**17.4 Kidnapping—Federal Officer or Employee**

**(18 U.S.C. § 1201(a)(5))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with kidnapping a federal officer or employee in violation of Section 1201(a)(5) 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 [[seized] [confined] [inveigled] [decoyed] [kidnapped] [abducted] [carried away]] [*name of kidnapped person*];

Second, at the time [*name of kidnapped person*] was [*specify federal office or employment position*];

Third, the defendant acted while [*name of kidnapped person*] was engaged in, or on account of, the performance of official duties; and

Fourth, the defendant [[held] [detained]] [*name of kidnapped person*] against [his][her] will.

[The government is not required to prove that the defendant kidnapped [*name of kidnapped person*] for reward or ransom, or for any other purpose.]

[The fact that [*name of kidnapped person*] [may have] initially voluntarily accompanied the defendant does not necessarily [prevent the occurrence] [negate the existence] of a later kidnapping.]

**Comment**

*See* Comment to Instruction 17.1 (Kidnapping—Interstate Transportation).

Federal officers or employees who may be the victim of a kidnapping are described in 18 U.S.C. § 1114.

As to the third element, for an instruction defining “official duties,” *see United States v. Ornelas*, 906 F.3d 1138, 1149 (9th Cir. 2018) (upholding “official duties” instruction providing 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”).

*See* Comment to Instruction 17.2 (Kidnapping—Within Special Maritime and Territorial Jurisdiction of United States) concerning the need for an instruction distinguishing kidnapping from other offenses involving seizure, confinement, detention, or asportation.

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