**18.1 Travel Act—Interstate or Foreign Travel in Aid of**

**Racketeering Enterprise (18 U.S.C. § 1952(a)(3))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with violating Section 1952(a)(3) 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 [traveled in interstate or foreign commerce] [used the mail] [used [*specify facility*] in interstate or foreign commerce] with the intent to [[promote, manage, establish, or carry on] [facilitate the promotion, management, establishment, or carrying on of]] [*specify unlawful activity*];and

Second, after doing so the defendant [performed [*specify act*]] [attempted to perform [*specify act*]][.] [; and]

[Third, 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 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**

In *United States v. Nader*, 542 F.3d 713, 722 (9th Cir. 2008), the Ninth Circuit held that telephone calls that were entirely intrastate in nature and were made using a facility in interstate commerce were adequate to support the conviction.

In attempt cases, “[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).

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