**16.6 Killing or Attempting to Kill Federal Officer**

**or Employee (18 U.S.C. § 1114)**

**Comment**

 If a defendant is charged with murder, manslaughter, attempted murder, or attempted manslaughter of an officer or employee of the United States in violation of 18 U.S.C. § 1114, the appropriate murder instruction (16.1 (Murder—First Degree) or 16.2 (Murder—Second Degree)), manslaughter instruction (16.3 (Manslaughter—Voluntary) or 16.4 (Manslaughter—Involuntary)), or attempted murder instruction (16.5 (Attempted Murder)) should be used but modified to require the jury to find that the victim was a federal officer or employee and that at the time of the killing the victim was engaged in the victim’s official duties or was killed on account of the performance of his/her official duties. An element alleging that the killing or attempted killing occurred at a place of federal jurisdiction, that is, within the special maritime and territorial jurisdiction of the United States, is not necessary here.

 For an instruction defining “official duties,” *see United States v. Ornelas*, 906 F.3d 1138,

1149 (9th Cir. 2018) (upholding “official duties” instruction stating that test for determining whether officer is “[e]ngaged in the performance of official duties” is “whether the officer is acting within the scope of his employment, that is, whether the officer’s actions fall within his agency’s overall mission, in contrast to engaging in a personal frolic of his own”). *See also United States v. Juvenile Female*, 566 F.3d 943, 950 (9th Cir. 2009) (describing official duties test as “whether [the officer] is acting within the scope of what he is employed to do, as distinguished from engaging in a personal frolic of his own”).

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