**17.6 Attempted Kidnapping—Federal Officer or**

**Employee (18 U.S.C. § 1201(d))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with attempting to kidnap a [federal officer] [federal employee] in violation of Section 1201(d) 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 intended to [seize] [confine] [inveigle] [decoy] [kidnap] [abduct] [carry away] and to hold a [federal officer] [federal employee] against [his] [her] will, on account of or during the performance of [his] [her] official duties; and

Second, the defendant did something that was a substantial step toward committing the crime.

A “substantial step” is conduct that strongly corroborated the defendant’s intent to commit the crime. To constitute a substantial step, a defendant’s act or actions must unequivocally demonstrate that the crime will take place unless interrupted by independent circumstances. Mere preparation is not a substantial step toward committing the crime.

Jurors do not need to agree unanimously as to which particular act or actions constituted a substantial step toward the commission of a crime.

**Comment**

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

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

As to the first 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”).

As to the second element, “[t]o constitute a substantial step, a defendant’s ‘actions must cross the line between preparation and attempt by unequivocally demonstrating that the crime will take place unless interrupted by independent circumstances.’” *United States v. Goetzke*, 494 F.3d 1231, 1237 (9th Cir. 2007) (per curiam) (quoting *United States v. Nelson*, 66 F.3d 1036, 1042 (9th Cir. 1995)).

The “strongly corroborated” language in this instruction comes from *United States v. Snell*, 627 F.2d 186, 187 (9th Cir. 1980) (per curiam) (“A conviction for attempt requires proof of culpable intent and conduct constituting a substantial step toward commission of the crime that strongly corroborates that intent.”) and *United States v. Darby*, 857 F.2d 623, 625 (9th Cir. 1988) (same).

Jurors do not need to agree unanimously as to which particular act or actions constituted a substantial step toward the commission of a crime. *United States v. Hofus*, 598 F.3d 1171, 1176 (9th Cir. 2010).

“[A] person may be convicted of an attempt to commit a crime even though that person may have actually completed the crime.” *United States v. Rivera-Relle*, 333 F.3d 914, 921 (9th Cir. 2003).

*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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