**18.8 Violent Crime or Attempted Violent Crime in Aid**

**of Racketeering Enterprise (18 U.S.C. § 1959)**

The defendant is charged in Count \_\_\_\_\_\_\_ of the indictment with [committing] [threatening to commit] [attempting to commit] [conspiring to commit] a crime of violence, specifically, [*specify crime of violence*] in aid of a racketeering enterprise in violation of Section 1959 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, on or about the time period described in Count \_\_\_\_\_\_\_, an enterprise affecting interstate commerce existed;

Second, the enterprise engaged in racketeering activity;

Third, the defendant [committed] [threatened to commit] [attempted to commit] [conspired to commit] the following crime of violence: [*specify crime of violence*] as defined in [*specify jury instruction stating all elements of predicate crime of violence*]; [and]

Fourth, the defendant’s purpose in [[committing] [threatening to commit] [attempting to commit] [conspiring to commit]] [*specify crime of violence*] was to gain entrance to, or to maintain, or to increase [his] [her] position in the enterprise[.] [and]

[Fifth, 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**

Use this instruction in conjunction with Instructions 18.9 (Racketeering Enterprise—Enterprise Affecting Interstate Commerce—Defined), 18.10 (Racketeering Activity—Defined), 18.11 (Racketeering Enterprise—Proof of Purpose); and an instruction setting forth the elements of the predicate crime of violence. When the charge alleges an attempt or conspiracy to commit a crime of violence, include an appropriate instruction as to attempt or conspiracy. *See* Instruction 4.4 (Attempt) and Instruction 11.1 (Conspiracy—Elements).

In *United States v. Banks*, 514 F.3d 959, 964 (9th Cir. 2008), the Ninth Circuit summarized existing case law that identified the four elements necessary for a conviction of committing violent crimes in aid of racketeering activity (VICAR):

The VICAR statute provides that “[w]hoever, . . . *for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity,* murders [or] . . . assaults with a dangerous weapon . . . in violation of the laws of any State or the United States, or attempts or conspires so to do, shall be punished.” 18 U.S.C. § 1959(a) (emphasis added). In our prior decisions we have identified four elements required for a conviction under this statute: “(1) that the criminal organization exists; (2) that the organization is a racketeering enterprise; (3) that the defendant [ ] committed a violent crime; and (4) that [the defendant] acted for the purpose of promoting [his] position in a racketeering enterprise.” *United States v. Bracy*, 67 F.3d 1421, 1429 (9th Cir. 1995); *see also United States v. Fernandez,* 388 F.3d 1199, 1220 (9th Cir. 2004).

The third element identified in *Banks* and listed in Instruction 18.8 “incorporates the elements of the relevant predicate violation.” *United States v. Elmore*, 118 F.4th 1193, 1199 (9th Cir. 2024). In *Elmore*, the Ninth Circuit held that the VICAR statute is divisible. 118 F.4th at 1199-1200. Therefore, when considering whether a charged or convicted VICAR offense qualifies as a predicate crime of violence under 18 U.S.C. § 924(c)(3)(A), courts employ a “modified categorical approach” and determine whether the VICAR offense charged or convicted “has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” *Id.* at 1201-02 (quoting § 924(c)(3)(A)).

In *United States v. Houston*,648 F.3d 806, 819-20 (9th Cir. 2011), the Ninth Circuit held it was not error to refuse to instruct on second degree murder as a lesser predicate to VICAR first degree murder.

A charge under § 1959 also applies to violent crimes committed “as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity.” 18 U.S.C. § 1957(f)(3); 18 U.S.C. § 1956(c)(9) (Section 1957 subsection (f)(3) was modified by Pub. L. 111-21, 123 Stat. 1618, which also added § 1956 subsection (c)(9)). For cases involving conduct prior to May 20, 2009, “proceeds” means “gross receipts” unless the money laundering transactions were a “central component” of the criminal scheme. *United States v. Phillips*, 704 F.3d 754, 765-66 (9th Cir. 2012); *see also United States v. Van Alstyne*, 584 F.3d 803, 814 (9th Cir. 2009) (when defining “proceeds” as “receipts” would present a merger problem, “proceeds” means “profits”); s*ee* Instruction 18.6 (Transporting or Attempting to Transport Monetary Instruments for the Purpose of Laundering (18 U.S.C. § 1956(a)(2)(B))).

The term “specified unlawful activity” in 18 U.S.C. § 1957 has the same meaning as that term is given in 18 U.S.C. § 1956. *See* 18 U.S.C. § 1957(f)(3). In § 1956(c)(7)(B)(iv), the “specified unlawful activity” of bribery of a public official “should be interpreted to take the ordinary, contemporary, common meaning” of that phrase at the time Congress enacted the statute. *See United States v. Chi*, 936 F.3d 888, 893-97 (9th Cir. 2019) (applying term “bribery of a public official” to include bribery under foreign law and not restricted to federal bribery statute, 18 U.S.C. § 201, or foreign law that mirrors federal bribery statute).

*Revised November 2024*