## 1.2 The Charge—Presumption of Innocence

This is a criminal case brought by the United States government. The government charges the defendant with [*specify* *crime[s] charged*]. The charge[s] against the defendant [is] [are] contained in the indictment. The indictment simply describes the charge[s] the government brings against the defendant. The indictment is not evidence and does not prove anything.

The defendant has pleaded not guilty to the charge[s] and is presumed innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant has the right to remain silent and never has to prove innocence or present any evidence.

[To help you follow the evidence, I will now give you a brief summary of the elements of the crime[s] that the government must prove to make its case: [*supply brief statement of elements of crime[s]*].]

**Comment**

“Although the Constitution does not require jury instructions to contain any specific language, the instructions must convey both that a defendant is presumed innocent until proven guilty and that he may only be convicted upon a showing of proof beyond a reasonable doubt.” *Gibson v. Ortiz*, 387 F.3d 812, 820 (9th Cir. 2004), *overruled on other grounds*, *Byrd v. Lewis* 566 F.3d 855 (9th Cir. 2009) (citation omitted). “Any jury instruction that reduces the level of proof necessary for the government to carry its burden is plainly inconsistent with the constitutionally rooted presumption of innocence.” *Id.* The words “unless and until” adequately inform the jury of the presumption of innocence. *United States v. Lopez*, 500 F.3d 840, 847 (9th Cir. 2007).

The second paragraph of this instruction assumes that no affirmative defense has been raised. When a defendant presents an affirmative defense on which the defendant has the burden of proof, the following paragraph may be substituted:

The government has the burden of proving every element of the crime[s] charged beyond a reasonable doubt. This burden of proof stays with the government throughout the case. [The; a] defendant is never required to prove [his] [her] innocence. [He] [She] is not required to produce any evidence at all. In this case, the defendant has raised the affirmative defense of [*identify defense, e.g., duress, insanity*]. Thus, the defendant has the burden of proving that affirmative defense by [a preponderance of the evidence] [clear and convincing evidence].

*Revised Sept. 2019*