## 8.73 False Statement to Government Agency (18 U.S.C. § 1001)

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with knowingly and willfully [making a false statement] [using a document containing a false statement] in a matter within the jurisdiction of a governmental agency or department in violation of Section 1001 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 [made a false statement] [used a writing that contained a false statement];

Second, the [statement][writing] was made in a matter within the jurisdiction of the

[*specify government agency or department*];

Third, the defendant acted willfully; that is, the defendant acted deliberately and with knowledge both that the statement was untrue and that his or her conduct was unlawful; and

Fourth, the [statement] [writing] was material to the activities or decisions of the [*specify government agency or department*]; that is, it had a natural tendency to influence, or was capable of influencing, the agency’s decisions or activities.

**Comment**

The Ninth Circuit has held the common law test for materiality, as reflected in the last sentence of this instruction, is the standard to use when false statement statutes such as 18 U.S.C. § 1001 are charged. *United States v. Peterson*, 538 F.3d 1064, 1072 (9th Cir. 2008) (citing *United States v. Gaudin*, 515 U.S. 506, 509 (1995)). “The false statement need not have actually influenced the agency, and the agency need not rely on the information in fact for it to be material.” *United States v. Serv. Deli Inc*., 151 F.3d 938, 941 (9th Cir. 1998); *see also* *United States v. King*, 735 F.3d 1098, 1108 (9th Cir. 2013).

No mental state is required with respect to the fact that a matter is within the jurisdiction of a federal agency, and the false statement need not be made directly to the government agency.  *United States v. Green*, 745 F.2d 1205, 1208-10 (9th Cir. 1984). There is no requirement that the defendant acted with the intention of influencing the government agency. *United States v. Yermian*, 468 U.S. 63, 73 & n.13 (1984). The initial determination whether the matter is one within the jurisdiction of a department or agency of the United States—apart from the issue of materiality—should be made by the court as a matter of law. *United States v. F.J. Vollmer & Co., Inc.*,1 F.3d 1511, 1518 (7th Cir. 1993).

To make a false statement “willfully” under Section 1001, the defendant must have both the specific intent to make a false statement and the knowledge that his or her conduct was unlawful. Specific intent does not require evil intent but only that the defendant act deliberately and knowingly. *See* *United States v. Heuer*, 4 F.3d 723, 732 (9th Cir. 1993). The requirement that the defendant knew that his or her conduct was unlawful is based on *Bryan v. United States,* wherein the Supreme Court stated that “in order to establish a willful violation of a statute, the Government must prove that the defendant acted with knowledge that his conduct was unlawful.” 524 U.S. 184, 191–92 (1998) (internal citations omitted). The Solicitor General conceded that the district court erred by giving an instruction on “willfulness” that does not comply with *Bryan*. *Ajoku v. United States,* 134 S. Ct. 1872 (Mem.) (U.S. April 21, 2014).

In determining whether the government has carried its burden to prove defendant’s knowledge of unlawfulness, the jurors may rely on their common sense and life experiences in the absence of direct evidence. *See United States v. Charley*, 1 F.4th 637, 644 (9th Cir. 2021) (quoting *United States v. Ramirez*, 714 F.3d 1134, 1138 (9th Cir. 2013)).

Materiality must be demonstrated by the government, *United States v. Oren,* 893 F.2d 1057, 1063 (9th Cir. 1990); *United States v. Talkington,* 589 F.2d 415, 416 (9th Cir. 1978), and must be submitted to the jury.  *Gaudin*, 515 U.S. at 506. Actual reliance is not required. *Talkington,* 589 F.2d at 417. The materiality test applies to each allegedly false statement submitted to the jury. *Id.*

Depending on the facts in evidence, it may be appropriate to amend this instruction with language requiring specific jury unanimity (*e.g.*, “with all of you agreeing as to which statement was false and material”). *See* Instruction 6.27 (Specific Issue Unanimity).

*Revised 9/2021*