**14.15 Firearms—Unlawful Possession**

**(18 U.S.C. § 922(g))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with the possession of [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 possessed [*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 possessed 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 possessed the [*specify firearm*] [*specify ammunition*], the

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

**Comment**

*See* Comment to Instruction 14.1 (Firearms).

For a discussion of both knowledge elements for a prosecution under 18 U.S.C. § 922(g), *see* *Rehaif v. United States*, 139 S. Ct. 2191, 2200 (2019) (“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.”). For a discussion of the nine categories of prohibited status set forth in 18 U.S.C. § 922(g)(1)-(9), *see* Comment to Instruction 14.13 (Firearms—Unlawful Receipt). For a definition of “possession,” *see* Instruction 6.15 (Possession—Defined).

Depending on the facts in evidence, it may be appropriate to amend this instruction with language requiring specific jury unanimity as to when the possession occurred. *See* Instruction 6.27 (Specific Issue Unanimity); *United States v. Garcia-Rivera*, 353 F.3d 788, 792 (9th Cir. 2003). For instance, an indictment may allege that the possession occurred at some point within an imprecise time frame. In such a case, and if there was evidence that the defendant possessed the weapon or ammunition on more than one occasion during the interval, the jury should be instructed to find unanimously as follows: “You must unanimously agree that the possession occurred on or about a particular date.” In such a case, it is advisable to require the jurors to answer a special interrogatory specifying the date(s) upon which all agreed that the possession occurred.

The Ninth Circuit does not recognize an “innocent possession” affirmative defense. *See United States v. Johnson*, 459 F.3d 990, 995-98 (9th Cir. 2006).

Although brief handling of a weapon does not always satisfy the element of possession, a short length of possession does not preclude conviction. *See id*. at 996. The commission of the crime requires no “act” other than the knowing possession of a firearm or ammunition by someone not authorized to do so. *United States v. Beasley*, 346 F.3d 930, 934 (9th Cir. 2003).

Constructive or joint possession may satisfy the possession element. To show constructive possession, the government must prove a connection between the defendant and the firearm or ammunition sufficient “to support the inference that the defendant exercised dominion and control over” it. *United States v. Carrasco*, 257 F.3d 1045, 1049 (9th Cir. 2001) (internal quotation marks and citation omitted); *see generally*, *United States v. Tucker*, 641 F.3d 1110 (9th Cir. 2011). Similarly, joint control of the premises where the firearm or ammunition was found may be sufficient to establish possession where a defendant “has knowledge of the weapon and both the power and the intention to exercise dominion and control over it.” *Carrasco*, 257 F.3d at 1049 (internal quotation marks and citation omitted).

For a defendant to be convicted of multiple counts under 18 U.S.C. § 922(g)(1) for

possession of multiple firearms and/or ammunition, the government must prove that the firearms

and/or ammunition at issue were acquired or possessed at different times or stored in different places. *United States v. Keen*, 96 F.3d 425, 432 n.11 (9th Cir. 1996); *United States v. Wiga*, 662 F.2d 1325, 1336 (9th Cir. 1981). If a defendant is charged with multiple counts, the jury should be instructed to make a finding of fact as to separate acquisition or possession. *United States v.*

*Ankeny*, 502 F.3d 829, 838 (9th Cir. 2007); *United States v. Szalkiewicz*, 944 F.2d 653, 653-54

(9th Cir. 1991) (per curiam). A possible instruction could be:

If you have found the defendant guilty of Count I, you may not find [him][her] guilty of Count II unless you also find that the government has proven beyond a reasonable doubt that the [firearm[s]] [and] [ammunition] charged in Counts I and II [were][was] acquired or possessed at different times or stored in different places.

Section 922(g)(8)(C)(i) (prohibiting a person subject to a domestic violence restraining order from possessing a firearm if the order includes a finding that the person represents a credible threat to the physical safety of an intimate partner) survived a facial Second Amendment challenge when the Supreme Court held that, “[w]hen an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed.” *United States v. Rahimi*, 602 U.S. \_\_, 144 S. Ct. 1889, 1896-902 (2024) (reiterating that the government need only provide a “historical *analogue*, not a historical *twin*” to meet its burden of showing that § 922(g)(8)(C)(i) is “consistent with the Nation’s historical tradition of firearm regulation” (quoting *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 24, 30 (2022))).

*Revised September 2024*