## 8.25 CONSPIRACY—LIABILITY FOR SUBSTANTIVE OFFENSE COMMITTED BY CO-CONSPIRATOR (*PINKERTON* CHARGE)

Each member of the conspiracy is responsible for the actions of the other conspirators performed during the course and in furtherance of the conspiracy. If one member of a conspiracy commits a crime in furtherance of a conspiracy, the other members have also, under the law, committed that crime.

Therefore, you may find the defendant guilty of [*specify crime*] as charged in Count \_\_\_\_\_\_\_ of the indictment if the government has proved each of the following elements beyond a reasonable doubt:

First, a person named in Count \_\_\_\_\_\_\_ of the indictment committed the crime of [*specify crime*] as alleged in that count;

Second, the person was a member of the conspiracy charged in Count \_\_\_\_\_\_\_ of the indictment;

Third, the person committed the crime of [*specify crime*] in furtherance of the conspiracy;

Fourth, the defendant was a member of the same conspiracy at the time the offense charged in Count \_\_\_\_\_\_\_ was committed; and

Fifth, the offense fell within the scope of the unlawful agreement and could reasonably have been foreseen to be a necessary or natural consequence of the unlawful agreement.

**Comment**

The *Pinkerton* charge derives its name from *Pinkerton v. United States*, 328 U.S. 640 (1946), which held that a defendant could be held liable for a substantive offense committed by a co-conspirator as long as the offense occurred within the course of the conspiracy, was within the scope of the agreement, and could reasonably have been foreseen as a necessary or natural consequence of the unlawful agreement. *United States v. Alvarez-Valenzuela*, 231 F.3d 1198, 1202 (9th Cir. 2000); *United States v. Henry*, 984 F.3d 1343, 1355-1356 (9th Cir. 2021).

When this instruction is appropriate, it should be given in addition to Instruction 8.20 (Conspiracy—Elements).

This instruction is based upon *United States v. Alvarez-Valenzuela*, 231 F.3d at 1202-03, in which the Ninth Circuit approved of the 1997 version of Instruction 8.5.5 (Conspiracy—*Pinkerton* Charge), and *United States v. Montgomery*, 150 F.3d 983, 996-97 (9th Cir. 1998). *See* *also United States v. Gonzalez*, 906 F.3d 784, 791-92 (9th Cir. 2018); *United States v. Gadson*, 763 F.3d 1189, 1216-17 (9th Cir. 2014).

This instruction was found adequate in a case in which three separate conspiracies were charged. *See United States v. Moran*, 493 F.3d 1002, 1009-10 (9th Cir. 2007). However, given the potential for ambiguity where more than one conspiracy is charged, the court should consider giving separate *Pinkerton* instructionsfor each conspiracy charged.

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