## 8.63 FIREARMS—UNLAWFUL RECEIPT

## (18 U.S.C. § 922(g))

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with receiving [a firearm] [ammunition] in violation of Section 922(g) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly received [*specify firearm*] [*specify ammunition*];

Second, the [*specify firearm*] [*specify ammunition*] had been [[shipped] [transported]] [[from one state to another] [between a foreign nation and the United States]];

Third, at the time the defendant received the [*specify firearm*] [*specify ammunition*], the defendant [*specify applicable prohibited status from 18 U.S.C. § 922(g)(1)-(9)*]; and

Fourth, at the time the defendant received the [*specify firearm*] [*specify ammunition*], the

defendant knew [he] [she] was *[specify applicable prohibited status from 18 U.S.C. § 922(g)(1)-(9)*].

If a person knowingly takes possession of [a firearm] [ammunition], [he] [she] has “received” it.

**Comment**

*See* Comment in 8.51 (Firearms).

Under 18 U.S.C. § 922(g) individuals falling into certain categories, such as fugitives from justice, are prohibited from receiving, shipping or transporting firearms or ammunition. This instruction covers receipt; for shipment or transportation, *see* Instruction 8.64 (Firearms—Unlawful Shipment or Transportation), and for possession, *see* Instruction 8.65 (Firearms—Unlawful Possession).

To establish “knowingly” under the first element, the government need not prove the defendant’s knowledge of the law, only “that the defendant consciously possessed [received, shipped, or transported] what he knew to be a firearm.” *United States v. Benamor*, 937 F.3d 1182, 1186 (9th Cir. 2019); *United States v. Beasley*, 346 F.3d 930, 934 (2003). Moreover, a defendant prosecuted under § 922(g)(1) need not be aware that the firearm or ammunition traveled in interstate commerce. *United States v. Stone*, 706 F.3d 1145, 1147 (9th Cir. 2013)(holding defendant’s “knowledge of ammunition’s [or firearm’s] interstate connection is irrelevant”); *see also United States v. Nevils*, 598 F.3d 1158, 1168-70 (9th Cir. 2010) (en banc) (concluding sufficient evidence established sleeping defendant had knowing possession of firearms). The antique firearm exception, codified at 18 U.S.C. § 921(a)(16), is an affirmative defense and the government need not prove that the defendant knew a firearm was not antique to establish knowing possession. *Benamor*, 973 F.3d at 1186, 87.

The third and fourth elements refer to 18 U.S.C. § 922(g)(1)-(9), which sets forth nine categories of individuals prohibited from receiving, shipping, transporting, or possessing firearms and ammunition. Those categories are: (1) convicted felons; (2) fugitives from justice; (3) unlawful users and addicts of controlled substances defined in 21 U.S.C. § 802; (4) individuals who have been adjudicated as mentally ill or who have been committed to a mental institution; (5) aliens without authorization to be in the United States, and (subject to certain exceptions set forth at 18 U.S.C. § 922(y)(2)) aliens lawfully in the United States but with non-immigrant visas; (6) individuals who have been dishonorably discharged from the Armed Forces; (7) individuals who have renounced their citizenship; (8) individuals who are subject to certain restraining orders issued after the individuals have been provided notice and opportunity to be heard and supported by specific factual findings that the individuals represent a credible threat to their intimate partners or children; and (9) individuals who have been convicted in any court of a misdemeanor crime of domestic violence.

In addition to proving that the defendant falls into one of the categories listed in § 922(g)(1)-(9), the defendant must have known of his or her relevant status at the time of the offense. *Rehaif v. United States*, 139 S. Ct. 2191, 2200 (2019) (“in a prosecution under 18 U.S.C. § 922(g) and § 924(a)(2), the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm”). *See also* *United States v. Door,* 996 F.3d 606 (9th Cir. April 28, 2021) (holding that government must prove defendant’s knowledge of prohibited status). If a defendant is charged under § 922(g)(5)(b), the government must prove that the defendant knew he had a nonimmigrant visa at the time of the offense. *See* *United States v. Gear*, 985 F.3d 759, 761 (9th Cir. 2021).

If the defendant is charged under § 922(g)(1) (convicted felon), the instruction should be modified if the defendant stipulates to the third element of the offense rather than have evidence of prior convictions presented to the jury. *See Old Chief v. United States*, 519 U.S. 172, 189 (1997) (holding reversible error to allow government to prove nature of prior conviction when defendant offers to stipulate to the prior conviction). If the defendant so stipulates, the third element should be modified as follows:

Third, at the time the defendant [received] [shipped] [transported] [possessed] the [*specify firearm*] [*specify ammunition*], the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year. The defendant stipulates that on [*date*], the defendant was convicted of a crime punishable by imprisonment for a term exceeding one year.

If the defendant does not stipulate to the third element, the following instruction should be given:

Third, at the time the defendant [received] [shipped] [transported] [possessed] the [*specify firearm*] [*specify ammunition*], the defendant had been convicted of [*specify prior felony*], which is a crime punishable by imprisonment for a term exceeding one year.

A conviction in a foreign court does not satisfy the element of prior conviction under § 922(g)(1). *Small v. United States*, 544 U.S. 385, 387 (2005).

For a definition of “fugitive from justice” as used in § 922(g)(2), *see* Instruction 8.52 (Firearms—Fugitive From Justice Defined).

Despite some indication in the case law that aliens who have been released on bail pending deportation or pending a removal hearing, but who have filed applications to legalize their immigration status, are not subject to the prohibition of § 922(g)(5), such a conclusion is incorrect under current versions of removability statutes.  *See United States v. Latu*, 479 F.3d 1153, 1158 (9th Cir. 2007).

The term “misdemeanor crime of domestic violence” used in § 922(g)(9) is separately defined in § 921(a)(33)(A). The Supreme Court has interpreted that definition to include two requirements: first, the crime must have as an element “the use or attempted use of physical force, or the threatened use of a deadly weapon,” and second, the victim of the offense must have been in a specified domestic relationship with the defendant. *United States v. Hayes*, 555 U.S. 415, 421 (2009). The first requirement, the use or attempted use of force, or threatened use of a deadly weapon, must be an element of the underlying offense. *Id.* Conversely, the second requirement, the domestic relationship, need not be an element of the underlying offense. A conviction under a statute that does not require a domestic relationship may thus be a misdemeanor crime of domestic violence if the government proves that the “prior conviction was, in fact, for an offense . . . committed by the defendant against a spouse or other domestic victim.” *Id.* (internal quotation marks omitted).

In determining whether a statute has as an element the “use . . . of physical force” for purposes of § 922(g)(9), the Supreme Court has held that “Congress incorporated the common-law meaning of ‘force’—namely, offensive touching—in § 921(a)(33)(A)’s definition of a ‘misdemeanor crime of domestic violence.’” *United States v. Castleman*, 134 S. Ct. 1405, 1410 (2014). Accordingly, the statute under which the defendant is convicted need not prohibit *violent* force, so long as it prohibits “the degree of force that supports a common-law battery conviction.” *Id.* at 1413; *see id.* at 1413–14 (holding that Tennessee statute prohibiting “intentionally or knowingly caus[ing] bodily injury” to family or household member necessarily has as element use of physical force in common-law sense).

*Approved 6/2021*