

APPENDIX A
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AUGUST TERM, 2019

(ARGUED: May 27, 2020)

DECIDED: July 16, 2020)

Docket No. 19-95

UNITED STATES OF AMERICA,

Appellee,

v.

BRANDON JONES, AKA Brandon McGeer,
AKA Brandon Jones-McGeer,

Defendant-Appellant.

Before: POOLER, LYNCH, and MENASHI,
Circuit Judges.

Brandon Jones appeals from the judgment of conviction entered in the United States District Court for the Southern District of New York (Alison J. Nathan, *J.*) for the use of “false or fictitious” government financial documents, in violation of 18 U.S.C. §§ 514 and 2. Jones acknowledges that he used fake government transportation requests and purchase orders but argues that there is insufficient evidence to support his conviction because Section 514 criminalizes only the passing of fictitious types of documents, not the passing of counterfeit, or fake, versions of genuine types of documents.

We hold that the term “false or fictitious” as used in 18 U.S.C. § 514 refers to both wholly contrived types of documents or instruments and fake versions of existing documents or instruments. Therefore, the evidence was sufficient to support Jones’s conviction.

Affirmed.

LUCAS ANDERSON, Rothman, Schneider, Soloway & Stern, LLP, New York, NY, *for Defendant-Appellant Brandon Jones*.

KIERSTEN A. FLETCHER, Assistant United States Attorney (Jessica Fender, Tara LaMorte, Daniel B. Tehrani, Assistant United States Attorneys, *on the brief*), *for* Audrey Strauss, Acting United States Attorney for the Southern District of New York, New York, NY, *for Appellee*.

POOLER, *Circuit Judge*:

Brandon Jones appeals from the judgment of conviction entered in the United States District Court for the Southern District of New York (Alison J. Nathan, *J.*) for the use of “false or fictitious” government financial documents, in violation of 18 U.S.C. §§ 514 and 2. Jones acknowledges that he used fake government transportation requests and purchase orders but argues that there is insufficient evidence to support his conviction because Section 514 criminalizes only the passing of fictitious types of documents, not the passing of counterfeit, or fake, versions of genuine types of documents.

We hold that the term “false or fictitious” as used in 18 U.S.C. § 514 refers to both wholly contrived types of documents or instruments and fake versions of existing

documents or instruments. Therefore, the evidence was sufficient to support Jones's conviction.

BACKGROUND

On February 8, 2019, Jones was indicted for one count of wire fraud in violation of 18 U.S.C. §§ 1343 and 2; one count of conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349; and one count of use of fictitious government documents in violation of 18 U.S.C. §§ 514(a)(2) and 2.

At trial, the Government's evidence established the following. As early as 2010, Jones created a nongovernmental organization ("NGO") titled the "Office of the Commissioner for Burns,"¹ which he later represented, falsely, as an "international governmental organization" (which he abbreviated as "IGO") affiliated with the United Nations. Jones styled himself as the "Commissioner and Head of Delegation." He often used badges and other identifying documents purportedly from the United Nations. The United Nations did not recognize Jones's organization as an intergovernmental organization and barred Jones from its premises in 2014. At no time during the relevant period was Jones a member or delegate of the United Nations, an employee of either the United Nations or the United States Department of State, or a person with recognized diplomatic status.

While playing this role, Jones submitted false government transportation requests ("GTRs") and purchase orders to various companies. For instance, an internal investigation conducted by American Airlines showed that Jones used false GTRs to pay the airline for tickets valuing a total of \$100,417.89 over several years. These contrived GTRs had "Office of the Commissioner, An IGO" across the top of the document and included the address

¹ Sometimes Jones used the title "Office of the Commissioner."

of the United Nations headquarters in New York. Supp. App'x at 8. An American Airlines employee testified that during one encounter, Jones presented her with a typed-up white sheet of paper reading "Governmental Transportation Request." App'x at 47.

GTRs are legitimate government forms, still used by federal employees, though less often since the introduction of government-issued credit cards. Unlike the GTRs tendered by Jones, authentic GTRs are issued only by the General Services Administration ("GSA") to authorized federal or quasi-governmental agencies, a category that does not include the United Nations. Legitimate GTRs are either blue and white documents with the words "U.S. Government Transportation Request" at the bottom of the document, Supp. App'x at 47, or white documents containing the words "U.S. Government Transportation Request" at the top, Supp. App'x at 48. The blue and white GTRs were used before 2013, and the white GTRs have been used since 2013. No entity's logo or header appears on either version of the legitimate GTRs. Trial testimony established that none of the GTRs used by Jones were issued by the federal government.

The Government also proffered evidence regarding Jones's use of false purchase orders with various entities ranging from the UPS Store to Apple. For example, Jones used a purchase order for \$9,000 to rent a car through Enterprise Rent-A-Car in November 2013. He also used a purchase order to rent a corporate apartment in 2015. This purchase order was authorized and signed by someone named Sandra Zongo, who purported to be the "Dep. Comm. For Foreign Affairs." Supp. App'x at 5. Like the GTRs, the purchase orders purported to relate to the "Office of the Commissioner for Burns, an IGO" of the "United Nations." Supp. App'x at 6. The purchase orders are single-page documents that also contain the words "Purchase Order" in outsized font at the top of the page,

either across the middle or in the right corner, along with Jones's organization's logo. Supp. App'x at 5-6.

The Government introduced into evidence legitimate purchase orders, which are white documents that say "Solicitation/Contract/Order for Commercial Items" in the top left-hand corner. Supp. App'x at 52. The legitimate purchase orders are two-page documents. No entity's logo is located on the document. The official documents contain numerous spaces for entries missing from Jones's documents as well, such as various codes. A GSA employee testified that the purchase orders used by Jones were not authentic.

The district court, in relevant part, instructed the jury that a false or fictitious document "is a bogus financial document made to look like a real financial document which could be used for payment when, in fact, there is no such genuine financial instrument." App'x at 257. The jury convicted Jones on all counts, and the district court sentenced him to principally 50 months' imprisonment followed by five years' supervised release.

Jones timely appealed.

DISCUSSION

We review challenges to the sufficiency of the evidence de novo. *United States v. Taylor*, 816 F.3d 12, 22 (2d Cir. 2016). "A defendant challenging the sufficiency of the evidence bears a heavy burden, because the reviewing court is required to draw all permissible inferences in favor of the government and resolve all issues of credibility in favor of the jury verdict." *Id.* (citation omitted). "A judgment of acquittal can be entered only if the evidence that the defendant committed the crime alleged is nonexistent or so meager that no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* (internal quotation marks and citation omitted).

18 U.S.C. § 514(a)(2) prohibits the passing, uttering, presenting, offering, brokering, issuing, selling, attempting or causing the same, or possessing, with intent to defraud, “any false or fictitious instrument, document, or other item appearing, representing, purporting, or contriving through scheme or artifice, to be an actual security or other financial instrument issued under the authority of the United States, a foreign government, a State or political subdivision of the United States, or an organization.”

Jones’s sufficiency-of-the-evidence argument turns on what properly constitutes a “false or fictitious” instrument or document for purposes of Section 514. Jones argues that the term applies only to nonexistent or virtually nonexistent types of documents or instruments. In other words, Jones asserts that Section 514 criminalizes only the use of fake documents or instruments that purport to be entirely contrived or extremely rare types of financial instruments. As a result, he argues that there is insufficient evidence that he passed “false or fictitious” documents because the evidence at trial established that legitimate GTRs and purchase orders do exist and are used by the government. Jones’s interpretation of Section 514 is the same interpretation reflected in both parties’ requested jury instructions, the jury instructions given by the district court, and the Government’s position on appeal. For the reasons set forth below, however, we believe that that instruction was overly favorable to Jones.

I. The Meaning of “False or Fictitious”

We cannot agree with Jones’s interpretation. “This case begins, and pretty much ends, with the text” of Section 514. *See Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1724 (2020). “Our starting point in statutory interpretation is the statute’s plain meaning, if it has one.” *United States v. Dauray*, 215 F.3d 257, 260 (2d Cir. 2000). Section 514 covers the use of “false or fictitious” instruments or

documents. 18 U.S.C. § 514 (emphasis added). “The statute’s use of the disjunctive ‘or’ within the phrase ‘false or fictitious instrument’ calls for some distinction to be made between a false instrument and a fictitious one.” *United States v. Williams*, 790 F.3d 1240, 1246 (11th Cir. 2015); *see also United States v. Harris*, 838 F.3d 98, 105 (2d Cir. 2016) (explaining that canons of statutory interpretation “ordinarily suggest that terms connected by a disjunctive be given separate meanings” (internal quotation marks and citation omitted)).

That “false” and “fictitious” do not share a plain meaning also indicates that the two terms should be treated distinctly. “False” is defined as “not genuine.” *False*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/false> (last visited July 15, 2020). “Fictitious” is defined as “of, relating to, or characteristic of fiction,” which in turn is defined as “something invented by the imagination or feigned.” *Fictitious*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/fictitious> (last visited July 15, 2020); *Fiction*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/fiction> (last visited July 15, 2020). Thus, “Section 514’s use of the disjunctive ‘or’ indicates that the statute contemplates documents that are not ‘fictitious’ since they purport to be a type of instrument that actually exists, but are still ‘false’ in the sense that they are wholly inauthentic.” *Williams*, 790 F.3d at 1246.

This conclusion is additionally supported by the canon against surplusage, which requires courts to “construe statutes in a manner that gives effect to all of their provisions.” *Hayward v. IBI Armored Servs.*, 954 F.3d 573, 576 (2d Cir. 2020); *see also Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013). Jones’s interpretation of “false or fictitious” as referring only to purely contrived types of documents and instruments “would render the term ‘false’ mere surplusage,” *Williams*, 790 F.3d at 1246,

because “fictitious” already encompasses purely contrived categories of obligations.

Finally, as the Eleventh Circuit observed, the statutory definitions incorporated by reference in Section 514 further undermine Jones’s preferred interpretation. *Id.* The statutory definition of “security,” for instance, includes financial instruments such as checks, bonds, and other existent and commonly used obligations. 18 U.S.C. § 513(c)(3). In light of this definition, Jones’s argument that Section 514 criminalizes the passing of fake versions of only nonexistent or extremely rare types of documents or instruments conflicts with the statute itself.

Jones relies heavily on the Ninth Circuit’s decision in *United States v. Howick*, 263 F.3d 1056 (9th Cir. 2001).² Relying on legislative history, the Ninth Circuit explained that Section 514 “was intended to criminalize a range of behavior not reached by [18 U.S.C. §] 472,” which is the federal counterfeit statute. *Id.* at 1066. The Ninth Circuit explained that it “interpret[s] the phrase ‘false or fictitious instrument’ in section 514 to refer to nonexistent instruments, whereas the phrase ‘falsely made, forged, counterfeited, or altered obligation’ in Section 472 refers to doctored up versions of obligations that truly exist.” *Id.* at 1067. We are not persuaded and see no reason to examine legislative history. “When the plain language and canons of statutory interpretation fail to resolve statutory ambiguity” we turn to legislative history. *Dauray*, 215 F.3d at 264. But here, the plain language and canons of statutory interpretation make clear, for the reasons

² Other circuits, including the Fifth, Sixth, and Eighth Circuits, have adopted the Ninth Circuit’s definition. *See, United States v. Heath*, 525 F.3d 451, 458 (6th Cir. 2008); *United States v. Morganfield*, 501 F.3d 453, 459-60 (5th Cir. 2007); *United States v. Getzschman*, 81 F. App’x 619, 622 (8th Cir. 2003).

discussed above, that “false or fictitious” means either “false” or “fictitious.”³

II. The Sufficiency of the Evidence

Having determined that Section 514 applies to fake versions of existing types of documents or instruments, we have little trouble concluding that the evidence was sufficient to support Jones’s conviction. The record is replete with evidence establishing that Jones passed inauthentic GTRs and purchase orders. For example, Jones gave an American Airlines representative a “typed up . . . white sheet of paper, saying Governmental

³ Even if we did consider the legislative history, we are not convinced that it mandates a different conclusion. Section 514 was intended to “close[] a loophole in Federal counterfeiting law,” which was caused by “fictitious instruments [that] are not counterfeits of any existing negotiable instrument,” which “Federal prosecutors have determined . . . do not violate the counterfeit or bank fraud provisions.” 141 Cong. Rec. S9533-34 (1995). Congress can close loopholes either by creating a narrow-gauge statute that addresses only one particular situation that the earlier statute missed, or by writing a more capacious statute that covers a broader variety of conduct than the original statute. It sometimes chooses the latter course, even when some overlap or duplication results. Here, Congress did not simply add a new prohibition on “fictitious” instruments or define that term to mean purported government obligations that do not correspond to any real document at all; rather, it enacted a prohibition that covered all kinds of “false” or “fictitious” documents.

Moreover, to adopt Jones’s interpretation would leave open a different loophole for false documents like Jones’s, which also arguably “do not violate the counterfeit or bank fraud provisions.” Section 472, the counterfeit statute, has a “similitude requirement.” *See Howick*, 263 F.3d at 1067. Instruments such as Jones’s, which actually exist but are so markedly different from the actual instruments as to fail that requirement, would also fall within the loophole in Section 472. In the face of statutory text that clearly covers such instruments, we see no reason to seize upon legislative history reflecting an intention to close loopholes as a basis to distort the plain meaning of the text to create or perpetuate precisely such a loophole.

Transportation Request.” App’x at 47. An internal investigation by American Airlines revealed that the document, like all the GTRs Jones had submitted, was false. Indeed, Jones represented that he worked for a fictitious entity associated with the United Nations, but the United Nations is not authorized to issue or use GTRs. Similarly, Jones rented cars and apartments that were paid for with fake purchase orders. Thus, there is ample evidence to support the jury’s finding that Jones passed false or fictitious documents in violation of Section 514.

CONCLUSION

For the foregoing reasons, we affirm the judgment of conviction.

APPENDIX B
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of September, two thousand twenty.

United States of America,
Appellee,
v.
Brandon Jones, AKA Brandon McGeer,
AKA Brandon Jones-McGeer,
Defendant-Appellant.

ORDER
Docket No: 19-95

Appellant, Brandon Jones, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

The block contains a handwritten signature in cursive script that reads "Catherine O'Hagan Wolfe". The signature is written over a circular official seal of the United States Court of Appeals for the Second Circuit. The seal features the words "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS" around its perimeter.

APPENDIX C**RELEVANT PROVISIONS OF
TITLE 18, CHAPTER 25 OF THE U.S. CODE****§ 473. Dealing in counterfeit obligations or securities**

Whoever buys, sells, exchanges, transfers, receives, or delivers any false, forged, counterfeited, or altered obligation or other security of the United States, with the intent that the same be passed, published, or used as true and genuine, shall be fined under this title or imprisoned not more than 20 years, or both.

§ 478. Foreign obligations or securities

Whoever, within the United States, with intent to defraud, falsely makes, alters, forges, or counterfeits any bond, certificate, obligation, or other security of any foreign government, purporting to be or in imitation of any such security issued under the authority of such foreign government, or any treasury note, bill, or promise to pay, lawfully issued by such foreign government and intended to circulate as money, shall be fined under this title or imprisoned not more than 20 years, or both.

§ 479. Uttering counterfeit foreign obligations or securities

Whoever, within the United States, knowingly and with intent to defraud, utters, passes, or puts off, in payment or negotiation, any false, forged, or counterfeited bond, certificate, obligation, security, treasury note, bill, or promise to pay, mentioned in section 478 of this title, whether or not the same was made, altered, forged, or counterfeited within the United States, shall be fined under this title or imprisoned not more than 20 years, or both.

§ 480. Possessing counterfeit foreign obligations or securities

Whoever, within the United States, knowingly and with intent to defraud, possesses or delivers any false, forged, or counterfeit bond, certificate, obligation, security, treasury note, bill, promise to pay, bank note, or bill issued by a bank or corporation of any foreign country, shall be fined under this title or imprisoned not more than 20 years, or both.

§ 482. Foreign bank notes

Whoever, within the United States, with intent to defraud, falsely makes, alters, forges, or counterfeits any bank note or bill issued by a bank or corporation of any foreign country, and intended by the law or usage of such foreign country to circulate as money, such bank or corporation being authorized by the laws of such country, shall be fined under this title or imprisoned not more than 20 years, or both.

§ 483. Uttering counterfeit foreign bank notes

Whoever, within the United States, utters, passes, puts off, or tenders in payment, with intent to defraud, any such false, forged, altered, or counterfeited bank note or bill, mentioned in section 482 of this title, knowing the same to be so false, forged, altered, and counterfeited, whether or not the same was made, forged, altered, or counterfeited within the United States, shall be fined under this title or imprisoned not more than 20 years, or both.

§ 485. Coins or bars

Whoever falsely makes, forges, or counterfeits any coin or bar in resemblance or similitude of any coin of a denomination higher than 5 cents or any gold or silver bar coined or stamped at any mint or assay office of the United States, or in resemblance or similitude of any foreign gold or silver coin current in the United States or in actual use and circulation as money within the United States; or

Whoever passes, utters, publishes, sells, possesses, or brings into the United States any false, forged, or counterfeit coin or bar, knowing the same to be false, forged, or counterfeit, with intent to defraud any body politic or corporate, or any person, or attempts the commission of any offense described in this paragraph—

Shall be fined under this title or imprisoned not more than fifteen years, or both.

§ 486. Uttering coins of gold, silver or other metal

Whoever, except as authorized by law, makes or utters or passes, or attempts to utter or pass, any coins of gold or silver or other metal, or alloys of metals, intended for use as current money, whether in the resemblance of coins of the United States or of foreign countries, or of original design, shall be fined under this title or imprisoned not more than five years, or both.

§ 490. Minor coins

Whoever falsely makes, forges, or counterfeits any coin in the resemblance or similitude of any of the one-cent and 5-cent coins minted at the mints of the United States; or

Whoever passes, utters, publishes, or sells, or brings into the United States, or possesses any such false, forged, or counterfeited coin, with intent to defraud any person,

shall be fined under this title or imprisoned not more than three years, or both.

§ 493. Bonds and obligations of certain lending agencies

Whoever falsely makes, forges, counterfeits or alters any note, bond, debenture, coupon, obligation, instrument, or writing in imitation or purporting to be in imitation of, a note, bond, debenture, coupon, obligation, instrument or writing, issued by the Reconstruction Finance Corporation, Federal Deposit Insurance Corporation, National Credit Union Administration, Home Owners' Loan Corporation, Farm Credit Administration, Department of Housing and Urban Development, or any land bank, intermediate credit bank, insured credit union, bank for co-operatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States, shall be fined under this title or imprisoned not more than 10 years, or both.

Whoever passes, utters, or publishes, or attempts to pass, utter or publish any note, bond, debenture, coupon, obligation, instrument or document knowing the same to have been falsely made, forged, counterfeited or altered, contrary to the provisions of this section, shall be fined under this title or imprisoned not more than 10 years, or both.

§ 498. Military or naval discharge certificates

Whoever forges, counterfeits, or falsely alters any certificate of discharge from the military or naval service of the United States, or uses, unlawfully possesses or exhibits any such certificate, knowing the same to be forged, counterfeited, or falsely altered, shall be fined under this title or imprisoned not more than one year, or both.

§ 499. Military, naval, or official passes

Whoever falsely makes, forges, counterfeits, alters, or tampers with any naval, military, or official pass or permit, issued by or under the authority of the United States, or with intent to defraud uses or possesses any such pass or permit, or personates or falsely represents himself to be or not to be a person to whom such pass or permit has been duly issued, or willfully allows any other person to have or use any such pass or permit, issued for his use alone, shall be fined under this title or imprisoned not more than five years, or both.

§ 500. Money orders

Whoever, with intent to defraud, falsely makes, forges, counterfeits, engraves, or prints any order in imitation of or purporting to be a blank money order or a money order issued by or under the direction of the Post Office Department or Postal Service; or

Whoever forges or counterfeits the signature or initials of any person authorized to issue money orders upon or to any money order, postal note, or blank therefor provided or issued by or under the direction of the Post Office Department or Postal Service, or post office department or corporation of any foreign country, and payable in the United States, or any material signature or indorsement thereon, or any material signature to any receipt or certificate of identification thereof; or

Whoever falsely alters, in any material respect, any such money order or postal note; or

Whoever, with intent to defraud, passes, utters or publishes or attempts to pass, utter or publish any such forged or altered money order or postal note, knowing any material initials, signature, stamp impression or

indorsement thereon to be false, forged, or counterfeited, or any material alteration therein to have been falsely made; or

Whoever issues any money order or postal note without having previously received or paid the full amount of money payable therefor, with the purpose of fraudulently obtaining or receiving, or fraudulently enabling any other person, either directly or indirectly, to obtain or receive from the United States or Postal Service, or any officer, employee, or agent thereof, any sum of money whatever; or

Whoever embezzles, steals, or knowingly converts to his own use or to the use of another, or without authority converts or disposes of any blank money order form provided by or under the authority of the Post Office Department or Postal Service; or

Whoever receives or possesses any such money order form with the intent to convert it to his own use or gain or use or gain of another knowing it to have been embezzled, stolen or converted; or

Whoever, with intent to defraud the United States, the Postal Service, or any person, transmits, presents, or causes to be transmitted or presented, any money order or postal note knowing the same—

- (1) to contain any forged or counterfeited signature, initials, or any stamped impression, or
- (2) to contain any material alteration therein unlawfully made, or
- (3) to have been unlawfully issued without previous payment of the amount required to be paid upon such issue, or
- (4) to have been stamped without lawful authority; or

Whoever steals, or with intent to defraud or without being lawfully authorized by the Post Office Department or Postal Service, receives, possesses, disposes of or attempts to dispose of any postal money order machine or any stamp, tool, or instrument specifically designed to be used in preparing or filling out the blanks on postal money order forms—

Shall be fined under this title or imprisoned not more than five years, or both.

§ 508. Transportation requests of Government

Whoever falsely makes, forges, or counterfeits in whole or in part, any form or request in similitude of the form or request provided by the Government for requesting a common carrier to furnish transportation on account of the United States or any department or agency thereof, or knowingly alters any form or request provided by the Government for requesting a common carrier to furnish transportation on account of the United States or any department or agency thereof; or

Whoever knowingly passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, any such false, forged, counterfeited, or altered form or request—

Shall be fined under this title or imprisoned not more than ten years, or both.

APPENDIX D

EXCERPT OF SUPERSEDING INDICTMENT

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF
AMERICA

- v. -

BRANDON JONES,
a/k/a “Brandon McGeer,”
a/k/a “Brandon Jones-
McGeer,”
Defendant.

**SUPERSEDING
INDICTMENT**

S1 16 Cr. 553 (AJN)

COUNT THREE

(Use of Fictitious Government Financial Documents)

The Grand Jury further charges:

4. From at least in or about June 2014 up to and including at least in or about July 2016, in the Southern District of New York and elsewhere, BRANDON JONES, a/k/a “Brandon McGeer,” a/k/a “Brandon Jones-McGeer,” did pass, utter, present, offer, broker, issue, sell, and attempt and cause the same, and with like intent possess, within the United States, a false and fictitious instrument, document, and other item appearing, representing, purporting, and contriving through scheme and artifice, to be an actual security and other financial instrument issued under the authority of the United States, a foreign government, a State, and other political subdivision of the United States, and an organization, to wit, JONES created and tendered false and fictitious purchase orders and government travel requests purporting to be issued under the authority of the United States government. * * * .

APPENDIX E

EXCERPT OF FINAL JURY INSTRUCTIONS

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>UNITED STATES OF AMERICA,</p> <p>v.</p> <p>BRANDON JONES,</p> <p>Defendant.</p>	<p>S1 16 Cr. 553 (AJN)</p> <p>Trial</p> <p>New York, N.Y.</p> <p>March 14, 2018</p> <p>9:07 a.m.</p>
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[Trial Tr. pp. 1728–30]

* * *

Count three of the indictment charges the defendant with passing fictitious or fraudulent government payment obligations.

* * *

In order to prove the defendant guilty of Count Three, the government must establish beyond a reasonable doubt the following three elements:

First, that the defendant knowingly passed, uttered, presented, offered, brokered, or issued a false or fictitious document, or attempted or caused the same, or with like intent possessed the same, within the United States.

Second, the false or fictitious instrument or document appeared, represented, or purported to be an actual security or [1729] other financial instrument issued under the authority of the United States, a foreign government, a state or other political subdivision of the United States, or an organization which operates in or the activities of which affect interstate or foreign commerce.

And third, that the defendant acted with intent to defraud.

Here, the government alleges that the defendant used fictitious government purchase orders, certificates of indebtedness, government travel requests, and other government financial documents by providing them to various businesses and entities and that those documents purported to entitle the recipients to payments from the U.S. government.

The first element requires that the defendant committed one of the following actions: “passed, uttered, presented, offered, brokered, or issued.” All of these words are just different ways to use the financial instrument in order to obtain the goods or services that the instrument purported to provide payment for. For example, one “passes” or “offers” a purchase order when it is presented as payment for something.

A “false or fictitious instrument” simply is a bogus financial document made to look like a real financial document which could be used for payment when, in fact, there is no such genuine financial instrument. As a result, the document has no [1730] value, but that fact is presumably unknown by, and not revealed to, the person or entity receiving the document.

“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. Even false representations or statements or omissions of material facts do not amount to fraud unless done with fraudulent intent. Here, the loss alleged is to the various individuals and businesses that were presented with the fraudulent financial instruments.

* * *