**6.32 Venue**

 The Indictment alleges that some act [or acts] in furtherance of the crime charged occurred in [*Name of venue*]. There is no requirement that [all aspects of the crime charged] [the entire conspiracy] take place here in [*Name of venue*]. Before you may return a verdict of guilty, however, if that is your decision, the government must convince you that [some act in furtherance of the crime charged] [either the agreement or one of the overt acts in furtherance of the agreement] took place in [*Name of venue*].

 [*Define the specific geographic boundaries of the venue, if needed*.]

 Unlike all the specific elements of the crime[s] charged that I have described elsewhere in these instructions, this fact regarding venue need only be proven by a preponderance of the evidence. This means the government need only convince you that it is more likely than not that [some act in furtherance of the crime charged] [part of the conspiracy] took place here.

 The government, however, must prove all the offense-specific elements of any crime charged, as I have described elsewhere in these instructions, beyond a reasonable doubt. The lesser standard of preponderance of the evidence only applies to your decision on the issue of venue.

**Comment**

 The Ninth Circuit has explained:

Controlling circuit law establishes that, although venue is not an element of the offense, nevertheless it must still be proved by the government at trial. Venue is a question of fact that the government must prove by a preponderance of the evidence. It is a jury question. Normally it is not for the court to determine venue and *it is error to not give a requested instruction on venue*. Venue is part of the bedrock of our federal system, and proper venue is a constitutional right, not a mere technicality. The district court therefore could not properly decide venue itself and should have submitted the issue to the jury.

*United States v. Moran-Garcia*, 966 F.3d 966, 969 (9th Cir. 2020) (footnotes, quotation marks, and brackets omitted; emphasis added); *see also* *United States v. Ghanem*, 993 F.3d 1113, 1131 (9th Cir. 2021) (“In future cases with similarly muddled postures, a district court might consider using a special-verdict form requiring a venue finding separate from substantive guilt.”).

 This instruction is based on the Third Circuit’s model criminal instruction § 3.09, the Sixth Circuit’s model criminal instruction § 3.07, and the Eighth Circuit’s model criminal instruction § 3.13.

In *Smith v. United States*, 599 U.S. 236 (2023), the Supreme Court held that a violation of the Constitution’s Venue Clause does not necessitate dismissal; rather, it warrants a new trial. *Accord United States v. Fortenberry*, 89 F.4th 702, 713 (9th Cir. 2023) (reversing defendant’s conviction obtained in wrong venue “so that he may be retried, if at all, in a proper venue”).

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