**7.1 Alien—Bringing or Attempting to Bring to the United States**

**(Other than Designated Place) (8 U.S.C. § 1324(a)(1)(A)(i))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [bringing] [attempting to bring] an alien to the United States in violation of Section 1324(a)(1)(A)(i) of Title 8 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 [brought] [attempted to bring] a person who was an alien to the United States at a place other than a designated port of entry or at a place other than as designated by a United States immigration official;

Second, the defendant knew that the person was an alien; [and]

Third, the defendant acted with the intent to violate the United States immigration laws by assisting that person to enter the United States at a time or place other than as designated by a United States immigration official[.] [; and]

[Fourth, the defendant did something that was a substantial step toward committing the crime.

A “substantial step” is conduct that strongly corroborated a 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 a 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.]

An alien is a person who is not a natural-born or naturalized citizen of the United States.

**Comment**

Bringing an alien to the United States does not require that the alien be free from official restraint as is required for offenses under 8 U.S.C. § 1326 for aliens illegally reentering or being found in the United States. *United States v. Lopez*, 484 F.3d 1186, 1193 (9th Cir. 2007); *United States v. Hernandez-Garcia*, 284 F.3d 1135, 1137-38 (9th Cir. 2002); *see also* Comment to Instruction 7.6 (Alien—Deported Alien Reentering United States Without Consent).

The offense of bringing an alien to the United States is a continuing offense; “although all of the elements of the ‘bringing to’ offense are satisfied once the aliens cross the border, the crime does not terminate until the initial transporter who brings the aliens to the United States ceases to transport them—in other words, the offense continues until the initial transporter drops off the aliens on the U.S. side of the border.” *Lopez*, 484 F.3d at 1187-88. Thereafter, the offense is illegal “transport within” the United States, 8 U.S.C. § 1324(a)(1)(A)(ii). *Id.* at 1194-98. *Lopez* overrules *United States v. Ramirez-Martinez*, 273 F.3d 903 (9th Cir. 2001) (applying immediate destination analysis of whether alien had reached ultimate or intended destination within United States); *United States v. Angwin*, 271 F.3d 786, 271 F.3d 786 (9th Cir. 2001) (same). *Lopez*, 484 F.3d at 1191.

Aiding and abetting, involving a state-side transporter, requires proof of the specific intent to facilitate the commission of the “bringing to” offense and evidence that the state-side transporter involved himself in the bringing to offense prior to its completion. *See United States v. Singh*, 532 F.3d 1053, 1057-59 (9th Cir. 2008). Aiding and abetting a “bringing to” offense may take place entirely on the United States side of the border. *United States v. Noriega-Perez*, 670 F.3d 1033, 1040 (9th Cir. 2012).

Statutory maximum sentences under § 1324 are increased for offenses causing serious bodily injury, placing the life of any person in jeopardy, or resulting in the death of a person. In such cases, a special jury finding is required.

An alien is also defined as being a person who is not a national. In the rare event that there is an issue as to the alien being a national, the definition of alien in the last paragraph of the instruction should be modified accordingly. *See* 8 U.S.C. § 1101(a)(22); *Perdomo-Padilla v. Ashcroft*, 333 F.3d 964, 967-68 (9th Cir. 2003); *United States v. Sotelo*, 109 F.3d 1446, 1447-1448 (9th Cir. 1997).

The bracketed language stating an additional element applies only when the charge is an attempt. In attempt cases, “[t]o constitute a substantial step, a defendant’s ‘actions must cross the line between preparation and attempt by unequivocally demonstrating that the crime will take place unless interrupted by independent circumstances’.” *United States v. Goetzke*, 494 F.3d 1231, 1237 (9th Cir. 2007) (per curiam) (quoting *United States v. Nelson*, 66 F.3d 1036, 1042 (9th Cir. 1995)).

The “strongly corroborated” language in this instruction comes from *United States v. Snell*, 627 F.2d 186, 187 (9th Cir. 1980) (per curiam) (“A conviction for attempt requires proof of culpable intent and conduct constituting a substantial step toward commission of the crime that strongly corroborates that intent.”) and *United States v. Darby*, 857 F.2d 623, 625 (9th Cir. 1988) (same).

Jurors do not need to agree unanimously as to which particular act or actions constituted a substantial step toward the commission of a crime. *United States v. Hofus*, 598 F.3d 1171, 1176 (9th Cir. 2010).

“[A] person may be convicted of an attempt to commit a crime even though that person may have actually completed the crime.” *United States v. Rivera-Relle*, 333 F.3d 914, 921 (9th Cir. 2003).

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