

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys.

Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case.

This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true or that a person would have given certain testimony.

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the witness' age;
- the witness' intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness' memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness' testimony in light of all the evidence in the case.

You should judge the defendant's testimony in the same way that you judge the testimony of any other witness.

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inferences you make must be reasonable and must be based on the evidence in the case.

You have heard the phrases “circumstantial evidence” and “direct evidence.” Direct evidence is the testimony of someone who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a series of facts which tends to prove another fact in issue. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

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

First, testimony and exhibits that I struck from the record, or that I told you to disregard, are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

It is proper for an attorney to interview any witness in preparation for trial.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

The indictment in this case is the formal method of accusing a defendant of an offense and placing the defendant on trial. It is not evidence against a defendant and does not create any inference of guilt.

Defendant Felix Vasquez-Ruiz is charged with the offenses of mail fraud and health care fraud. The defendant has pleaded not guilty to the charges.

The defendant is presumed to be innocent of each of the charges against him. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that a defendant is guilty as charged. The government has the burden of proving the guilt of a defendant beyond a reasonable doubt.

This burden of proof stays with the government throughout the case. A defendant is never required to prove his innocence or to produce any evidence at all.

You have heard evidence that before the trial, witnesses made statements that may be inconsistent with the witnesses's testimony here in court. If you find that it is inconsistent, you may consider the earlier statement only in deciding the truthfulness and accuracy of that witness's testimony in this trial.

A statement made by a defendant before trial that is inconsistent with the defendant's testimony here in court may be used by you as evidence of the truth of the matters contained in it, and also in deciding the truthfulness and accuracy of that defendant's testimony in this trial.

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness' qualifications, and all of the other evidence in the case.

Certain summaries are in evidence. Their accuracy has been challenged by the defendant. Thus, the original materials upon which the exhibits are based have also been admitted into evidence so that you may determine whether the summaries are accurate.

You have seen hand written documents which have been identified as clinical data sheets and progress notes. These hand written documents are proper evidence and you may consider them, just as any other evidence.

When these hand written documents were shown during the trial, you were furnished with typed transcriptions of these documents prepared by a government agent.

The hand written documents are the evidence, and the transcriptions were provided to you only as a guide to help you follow as the hand written documents were read aloud. The transcriptions are not evidence of what was actually written. It is up to you to decide whether the transcriptions correctly reflect what was written. If you noticed any difference between what you saw in the hand written documents and what you saw in the transcriptions, you must rely on what you saw on the hand written documents. And if after careful review you are unable to read or understand certain parts of the hand written documents, you must ignore the transcriptions as those parts are concerned.

You have heard recorded conversations. These recorded conversations are proper evidence and you may consider them, just as any other evidence.

When the recordings were played during the trial, you were furnished transcripts of the recorded conversations prepared by government agents.

The recordings are the evidence, and the transcripts were provided to you only as a guide to help you follow as you listen to the recordings. The transcripts are not evidence of what was actually said or who said it. It is up to you to decide whether the transcripts correctly reflect what was said and who said it. If you noticed any difference between what you heard on the recordings and what you read in the transcripts, you must rely on what you heard, not what you read. And if after careful listening, you could not hear or understand certain parts of the recordings, you must ignore the transcripts as far as those parts are concerned.

I am providing you with the recordings and a player. You are not required to play the tapes, in part or in whole. You may rely, instead, on your recollections of these recordings as you heard them at trial. If you do decide to listen to a tape recording and wish to have the transcript corresponding to that recording, ask the Marshal in writing and the transcript will be given to you. You may choose to listen to the recording without the transcript.

Among the exhibits admitted during the trial was a recording that contained a conversation in the Spanish language. You were also provided with an English transcript of that conversation. The transcript was provided to you so that you could consider the content of the conversation on the recording.

Whether a transcript is an accurate translation, in whole or in part, is for you to decide. In considering whether a transcript accurately describes the meaning of a conversation, you should consider the testimony presented to you regarding how, and by whom, the transcript was made. You may consider the knowledge, training and experience of the translator, as well as the nature of the conversation and the reasonableness of the translation in light of all the evidence in the case. You should not rely in any way on any knowledge you may have of the language spoken on the recording; your consideration of the transcripts should be based on the evidence introduced at trial.

Counts One through Seven of the indictment charge the defendant with the offense of mail fraud.

To sustain the charge of mail fraud, the government must prove the following propositions:

First, that the defendant knowingly devised or participated in a scheme to defraud or to obtain money or property by means of material false statements, pretenses, representations or promises or material omissions or to deprive another of the intangible right of honest services, as described in Count One of the indictment;

Second, that the defendant did so knowingly and with the intent to defraud; and

Third, that for the purpose of carrying out the scheme or attempting to do so, the defendant caused the use of the United States mail in the manner charged in the particular count.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt as to the defendant, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt as to the defendant, then you should find the defendant not guilty.

The mail fraud statute can be violated whether or not there is any loss or damage to the victim of the crime or gain to the defendant.

The government must prove that the United States mail was used to carry out the scheme, or was incidental to an essential part of the scheme.

In order to cause the use of the United States mail to take place, the defendant need not actually intend that use to take place. You must find that the defendant knew this use would actually occur, or that the defendant knew that it would occur in the ordinary course of business, or that the defendant knew facts from which that use could reasonably have been foreseen.

The defendant need not actually or personally use the mails.

Although an item mailed need not itself contain a fraudulent representation or promise or a request for money, it must further or attempt to further the scheme.

Each separate use of the mail in furtherance of the scheme to defraud constitutes a separate offense.

Counts Eight through Twenty-seven charge the defendant with the offense of health care fraud.

To sustain the charge of health care fraud, the government must prove the following propositions:

First, that the defendant knowingly executed or attempted to execute a scheme or artifice to defraud any health care benefit program, or the defendant knowingly executed or attempted to execute a scheme or artifice to obtain the money or property owned by, or under the custody and control of, any health care benefit program by means of material false statements, pretenses, representations, promises, or omissions, as charged in the indictment;

Second, that the defendant did so knowingly and with the intent to defraud; and

Third, the defendant attempted to execute or executed the scheme in connection with the delivery or payment for health care benefits, items, or services by causing payments made by health care benefit programs, as charged in Counts Eight through Fourteen, and by making false entries in medical records, as charged in Counts Fifteen through Twenty-Seven.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt as to the defendant, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt as to the defendant, then you should find the defendant not guilty.

A health care benefit program means any public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract.

In reference to the requirement in Counts Eight through Twenty-seven of the indictment that the health care programs affected commerce, the government need only prove that the health care programs themselves either engaged in interstate commerce or that their activity affected interstate commerce. The government need not show any particular degree of effect on interstate commerce and need not prove that the defendant, himself affected commerce.

Commerce was affected, as required by the statute, if you find the government has proved beyond a reasonable doubt that the health care programs had any impact, regardless of how small or indirect, on the movement of any money, goods, services, or persons from one state to another.

A scheme is a plan or course of action formed with the intent to accomplish some purpose.

In considering whether the government has proven a scheme to defraud and to obtain money or property by means of material false statements, pretenses, representations, promises, acts, or material omissions, it is essential that one or more of the material false statements, pretenses, representations, promises or acts charged in the portion of the indictment describing the scheme be proved establishing the existence of the scheme beyond a reasonable doubt. However, the government is not required to prove all of them.

A scheme to defraud is a scheme that is intended to deceive or cheat another and to obtain money or property or cause the loss of money or property to another or, as charged in Counts One through Seven, to deprive another of the intangible right of honest services.

A false statement, pretense, representation, promise, or omission is "material" if it has a natural tendency to influence, or is capable of influencing, the decision of the decision maker to which it was addressed.

When the word “knowingly” is used in these instructions, it means that the defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake or accident. Knowledge may be proved by the defendant's conduct, and by all the facts and circumstances surrounding the case.

The phrase "intent to defraud" means that the acts charged were done knowingly with the intent to deceive or cheat the victim in order to cause a gain of money or property to the defendant or the loss of money or property to another or, as charged in Counts One through Seven, to deprive another of the intangible right of honest services.

Good faith on the part of the defendant is inconsistent with intent to defraud, an element of the charges in this case. The burden is not on the defendant to prove his good faith; rather, the government must prove beyond a reasonable doubt that the defendant acted with the intent to defraud.

To "attempt" means that the defendant knowingly took a substantial step toward the commission of the offense with the intent to commit that offense.

The indictment charges that certain offenses were committed "on or about" certain dates. The government must prove that the offenses in question happened reasonably close to that date but is not required to prove that the alleged offense happened on that exact date.

You should not speculate why any other person whose name you may have heard during the trial is not currently on trial before you.

A person is responsible for conduct that he performs or causes to be performed on behalf of a corporation just as though the conduct were performed on his own behalf. However, a person is not responsible for the conduct of others performed on behalf of a corporation merely because that person is an officer, employee, or other agent of a corporation.

An offense may be committed by more than one person. A defendant's guilt may be established without proof that the defendant personally performed every act constituting the crime charged.

Any person who knowingly aids, counsels, commands, induces or procures the commission of an offense may be found guilty of that offense. That person must knowingly associate with the criminal activity, participate in the activity, and try to make it succeed.

If a defendant knowingly caused the acts of another, the defendant is responsible for those acts as though he personally committed them.

If you find the defendant guilty, it will then be my job to decide what punishment should be imposed. In considering the evidence and arguments that have been given during the trial, you should not guess about the punishment. It should not enter into your consideration or discussions at any time.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate form, and each of you will sign it.

Each count of the indictment charges the defendant with having committed a separate offense.

Each count and the evidence relating to it should be considered separately, and a separate verdict should be returned as to each count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to any other count.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the marshal.

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
) No. 00 CR 1044
 v.)
)
 FELIX VASQUEZ-RUIZ) Judge Matthew F. Kennelly

VERDICT

We, the jury, do hereby find the defendant, FELIX VASQUEZ-RUIZ, as follows as to the following Counts of the indictment:

CHARGE:

MAIL FRAUD, 18 U.S.C. § 1341

<u>COUNT NO.</u>	<u>GUILTY</u>	<u>NOT GUILTY</u>
Count One	_____	_____
Count Two	_____	_____
Count Three	_____	_____
Count Four	_____	_____
Count Five	_____	_____
Count Six	_____	_____
Count Seven	_____	_____

HEALTH CARE FRAUD, 18 U.S.C. § 1347

<u>COUNT NUMBER</u>	<u>GUILTY</u>	<u>NOT GUILTY</u>
Count Eight	_____	_____
Count Nine	_____	_____
Count Ten	_____	_____
Count Eleven	_____	_____
Count Twelve	_____	_____
Count Thirteen	_____	_____
Count Fourteen	_____	_____
Count Fifteen	_____	_____
Count Sixteen	_____	_____
Count Seventeen	_____	_____
Count Eighteen	_____	_____
Count Nineteen	_____	_____
Count Twenty	_____	_____
Count Twenty-one	_____	_____
Count Twenty-two	_____	_____
Count Twenty-three	_____	_____
Count Twenty-four	_____	_____
Count Twenty-five	_____	_____
Count Twenty-six	_____	_____

Count Twenty-seven

FOREPERSON

(Date)