**18.6 Transporting or Attempting to Transport Monetary Instruments**

**for the Purpose of Laundering (18 U.S.C. § 1956(a)(2)(B))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [transporting] [attempting to transport] money for the purpose of laundering in violation of Section 1956(a)(2)(B) 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 [transported] [intended to transport] money [from a place in the United States to or through a place outside the United States] [to a place in the United States from or through a place outside the United States];

Second, the defendant knew that the money represents the proceeds of some form of unlawful activity; [and]

Third, the defendant knew the transportation was designed in whole or in part [to conceal or disguise the [nature] [location] [source] [ownership] [control] of the proceeds of [*specify criminal activity charged in the indictment*]] [to avoid a transaction reporting requirement under state or federal law] [.] [; and]

[Fourth, 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 of transporting money for the purpose of laundering.

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

[The laws of the [United States] [State of \_\_\_\_\_\_\_] require the reporting of [*reporting requirement*].]

**Comment**

For cases involving conduct on or after May 20, 2009, “proceeds” means “any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.” 18 U.S.C. § 1956(c)(9) (subsection (c)(9) was added by Pub. L. 111-21, 123 Stat. 1618).

For cases involving conduct before May 20, 2009, consider *United States v. Santos*, 553 U.S. 507, 513-14 (2008) (plurality opinion) (discussing where the prior, separate criminal activity is gambling, “proceeds” must be defined as “profits.”), and *United States v. Van Alstyne*, 584 F.3d 803, 814 (9th Cir. 2009) (“We therefore view the holding that commanded five votes in *Santos* as being that ‘proceeds’ means ‘profits’ where viewing ‘proceeds’ as ‘receipts’ would present a ‘merger’ problem of the kind that troubled the plurality and concurrence in *Santos*.”). *See also* *United States v. Phillips*, 704 F.3d 754 (9th Cir. 2012) (stating when money laundering activity did not further predicate criminal scheme or occur during normal course of running scheme, “proceeds” were correctly defined as “gross receipts” under 18 U.S.C. § 1957); *United States v. Webster*, 623 F.3d 901, 906 (9th Cir. 2010) (reading *Santos* as holding that when money laundering count is based on transfers among co-conspirators of money from sale of drugs, “proceeds” includes all “receipts” from such sales).

Because it is a specific intent crime, it is reversible error to give Instruction 4.8 (Knowingly) in a money laundering case. *United States v. Stein*, 37 F.3d 1407, 1410 (9th Cir. 1994). *See also United States v. Turman*, 122 F.3d 1167, 1169 (9th Cir. 1997) (applying *Stein* retroactively).

The elements of this instruction follow the language of the statute, although in most cases the crime described in each element would be the same. *See United States v. Jenkins*, 633 F.3d 788, 806-07 (9th Cir. 2011).

With respect to the third element of the instruction, *see Cuellar v. United States*, 553 U.S. 550, 561-68 (2008) (evidence of how money was moved insufficient to prove knowledge).

The bracketed language stating an additional element applies only when the charge is an attempt. 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) (internal quotations omitted).

The “strongly corroborated” language in this instruction comes from *United States v. Snell*, 627 F.2d 186, 187 (9th Cir. 1980) (“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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