Judge  
United States District Court