**24.8 False Impersonation of Citizen of United States**

**(18 U.S.C. § 911)**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with misrepresenting [himself] [herself] to be a citizen of the United States. 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 directly and falsely represented [himself] [herself] to be a citizen of the United States;

Second, the defendant was not a citizen of the United States at that time;

Third, the defendant made such false representation willfully, that is, the misrepresentation was voluntarily and deliberately made; and

Fourth, the false representation was made to someone who had good reason to make inquiry into defendant’s citizenship status.

**Comment**

In *United States v. Anguiano-Morfin*, 713 F.3d 1208 (9th Cir. 2013), the Ninth Circuit explained that, when a defendant charged with falsely impersonating a United States citizen relies on the defense that he genuinely believed that he was a United States citizen, the “best course” is to instruct the jury that the government must prove beyond a reasonable doubt that the defendant knew that his claim to United States citizenship was false, and that a “reasonable doubt as to whether [the defendant] knew his claim to United States citizenship was false” must result in an acquittal. *Id*. at 1210. The Ninth Circuit explained that in such cases the jury instructions should make clear that the defendant’s subjective belief is the dispositive issue. *Id*.

In *United States v. Karaouni*, 379 F.3d 1139, 1144 (9th Cir. 2004), the Ninth Circuit held that the representation must be “direct” and that a statement from which United States citizenship could be inferred is insufficient. “Willfully” requires proof that the misrepresentation was “voluntary and deliberate.” *Id.* at 1142*.* The fourth element is required by Ninth Circuit case law limiting the reach of the statute to avoid First Amendment overbreadth issues. *Id.* at 1142 n.7.

*Revised July 2013*