**22.9 Bulk Cash Smuggling**

**(31 U.S.C. § 5332(a))**

 The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with bulk cash smuggling in violation of Section 5332(a) of Title 31 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 knowingly concealed more than $10,000 in [*specify monetary instrument*] [[on his or her person] [in any conveyance, article of luggage, merchandise, or other container]];

 Second, the defendant [transported] [attempted to transport] the [*specify monetary instrument*] [[from a place within the United States to a place outside the United States] [from a place outside the United States to a place within the United States]];

 Third, the defendant knew that a report of the amount concealed was required to be filed with the Secretary of Treasury; and

 Fourth, the defendant intended to evade filing such a report.

 The intent to evade the reporting requirement can arise at any time prior to (and including) the moment of [attempted] transportation. It is not necessary that the defendant have such intent at the time the actual concealment occurred.

**Comment**

 The authority for the last paragraph in the instruction is found in *United States v. Tatoyan*, 474 F.3d 1174, 1180 (9th Cir. 2007).

 The penalties set forth in 31 U.S.C. § 5322—in particular a fine of up to $250,000—do not apply unless the jury makes an additional explicit finding that the defendant acted “willfully.” *Tatoyan*, 474 F.3d at 1180. Absent such a finding, the applicable penalties are found in 31 U.S.C. § 5332(b) and include a forfeiture provision, but not a fine. *Id.* at 1183.