**23.1 Theft of Government Money or Property**

**(18 U.S.C. § 641)**

 The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with theft of government [money] [property] in violation of Section 641 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 knowingly [[embezzled] [stole] [converted to the defendant’s use] [converted to the use of another]] [money] [property of value] with the intention of depriving the owner of the use or benefit of the [money] [property];

 Second, the [money] [property] belonged to the United States; and

 Third, the value of the [money] [property] was more than $1,000.

**Comment**

 This instruction deals with the first paragraph of 18 U.S.C. § 641. Instruction 23.2 (Receiving Stolen Government Money or Property) deals with the second paragraph of § 641.

 Theft of money or property having a value of $1,000 or less is a misdemeanor. 18 U.S.C. § 641. If the crime charged is a misdemeanor, the third element of this instruction should be omitted.

 Knowledge that stolen property belonged to the United States is not an element of the offense. *Baker v. United States,* 429 F.2d 1278, 1279 (9th Cir. 1970).

 *See United States v. Campbell*, 42 F.3d 1199, 1204 (9th Cir. 1994) (government must prove defendant stole property with intention of depriving owner of use or benefit of property).

 To qualify as property of the United States, “the United States ‘must have “title to, possession of, or control over” the funds involved.’” *United States v. Kranovich*, 401 F.3d 1107, 113 (9th Cir. 2005) (quoting *United States v. Faust*, 850 F.2d 575, 579 (9th Cir. 1988)). Property belongs to the United States for the purposes of § 641 even if it is in the possession of a third party or commingled with a third party’s funds so long as the government exercises “supervision and control of the funds and their ultimate use.” *Id*. at 1113-14 (citation omitted) (quoting *United States v. Von Stephens*, 774 F.2d 1411, 1413 (9th Cir. 1985) (per curiam)).

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