FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff - Appellee*, v. ALLEN GESSEN, *Defendant - Appellant*.	No. 24-2979 D.C. No. 3:22-cr-00276-JSC-1 OPINION

Appeal from the United States District Court
for the Northern District of California
Jacqueline Scott Corley, District Judge, Presiding

Argued and Submitted July 7, 2026
San Francisco, California

Filed September 8, 2026

Before: Richard A. Paez, Richard C. Tallman, and Mark J. Bennett, Circuit Judges.

Opinion by Judge Bennett

SUMMARY*

Criminal Law

The panel affirmed Allen Gessen's conviction for murder-for-hire in violation of 18 U.S.C. § 1958.

Gessen agreed to pay $50,000 to a broker, who agreed to arrange to kill Priscilla Chigariro, the mother of Gessen's children. Gessen didn't know that this supposed broker was undercover FBI agent David Rizzo posing as a member of an organized crime syndicate.

Gessen argued that the district court erroneously rejected his proposed instruction aligned with his defense theory that murder-for-hire under § 1958 cannot exist between a real solicitor and a fictional intermediator. The panel rejected this argument because the statute says nothing about the intent of the other party or parties to the proposed murder transaction. Proof of a quid pro quo is not necessary to support a § 1958 conviction. Because Gessen's proposed instruction is unsupported by law, the district court did not err in rejecting it.

Gessen challenged the sufficiency of the evidence to prove murder-for-hire. He contended that he solicited Rizzo to remove Chigariro from the United States but that he never wanted her dead. The panel held that a rational jury could have concluded that Gessen intended to kill Chigariro—not have her deported. The panel also held that sufficient evidence supports the jury's finding that Gessen intended

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Chigariro's murder to be committed in exchange for something of pecuniary value.

The panel rejected Gessen's contention that venue was improper in the Northern District of California.

- Murder-for-hire may be charged as a continuing offense, and the grand jury so charged Gessen. Venue therefore lies in any district court touched by the crime before the crime is completed.
- Gessen's proposed venue instruction, which provided that a murder-for-hire offense is complete after the single use of an interstate-commerce facility, is at odds with the panel's conclusion that Gessen was properly charged with a continuing offense and is thus contrary to law. The given instruction adequately covered Gessen's defense theory that the acts occurring in San Francisco did not further the crime because the charge offense was already complete.
- There was sufficient evidence for a rational jury to find that acts furthering the charged offense of murder-for-hire occurred in the Northern District of California.

The panel addressed remaining challenges in a concurrently filed memorandum disposition.

COUNSEL

Elizabeth R. Berenguer (argued), Assistant United States Attorney; Merry Jean Chan, Assistant United States Attorney, Chief, Appellate Section, Criminal Division; Craig H. Missakian, United States Attorney; Office of the United States Attorney, United States Department of Justice, San Francisco, California; for Plaintiff-Appellee.

James S. Thomson (argued), Attorney and Counselor at Law, Berkeley, California, for Defendant-Appellant.

OPINION

BENNETT, Circuit Judge:

During a bitter custody dispute, Allen Gessen faced state kidnapping charges for trying to take his son out of the country in violation of a court order. In his own words, Gessen was "pissed off" and "wanted, at any cost, to be reunited with the children." So he hatched a plan to gain sole custody. He initially sought to bribe an immigration official to deport the mother of his two children. But Gessen ultimately hired someone to kill her as a cheaper, "more permanent" alternative to the deportation scheme.

Through two in-person meetings and a series of messages, Gessen agreed to pay $50,000 (and provided half of that amount) to a broker, who agreed to arrange the hit. What Gessen did not know was that this supposed broker was actually an undercover federal agent. On the day Gessen expected the plot to be carried out, law enforcement arrested him, and a grand jury charged him with murder-for-hire in violation of 18 U.S.C. § 1958. The case proceeded to trial in San Francisco, and a jury found him guilty.

Gessen now appeals his conviction. We affirm.

I

A

Because this appeal arises following a conviction by a jury, we recount the facts in the light most favorable to the government. *See United States v. Nevils*, 598 F.3d 1158, 1163–64 (9th Cir. 2010) (en banc).

Allen Gessen is a naturalized United States citizen born in Russia. He practiced law in New York for a time, but most recently worked in consulting and managed investment funds. In 2011, Gessen met Priscilla Chigariro at a fashion event in Zimbabwe. The two began a romantic relationship and had a Zimbabwean cultural wedding in 2012, but they never legally married.

One year later, Gessen and Chigariro had their first child, a son, in Zimbabwe. The couple separated in 2014 but later reconciled. In 2016, Chigariro and the couple's son moved to Russia, where Gessen had been living. In 2018, they had a second child, a daughter, through a surrogate in Russia. The couple's relationship soured. On two occasions, once in 2019 and again in 2021, Gessen took their son out of the country without telling Chigariro.

In June 2019, while Chigariro was on a business trip to Zimbabwe, Gessen brought his son to the United States. As soon as she learned what Gessen had done, Chigariro called the authorities and filed a Hague petition in the U.S. District Court for the District of Massachusetts. But she could not travel to the United States without a visa, and she could not obtain one in Zimbabwe without leaving her daughter behind in Russia. Chigariro did not reunite with her son until 2021, when the United States granted her a visa to litigate custody proceedings in Massachusetts.

Chigariro obtained a ruling on her Hague petition in December 2021. The federal district court in Massachusetts found that Gessen had wrongfully removed their son from Russia and ruled that Gessen could not return him to Russia. The next day, Gessen failed to drop their son off at school and, when Chigariro messaged him, responded that he was driving and would talk to her later. Worried, Chigariro obtained an order from a Massachusetts family court awarding her temporary custody and ordering Gessen not to leave Massachusetts with their son. She also reported the possible abduction to the local police.

In January 2022, law enforcement arrested Gessen in Canada as he tried to board a plane to London with his son. Massachusetts later charged Gessen with parental kidnapping.

Around this time, Gessen sought to invest in a factory in Estonia. To organize funding, he contacted Oleksii Kiselev, a man Gessen believed to be a lobbyist representing Ukrainian interests in Washington, D.C. Gessen wanted Kiselev to arrange for funding from the United States government. Gessen also sought Kiselev's help in getting Chigariro deported. Unbeknownst to Gessen, Kiselev had been under investigation for international money laundering. And as part of that investigation, FBI Special Agent David Rizzo posed undercover as a member of an organized crime syndicate.

On March 24, 2022, Kiselev mentioned Gessen to Rizzo. He explained that Gessen "has his ex pretty much making hell out of his life" and "took his kids." According to Kiselev, the ex was "from Africa" but living in Boston on a visa, and Gessen wanted her visa revoked so that "she gets kicked out [of] the country." Rizzo quoted Kiselev $100,000 to bribe an immigration official to have her deported. Kiselev agreed to set up a "face-to-face conversation" between Rizzo and Gessen.

That conversation took place on June 2, 2022, when Gessen and Rizzo met for lunch in Boca Raton, Florida. Rizzo secretly taped the meeting. Gessen explained that he was "a little pissed off" at Chigariro for getting him arrested for kidnapping. Gessen told Rizzo that he wanted to "remain in the United States" with his children and for Chigariro to "go back to her home country" and "not be able to come and harass us again." Rizzo said that he had a contact "very high up" in government. For "about a hundred grand," Chigariro could be "back on a plane in probably, worst case scenario, 6 months" and "bounced out" of the country.

Later in the conversation, Gessen stated, "incidentally, if there was a cheaper way to get rid of her that would be good too." Rizzo responded, "I don't know how to say this, but like, there is a cheaper way and probably a more permanent way to do it." Gessen said that he was "prepared to proceed" with that route.

Gessen explained that he did not realize "that was an option" because he had "researched [his] sources"—the "Israelis and Eastern Europe and Italy"—and learned the "lowest price was [$220,000]." "[I]f that's what you want," Rizzo said, "you have to tell me because . . . it's a totally different conversation, but yes, that can happen, like, quickly." Rizzo conveyed that he thought this route would "be less money," to which Gessen responded, "[a]nd more definite." "[T]he issue with immigration," Gessen observed, is "so many lawyers"; if "you get a bad guy and she ends up staying," "[i]t just becomes unpredictable." Rizzo replied, "I just didn't know what your appetite for that was, but if you feel that way . . . we can make that happen, and it will be very clean, and it'll be quick, and it'll be final."

"[M]y one concern," Gessen said, is "to make sure that whoever orchestrates it makes sure the kids are not going to be present." They "cannot possibly do this in front of the kids," he insisted. But Rizzo assured him that it "would be a very clean, professional job." Gessen agreed to do "full RECON" for Rizzo and provide him with locations, schedules, addresses, descriptions, and photographs of Chigariro and the kids.

At the end of the conversation, Rizzo asked, "[H]ow do we protect the kids? They're going to lose their mother right?" Gessen replied that their son "wants her gone. He hates her with a passion." Gessen also repeated, "As long as they're not witnesses," to which Rizzo responded, "Yeah, they won't be. She'll be taken out without them present."

Gessen and Rizzo arranged for another meeting on June 22, 2022 in New York. Before the meeting, Rizzo wrote to Gessen over Signal, an encrypted messaging application, that he expected Gessen to bring "half the amount." Gessen asked what is the "full amount to know how much is 1/2." Rizzo stated that the "[f]ull amount is 50," meaning $50,000. He also explained that his "guys are ready to put in some work."

They met on June 22, and Rizzo again secretly taped the meeting. The men arranged for the plan to take place during the last week of July, when Gessen had the kids. Rizzo advised Gessen that it "need[ed] to be a random act" and

Gessen "can not be connected whatsoever" because "given [his] history and stuff like that, . . . somebody is gonna talk to [him]." Gessen agreed that he will be "the number one" suspect and he could arrange to "be out of state."

Gessen then gave Rizzo a gold coin worth $2,000. They agreed that Gessen would wire the balance of the downpayment "to a business account in San Francisco," which Rizzo would use to pay his men. Gessen again promised to provide identifying information, including photographs, an address, social media accounts, and car registration. A few minutes later, Rizzo said, "I just want to make sure you're comfortable with it and know that it is a permanent solution, right? Because, this is, this is final." Gessen replied, "Good. Mazel."

At the end of the meeting, Rizzo repeated, "I wanna make sure that you're comfortable and you don't have any regrets." Gessen stated, "Oh yeah, hundred percent. Hundred percent on board." Rizzo also asked Gessen, "do you have any preference in the means? Or do you just want her gone?" Gessen responded, "As you already pointed out, I will be talked to," so "it just needs to be um quick and um random."

Several days later, Gessen wired approximately $23,000 to the FBI's undercover bank account in San Francisco. Gessen also sent Rizzo a link to a target package that included Chigariro's photo, birthdate, social-media accounts, current address, and information on her boyfriend, friends, landlord, vehicle, location, habitual movements, and lifestyle.

On July 26, 2022, Rizzo messaged Gessen, that "[t]he project" will "be completed on the 28th." He instructed Gessen to "[k]eep [him]self busy and make sure [he is] putting charges on [his] credit card while [he is] away." Rizzo also asked Gessen, "If there are any guests present do you have any problem with showing them the exit? My guys said we need to plan for extra guests at the show." Rizzo testified that this meant "if there was anybody with [Chigariro] at the time we were going to conduct the killing, would [Gessen] have any problem with us killing that person as well." Gessen responded, "I am absolutely ambivalent to the modalities and circumstances as long as we achieve project objectives. Additional unexpected expenses are a part of doing business," so "collateral" is "fine." At trial, Rizzo explained that he understood "collateral" to mean Chigariro's boyfriend. Gessen had shared information about Chigariro's boyfriend in the target package he sent Rizzo. And Gessen had explained that Chigariro usually stayed at her boyfriend's house and provided his address.

B

On July 26, 2022, a grand jury in the Northern District of California charged Gessen with murder-for-hire in violation of 18 U.S.C. § 1958. And on July 28, 2022, law enforcement arrested him while on vacation with his children in Massachusetts.

The case proceeded to trial in May 2023. The government called several witnesses. Agent Rizzo testified about his communications with Gessen in 2022. In connection with his testimony, the government introduced into evidence the audio recordings of Rizzo's call with Kiselev and his two meetings with Gessen; the government also offered transcripts. Special Agent David Peacock testified about the FBI's investigation of Gessen, including the $23,000 (less bank fees) Gessen wired to the FBI's undercover bank account in San Francisco. Peacock also testified that some of the Signal messages sent to Gessen were sent from the FBI office in San Francisco. Chigariro testified about Gessen's prior abductions of their son and the ongoing custody proceedings.

Gessen testified in his own defense. He denied that he had asked Rizzo to arrange for Chigariro's murder or that he wanted her killed. Gessen instead claimed that he sought only to have Chigariro deported and he "had [a] very different understanding of what was being discussed" with Rizzo. Gessen also told the jury that he "wanted, at any cost, to be reunited with [his] children."

At the close of trial, Gessen requested two modifications to the Ninth Circuit Model Criminal Jury Instructions. First, he proposed a theory-of-defense instruction adding a requirement for murder-for-hire: "In considering whether something of pecuniary value was promised or agreed to be paid as consideration for a murder," the proposed instruction stated, "the defendant must have reached an agreement with a person who clearly understood that they themself would commit a murder in exchange for defendant's promise to pay or payment of something of pecuniary value—that is, a quid pro quo agreement." The district court declined to give the requested instruction, explaining that it is not "in accordance with the law" because it "essentially say[s] that you can't have an undercover agent in a murder for hire."

Second, Gessen proposed his own venue instruction. He asked the district court to instruct the jury that "[w]hen considering whether the government has established that venue is proper in the Northern District of California, [the jury] may not consider acts that occurred after the offense was completed." And "[t]he offense of murder-for-hire is completed," it continued, "once the defendant (1) uses a facility in interstate commerce with the intent that a murder be committed in exchange for something of pecuniary value, or (2) travels in interstate commerce with the intent that a murder be committed in exchange for something of pecuniary value." The district court also refused to give this instruction, finding that it would be confusing or misleading to the jury.

The jury returned a guilty verdict on May 8, 2023. Gessen moved for a judgment of acquittal and a new trial under Federal Rules of Criminal Procedure 29 and 33. Under Rule 29, he challenged the sufficiency of the evidence and contended that venue was improper. Under Rule 33, he urged that the district court's rejection of his proposed jury instruction on 18 U.S.C. § 1958 improperly permitted the jury to convict him despite "the absence of a hitman."

The district court denied the motions. It again rejected Gessen's construction of § 1958, explaining that "[n]othing in the statute suggests the person to whom the defendant promises to pay money for the murder must be the person who the defendant believes will personally commit the murder." And "[u]nder this interpretation of § 1958," the district court continued, "the trial evidence was sufficient to satisfy the pecuniary consideration element." The district court explained that "[o]n June 20, 2022, the undercover agent directed Mr. Gessen to pay him $50,000 for Ms. Chigariro's murder." "At their June 22, 2022 Manhattan meeting, Mr. Gessen gave the undercover agent a gold coin, worth $2,000, as 'part of the down payment' for arranging Ms. Chigariro's murder." Gessen then wired the undercover agent approximately $23,000. "The gold coin and $23,000 covered half the murder-for-hire contract," and "Mr. Gessen agreed to pay the undercover agent the other half of the agreed-upon $50,000 after the murder's completion." On this record, the district court concluded, "[a] rational trier of fact could find Mr. Gessen hired the undercover agent to arrange Ms. Chigariro's murder in exchange for $50,000."

As to the intent element, the district court recounted the evidence from Gessen's recorded meetings showing that he intended for Chigariro to be murdered—not deported. From there, the district court explained, "Gessen sought to hire the undercover agent to kill Ms. Chigariro as a cheaper, more permanent alternative to the deportation scheme." "Embroiled in a multi-front custody battle and facing a kidnapping charge, Mr. Gessen wanted 'to get rid of' Ms. Chigariro so she would 'not be able to come and harass [Mr. Gessen and his children] again.'"

The district court also determined that venue was proper. Because "Gessen sent two wire transmissions, amounting to $23,000, to a San Francisco bank account as payment for the murder of Ms. Chigariro," it found that "[s]ufficient evidence demonstrated some acts in furtherance of Mr. Gessen's murder-for-hire scheme occurred in the Northern District such that any rational trier of fact could find venue proper in the Northern District of California."

The district court later sentenced Gessen to 120 months in prison. This appeal followed.

II

Gessen asks us to vacate his conviction based on instructional error, the insufficiency of the evidence, improper venue, the admission of certain evidence, and one of the prosecutor's cross-examination questions. We have jurisdiction under 28 U.S.C. § 1291. In this opinion, we resolve Gessen's challenges to the jury instructions, the sufficiency of the evidence, and venue. We address the remaining issues in a concurrently filed memorandum disposition.

III

We begin with Gessen's contention that the district court erroneously rejected his proposed instruction on the elements of 18 U.S.C. § 1958. "We review the formulation of jury instructions for abuse of discretion, but review de novo whether those instructions correctly state the elements of the offense and adequately cover the defendant's theory of the case." *United States v. Liew*, 856 F.3d 585, 595–96 (9th Cir. 2017). "A defendant is entitled to have the judge instruct the jury on his theory of defense, provided that it is supported by law and has some foundation in the evidence," *United States v. Whittemore*, 776 F.3d 1074, 1078 (9th Cir. 2015) (quoting *United States v. Mason*, 902 F.2d 1434, 1438 (9th Cir. 1990), *overruled on other grounds by Dixon v. United States*, 548 U.S. 1 (2006)), but he "is not entitled to the instructions of his choice," *id.* at 1080. When a district court rejects a defendant's proposed instruction, he must show on appeal: "(1) that his theory has some foundation in evidence; (2) that it is supported by law; and (3) that the given instructions did not adequately encompass his theory." *Id.* at 1078.

Section 1958 provides:

> Whoever travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any facility of interstate or foreign commerce, with intent that a murder be committed in violation of the

> laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, or who conspires to do so, shall be fined under this title or imprisoned for not more than ten years, or both; and if personal injury results, shall be fined under this title or imprisoned for not more than twenty years, or both; and if death results, shall be punished by death or life imprisonment, or shall be fined not more than $250,000, or both.

18 U.S.C. § 1958(a).

"To be convicted of violating § 1958(a)," we have explained, "an offender must (1) have traveled or caused another to travel in interstate commerce, or used or caused another to use an instrumentality of interstate or foreign commerce"; "(2) have done so with the intent that a murder be committed; and (3) have intended that the murder be committed in exchange for something of pecuniary value." *United States v. Linehan*, 56 F.4th 693, 707 (9th Cir. 2022). Relying on Ninth Circuit Model Criminal Jury Instruction 16.7, the district court instructed the jury that for Gessen to be found guilty of murder-for-hire, the government had to prove beyond a reasonable doubt: "First, the defendant used or caused another to use a facility in interstate or foreign commerce; Second, the defendant did so with the intent that murder be committed; and Third, the defendant intended that the murder be committed in exchange for pecuniary value, namely $50,000." *See Manual of Model Criminal Jury Instructions for the District*

Courts of the Ninth Circuit § 16.7 (2022 ed., updated Mar. 2026).

As noted, Gessen sought to add to the instruction:

> In considering whether something of pecuniary value was promised or agreed to be paid as consideration for a murder, you are instructed that the defendant must have reached an agreement with a person who clearly understood that they themself would commit a murder in exchange for defendant's promise to pay or payment of something of pecuniary value—that is, a quid pro quo agreement.

Gessen's proposed instruction aligned with his defense theory that murder-for-hire cannot exist between a real solicitor and a fictional intermediary, like an undercover FBI agent. But the district court correctly rejected the instruction because it is contrary to the requirements of § 1958.

We start with the text of § 1958. As relevant here, § 1958 requires that the defendant act "with intent that a murder be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value." 18 U.S.C. § 1958(a). The statute says nothing about the intent of the other party or parties to the proposed murder transaction. Thus, Gessen's argument is contrary to the explicit requirements of the statute and seeks to add an element that is not contained in the statute.

In *United States v. Linehan*, we concluded that the murder-for-hire statute "does not require that a defendant actually enter into a murder-for-hire agreement." 56 F.4th at 707 (citation omitted). This position finds support in the decisions of our sister circuits. "[T]he overwhelming majority of circuits that have addressed the issue" have determined that "the plain language of § 1958 does not require the existence of an actual murder-for-hire agreement." *United States v. Dvorkin*, 799 F.3d 867, 875 (7th Cir. 2015) (collecting cases). Instead, all the government must show is that the defendant acted with the requisite intent when traveling in or using a facility of interstate commerce (or causing another to travel in or use a facility of interstate commerce). *See Linehan*, 56 F.4th at 707; *accord United States v. Smith*, 755 F.3d 645, 647 (8th Cir. 2014). Proof of a quid pro quo agreement is thus not necessary to support a § 1958 conviction.

Our decisions in *United States v. Ritter*, 989 F.2d 318 (9th Cir. 1993), and *United States v. Chong*, 419 F.3d 1076 (9th Cir. 2005), are not to the contrary. To start, those are murder-for-hire *conspiracy* cases. Unlike a conviction for the underlying substantive offense, a conviction for conspiracy to commit murder-for-hire *does* require "an agreement to accomplish an illegal purpose." *Ritter*, 989 F.2d at 321.

Further, in *Chong*, "the evidence show[ed] only that [the defendant's co-conspirator] volunteered for a dangerous assignment and wound up getting some walking-around money in the course of traveling to Boston." 419 F.3d at 1083. But the money was paid "to cover incidental expenses rather than as compensation for carrying out the murder-for-hire." *Id.* "Because the jury did not have sufficient evidence that the co-conspirator knew he would receive any compensation specifically for the murder, we reversed the defendant's conviction." *United States v. Phillips*, 929 F.3d

1120, 1124 (9th Cir. 2019) (discussing *Chong*). Similarly, in *Ritter*, the defendant "did not know that anyone would be paid to commit murder." 989 F.2d at 321. Although the defendant had been paid "$70 to build a bomb," *id.*, the government failed to prove that he "was also paid to commit murder or knew that his co-conspirator agreed to be paid for murder," *Phillips*, 929 F.3d at 1123 (discussing *Ritter*).

These cases hold that the pecuniary element of § 1958 is not satisfied when, at the time a defendant receives payment, he is unaware that he is being paid to commit a murder—and specifically a murder. But they do not establish, as Gessen urges, that the government must show a hitman agreed to commit the murder himself.

Gessen asked the district court to instruct the jury that he could not be convicted without evidence of a "quid pro quo agreement." His proposed instruction provided that "the defendant must have reached an agreement with a person who clearly understood that they themself would commit a murder in exchange for defendant's promise to pay or payment of something of pecuniary value." But an actual agreement is not required unless conspiracy is charged. Because Gessen's requested instruction is unsupported by law, the district court did not err in rejecting it. *See Whittemore*, 776 F.3d at 1078.

IV

Gessen also renews his challenge to the sufficiency of the evidence, contending that the government did not introduce enough evidence to prove murder-for-hire. In reviewing the denial of a Federal Rule of Criminal Procedure 29 motion for a judgment of acquittal, we must view "the evidence in the light most favorable to the prosecution" and ask whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Reversal under this standard, courts have observed, is a "nearly insurmountable hurdle." *United States v. Peoples*, 119 F.4th 1097, 1101 (7th Cir. 2024) (quoting *United States v. Garcia*, 919 F.3d 489, 496 (7th Cir. 2019)).

Again, to be convicted of violating § 1958(a), a defendant must "(1) have traveled or caused another to travel in interstate commerce, or used or caused another to use an instrumentality of interstate or foreign commerce"; "(2) have done so with the intent that a murder be committed; and (3) have intended that the murder be committed in exchange for something of pecuniary value." *Linehan*, 56 F.4th at 707. Gessen contends that the government failed to prove the second and third elements.

Begin with intent. Gessen contends that he solicited Rizzo (and, in turn, his associates) to remove Chigariro from the United States but that he never wanted her dead. Gessen relies on the fact that neither he nor Rizzo ever used the words "murder," "kill," or "murder-for-hire." But our inquiry is not so narrow. A jury "can draw inferences about a defendant's intent based on all the facts and circumstances of a crime's commission." *Rosemond v. United States*, 572 U.S. 65, 78 n.9 (2014).

From the recorded conversations between Gessen and Rizzo, which the government played at trial, a rational jury could have concluded that Gessen intended to kill Chigariro—not have her deported. At their first meeting, Gessen told Rizzo that he was "pissed off" at Chigariro for having him arrested on kidnapping charges. It is true that the men initially discussed a scheme in which Chigariro would be simply "bounced out" of the United States. But

Gessen then asked whether there was a "cheaper way to get rid of her." The issue with the deportation scheme, he observed, "is so many lawyers." If "you get a bad guy," he explained, "she ends up staying," "[i]t just becomes unpredictable." Gessen said that he was "prepared to proceed" with a "more definite" option to take care of Chigariro, even when Rizzo confirmed that it would be "final" and "permanent."

The jury learned that, at the same meeting, Gessen expressed his "secret concern" that "we cannot possibly do this in front of the kids." He insisted that "whoever orchestrates it makes sure the kids are not going to be present." So Rizzo agreed that Chigariro would be "taken out without them present." The two also discussed how "this need[ed] to be a random act" because "given [Gessen's] history and stuff like that, . . . somebody is gonna talk to [him]." Gessen agreed and said he could arrange to "be out of state."

This evidence was more than sufficient to allow the jury to find that Gessen wanted Chigariro dead and was paying for her murder, not her deportation. Gessen's own words, recorded by law enforcement, support that he sought Rizzo's help to hire someone to kill Chigariro as a cheaper, "more permanent" alternative to the deportation scheme. Indeed, a reasonable jury could infer that Gessen's concern about making sure the kids would not be present and his need for an alibi made little sense if Gessen had arranged only to have immigration officials remove Chigariro from the country.

The jury also heard that after the second meeting, Gessen sent Rizzo a target package which included Chigariro's picture, date of birth, social media accounts, address, and information on her boyfriend, friends, landlord, vehicle, location, habitual movements, and lifestyle. This conduct would seemingly have little to do with a scheme to bribe immigration officials, but it could facilitate private actors in carrying out a hit and making the murder appear random. Further, the messages the men exchanged on Signal—including those in which Gessen expressed that he was "fine" with any "collateral"—also suggest Gessen believed he had hired a hitman. As Gessen told the jury on direct examination, he "wanted, at any cost, to be reunited with the children."

From this evidence, a reasonable jury could conclude that the government proved the intent element of murder-for-hire beyond a reasonable doubt. Gessen urges us to see the evidence as showing nothing more than a plot to have Chigariro deported. But that is the view Gessen pressed at trial from the witness stand, and which the jury reasonably rejected.

Sufficient evidence also supports the jury's finding that Gessen intended Chigariro's murder to be committed in exchange for something of pecuniary value. The jury heard that, before the second meeting, Rizzo asked Gessen to bring "half the amount" of $50,000 for their "project." Then, at the meeting itself, Gessen gave Rizzo a gold coin worth $2,000 and promised to wire the remainder to a business account in San Francisco. And after the meeting, Gessen wired about $23,000 to the FBI's undercover bank account. A rational jury could thus conclude that Gessen intended to pay $50,000 in exchange for Chigariro's murder.

Gessen argues that the pecuniary consideration element is not satisfied because Rizzo did not plan to keep the money for himself. Rizzo, he observes, "was facilitating the scheme as an unspecified 'favor' not in consideration of anything" and "only promised to pay a nonexistent hitman with Mr. Gessen's funds to commit murder." And, in Gessen's view, "[a] conviction of a substantive offense under § 1958 requires an agreement between the solicitor and the hitman."

But as we have explained, the murder-for-hire statute "does not require that a defendant actually enter into a murder-for-hire agreement." *Linehan*, 56 F.4th at 707 (citation omitted). The evidence, which showed that Gessen intended to have Chigariro murdered by Rizzo's men in exchange for his promise to pay $50,000, about half of which he actually did pay, was thus sufficient.

V

Gessen finally contends that venue was improper in the Northern District of California and that the district court erred in not giving his requested venue instruction. "[T]he Constitution not once but 'twice safeguards the defendant's venue right.'" *Abouammo v. United States*, 146 S. Ct. 1571, 1576 (2026) (quoting *United States v. Cabrales*, 524 U.S. 1, 6 (1998)). Article III requires that "Trial of all Crimes" shall "be held in the State where the said Crimes shall have been committed." U.S. Const. art. III, § 2, cl. 3. And the Sixth Amendment guarantees criminal defendants "an impartial jury of the State and district wherein the crime shall have been committed." U.S. Const. amend. VI.

Section 1958 lacks an express venue provision. Thus, we "decide where the crime was committed" by "determin[ing] the location of the offense's 'essential conduct elements.'" *Abouammo*, 146 S. Ct. at 1576 (quoting *United States v. Rodriguez-Moreno*, 526 U.S. 275, 280 (1999)). "In performing this inquiry, a court must initially identify the conduct constituting the offense," *Rodriguez-Moreno*, 526 U.S. at 279, that is, "the things a defendant must do to violate the statute at issue," *Abouammo*, 146 S. Ct. at 1576. From there, "the court must ascertain the 'location' of those 'criminal acts'—the place where their 'commission' occurred." *Id.* (quoting *Rodriguez-Moreno*, 526 U.S. at 279).

This inquiry sometimes "points to a single district." *Id.* But when "the proscribed acts happen in multiple locations," venue is proper in more than one judicial district. *Id.* The latter are so-called "continuing offenses," and Congress has codified the constitutional rule with respect to such offenses in 18 U.S.C. § 3237(a). *See id.* at 1576–77, 1577 n.2. As we have explained, "[c]rimes that are not unitary but instead span space and time . . . may be considered continuing offenses under 18 U.S.C. § 3237(a)." *United States v. Corona*, 34 F.3d 876, 879 (9th Cir. 1994). Section 3237(a) provides that "any offense against the United States begun in one district and completed in another, or committed in more than one district," may be prosecuted "in any district in which such offense was begun, continued, or completed." 18 U.S.C. § 3237(a).

Because a jury convicted Gessen of murder-for-hire, we need to identify the "essential conduct elements" of that offense. *See Abouammo*, 146 S. Ct. at 1576. As noted, under 18 U.S.C. § 1958, a defendant must "(1) have traveled or caused another to travel in interstate commerce, or used or caused another to use an instrumentality of interstate or foreign commerce"; "(2) have done so with the intent that a murder be committed; and (3) have intended that the murder be committed in exchange for something of pecuniary value." *Linehan*, 56 F.4th at 707. Reviewing these elements, we conclude that murder-for-hire may be charged as a continuing offense.

We do not look to "a statute's *mens rea* elements in considering venue." *See Abouammo*, 146 S. Ct. at 1577. Our focus is on the conduct element: "travels in . . . interstate or foreign commerce," or "use[s] the mail or any facility of interstate or foreign commerce." 18 U.S.C. § 1958(a). These provisions proscribe "act[s] that [are] not a static or an instantaneous occurrence, geographically or temporally." *United States v. Lopez*, 484 F.3d 1186, 1192 (9th Cir. 2007) (en banc). Travel in interstate or foreign commerce "requires transport[] . . . over a period of time and distance," *see id.*, and so the offense can span those judicial districts through which the defendant (or another person) crosses. The same is true for the use of the mail or any facility of interstate or foreign commerce. *See United States v. Johnson*, 323 U.S. 273, 275 (1944). Because a murder-for-hire plot "span[s] space and time," it "may be considered [a] continuing offense[] under 18 U.S.C. § 3237(a)." *See Corona*, 34 F.3d at 879.

In this way, murder-for-hire is like kidnapping. As the Supreme Court emphasized in *United States v. Rodriguez-Moreno*, "where a crime consists of distinct parts which have different localities[,] the whole may be tried where any part can be proved to have been done." 526 U.S. at 281 (quoting *United States v. Lombardo*, 241 U.S. 73, 77 (1916)). There, the kidnapping "beg[a]n in Texas and continued in New York, New Jersey, and Maryland." *Id.* "A kidnaping, once begun," the Court explained, "does not end until the victim is free. It does not make sense, then, to speak of it in discrete geographic fragments." *Id.* The Court thus concluded that a kidnapping is "committed in all of the places that any part of it took place, and venue for [a] kidnaping charge . . . [i]s appropriate in any of them." *Id.* at 282. And because the kidnapping continued in New Jersey, venue was proper there. *See id.*

Just as a kidnapping consists of "distinct parts" in "different localities" when a perpetrator moves their victim across state lines, so too does a murder-for-hire if the offender, for example, uses interstate-commerce facilities (with the requisite intent) on more than one occasion. Similarly, the victim of a murder-for-hire is not safe until the plan is foiled or the culprits arrested. So until that point, each act of travel or use of interstate commerce facilities in furtherance of the plot continues the criminal offense. Put another way, the offense "does not terminate merely because all of the elements are met." *See Lopez*, 484 F.3d at 1192.

It is true that in *United States v. Delpit*, the Eighth Circuit explained that "[o]nce the interstate-commerce facility is used with the required intent the crime is complete." 94 F.3d 1134, 1149 (8th Cir. 1996). And the Eleventh Circuit later "agree[d] with the Eighth Circuit that once the defendant uses an instrument of interstate commerce with the intent that a murder-for-hire be committed, the crime is completed." *United States v. Preacher*, 631 F.3d 1201, 1203 (11th Cir. 2011) (per curiam).

These cases are distinguishable, however. The murder-for-hire plot in each involved only a *single* act of travel and use of an interstate-commerce instrument, respectively. *See id.* at 1203 n.1; *Delpit*, 94 F.3d at 1141, 1150. For example, in *Delpit*, the Eighth Circuit reversed the convictions of two out of five defendants because their alleged conduct relating to the murder-for-hire scheme only occurred *after* the single act of interstate travel transpired. *See* 94 F.3d at 1150–52. And in *Preacher*, the Eleventh Circuit affirmed the denial of the defendant's proposed abandonment jury instruction, finding that his murder-for-hire offense was completed the moment he used a facility of interstate commerce—his cellphone—with the requisite intent to violate 18 U.S.C. § 1958. *See* 631 F.3d at 1204. Thus, abandonment could not be "an affirmative defense to a completed violation of § 1958." *Id.* Indeed, the Eleventh Circuit observed that, as in the Eighth Circuit case, "the indictment clearly charge[d] a single crime occurring 'on or about' certain dates and not an ongoing crime." *Id.* at 1203 n.1. So there the court did not consider whether a different rule would apply when the indictment charges a continuing offense. *See id.*

Review of the indictment here, by contrast, demonstrates that Gessen was charged with a continuing offense. The grand jury charged:

> Beginning on or about June 2, 2022, and continuing up to and including on or about July 26, 2022, in the Northern District of California and elsewhere, the defendant, ALLEN GESSEN, traveled in and used facilities of interstate and foreign commerce with the intent to murder [Chigariro], an individual known to the Grand Jury, in violation of the laws of the Commonwealth of Massachusetts, as consideration for the receipt of, and as consideration for a promise and agreement to pay, things of pecuniary value, to wit: $50,000.

The indictment confirms that the offense spanned both time and geography—lasting more than seven weeks, crossing multiple judicial districts, and involving both travel in *and* use of facilities of interstate and foreign commerce. Thus, the murder-for-hire can be tried "in all of the places that any part of it took place." *See Rodriguez-Moreno*, 526 U.S. at 282.

Our determination that murder-for-hire may be charged as a continuing offense also finds support in the decisions of our sister circuits defining the unit of prosecution for a violation of 18 U.S.C. § 1958. The First, Sixth, and Tenth Circuits have each held that "the proper unit of prosecution under the murder-for-hire statute is a single plot to murder a single individual." *United States v. Gordon*, 875 F.3d 26, 37 (1st Cir. 2017); *see United States v. Wynn*, 987 F.2d 354, 359 (6th Cir. 1993); *United States v. Maldonado-Passage*, 56 F.4th 830, 840–41 (10th Cir. 2022). As a result, "where an individual has made multiple interstate communications associated with the intended murder of one individual, there may be but one offense under § 1958(a)." *Maldonado-Passage*, 56 F.4th at 841; *see also Wynn*, 987 F.2d at 359. A corollary to this conclusion is that a single § 1958 offense may continue through each act of travel or use of interstate-commerce facilities that makes up an overarching plot to kill a single person.

The Supreme Court's recent decision in *Abouammo v. United States*, 146 S. Ct. 1571, does not alter this conclusion. There, the Court determined that the venue for an 18 U.S.C. § 1519 offense "must be where a document's falsification happened." *Id.* at 1577. "The only prohibited act in that statute," it explained, "is the falsification of a document." *Id.* And "[o]nce a person has committed that act (with the requisite intent), he need do nothing more to violate the law." *Id.* So "[t]he trial for falsifying a document must take place where the defendant falsified the document." *Id.* at 1579.

But the Court took care to explain that its holding "is 'discrete' and narrow," limited to "the nature of the [specific] crime charged." *Id.* (alteration in original) (quoting *Travis v. United States*, 364 U.S. 631, 635 (1961)). It also underscored that when "the proscribed acts happen in multiple locations," *id.* at 1576, the offense "may be prosecuted 'in any district in which such offense was begun, continued, or completed,'" *id.* at 1577 n.2 (quoting 18 U.S.C. § 3237(a)). That is the case here. Because the grand jury charged Gessen with a continuing offense, which took place in multiple locations over time, the government's venue options are not confined to a single judicial district. *See id.*

In sum, murder-for-hire may be charged as a continuing offense. And the grand jury so charged Gessen. Thus, "venue lies in any district touched by the crime before the crime is completed." *Lopez*, 484 F.3d at 1194; *see* 18 U.S.C. § 3237(a).

A

Gessen recognizes that "the charged offense 'was begun in one district and completed in another, or committed in more than one district.'" (quoting 18 U.S.C. § 3237(a)). But he contends that he could not be tried in the Northern District of California because his offense was complete *before* any acts occurred in the district. His argument is twofold. First, he urges that the district court erred in rejecting his proposed venue instruction. Second, he challenges the sufficiency of the evidence as to venue. We address each argument in turn.

B

The district court instructed the jury that "[v]enue is proper in the Northern District of California if some act in furtherance of the crime charged occurred in the Northern

District of California." Gessen's proposed instruction added that "[w]hen considering whether the government has established that venue is proper in the Northern District of California, [the jury] may not consider acts that occurred after the offense was completed." And "[t]he offense of murder-for-hire is completed," it continued, "once the defendant (1) uses a facility in interstate commerce with the intent that a murder be committed in exchange for something of pecuniary value, or (2) travels in interstate commerce with the intent that a murder be committed in exchange for something of pecuniary value." Gessen relied on the Eighth Circuit's statement in *Delpit* that "[o]nce the interstate-commerce facility is used with the required intent the crime is complete." 94 F.3d at 1149. The district court declined to adopt his instruction.

As explained, "[w]e review the formulation of jury instructions for abuse of discretion, but review de novo whether those instructions correctly state the elements of the offense and adequately cover the defendant's theory of the case." *Liew*, 856 F.3d at 595–96. And Gessen must show "(1) that his theory has some foundation in evidence; (2) that it is supported by law; and (3) that the given instructions did not adequately encompass his theory." *Whittemore*, 776 F.3d at 1078.

The district court did not err. Gessen's proposed instruction, which provided that a murder-for-hire offense is complete after the single use of an interstate-commerce facility, is at odds with our conclusion that Gessen was properly charged with a continuing offense. Thus, his requested instruction is contrary to law.

Moreover, the given instruction adequately covered Gessen's defense theory as to venue. The district court instructed that "the government must convince you that some act *in furtherance of the crime charged* took place in the Northern District of California." This language mirrored Model Instruction 6.32. *See Manual of Model Criminal Jury Instructions for the District Courts of the Ninth Circuit* § 6.32 (2022 ed., updated Mar. 2026). And because the district court instructed the that jury it could consider only acts committed "in furtherance of" the crime to determine venue, Gessen could argue that the acts occurring in San Francisco did not further the crime because the charged offense was already complete. Indeed, Gessen's counsel did make such an argument in his closing.

The district court made no instructional error as to venue. So we will not disturb Gessen's conviction on this ground.

C

Gessen also presses that the government presented insufficient evidence for the jury to find proper venue in the Northern District of California. "[W]e review de novo whether venue was proper." *United States v. Hui Hsiung*, 778 F.3d 738, 745 (9th Cir. 2015).

As discussed, the district court properly instructed the jury that "[v]enue is proper in the Northern District of California if some act in furtherance of the crime charged occurred in the Northern District of California." And the crime charged here required the government to prove that Gessen (1) "used or caused another to use a facility in interstate or foreign commerce"; (2) "did so with the intent that murder be committed"; and (3) "intended that the murder be committed in exchange for pecuniary value."

The government sought to prove venue in the Northern District based on evidence that Gessen sent messages to a phone located in San Francisco and wire transmissions to a San Francisco bank account. The jury heard that on June 13, 2022, Gessen exchanged Signal messages with Rizzo's phone—located in the San Francisco FBI office—to organize their second meeting. Then, on June 29 and July 8, Gessen sent two wire transfers (totaling around $23,000) to a San Francisco bank account as the down payment for Chigariro's murder. Gessen stipulated that his "cellular phone" and "[t]he Signal application" "were a facility in interstate or foreign commerce." He also stipulated that the "two wire transmissions sent from an account in the name of GEEWIZ ÖU at AS LHV Bank in Tallinn, Estonia . . . and then received by Bank of America Account 334030493647 in the name of MLI Ventures, LLC in San Francisco, California, were a facility in interstate or foreign commerce." And each such use of interstate commerce facilities furthered the murder-for-hire plot and occurred before the intended victim was safe. *See Rodriguez-Moreno*, 526 U.S. at 281. On this record, we conclude that a rational jury could find that acts furthering the charged offense of murder-for-hire occurred in the Northern District of California.

Gessen urges that the evidence of wire transmissions to the San Francisco bank account could not be considered in determining venue because his offense was already complete *before* he wired those payments. In his view, "the offense was committed and completed prior to the money transfers on June 29 and July 8, 2022," when Gessen "first contacted Rizzo via Signal message or met with him on June 2, 2022 in Florida or later in New York." But a rational trier of fact could not conclude that the offense was complete when Gessen first contacted Rizzo because that occurred *before* he asked Rizzo to arrange the murder and the two agreed to a price. *See United States v. Driggers*, 559 F.3d 1021, 1023–24 (9th Cir. 2009) (explaining that the murderous intent must be contemporaneous with interstate travel or using interstate commerce facilities). Again, in order to convict, the jury had to find that "some act in furtherance of the crime charged occurred in the Northern District of California." And the jury did so find.

At oral argument, Gessen's counsel also urged that when the use of interstate commerce facilities is at issue, venue is proper only in the judicial district where items are sent from—not where they are received. As applied here, counsel continued, the wire transfers do not support venue in the Northern District because the money was merely *received* in San Francisco.

Counsel relied on *United States v. Johnson*, 323 U.S. 273. There, the Supreme Court confronted the now-defunct Federal Denture Act, which prohibited "us[ing] the mails or any instrumentality of interstate commerce for the purpose of sending or bringing into" any State dentures made by a non-dentist. *Id.* at 274 (citation omitted); *see Abouammo*, 146 S. Ct. at 1578 (discussing *Johnson*). "[U]nder the Act," the Court explained, "'the crime of the sender is complete' when he drops the denture into the mailbox." *Abouammo*, 146 S. Ct. at 1578 (quoting *Johnson*, 323 U.S. at 277). So "[v]enue, the Court held, was proper only where the product was put in the mail (Illinois), not where it was later received and used (Delaware)." *Id.*

Johnson does not control. That decision turned on the particular language of the Federal Denture Act. Unlike in related statutes where Congress barred the illegal "transportation" of goods, the Court explained, "[t]he Federal Denture Act did not make 'transportation' the offense." *Johnson*, 323 U.S. at 277. Transportation "is inescapably a process, a continuing phenomenon." *Id.* And "[b]y utilizing the doctrine of a continuing offense, Congress may . . . provide that the locality of a crime shall extend over the whole area through which force propelled by an offender operates," so that "an illegal use of the mails or of other instruments of commerce may subject the user to prosecution in the district where he sent the goods, or in the district of their arrival, or in any intervening district." *Id.* at 275. But the Denture Act instead proscribed the use of the mails explicitly for "the purpose of *sending* or *bringing into* any State" unlawful dentures. *Id.* at 277 (emphases added). Reading this statutory language, the Court determined that "Congress did not make provision for trial in any district through which the goods were shipped." *Id.* at 276.

Section 1958 is not so limited. It prohibits "travel in interstate or foreign commerce" or "us[ing] . . . the mail or any facility of interstate or foreign commerce" with the requisite intent. 18 U.S.C. § 1958(a). Here, Congress has "utilize[d] the doctrine of a continuing offense," "[t]hus, an illegal use of . . . instruments of commerce may subject the user to prosecution in the district where he sent the goods, or in the district of their arrival, or in any intervening district." *See Johnson*, 323 U.S. at 275.

Against this backdrop, Gessen's use of interstate commerce facilities to wire money to San Francisco, in furtherance of the murder-for-hire plot, subjects him to prosecution where that money was received: San Francisco. Because San Francisco is within the Northern District of California, venue was proper in the Northern District.

AFFIRMED.