**8.1 Assault on Federal Officer or Employee**

**(18 U.S.C. § 111(a))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with assault on a federal officer in violation of Section 111(a) 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 forcibly assaulted [*name of federal officer or employee*]; [and]

Second, the defendant did so while [*name of federal officer or employee*] was engaged in, or on account of [his] [her] official duties[.] [; and]

[Third, the defendant [made physical contact] [acted with the intent to commit another felony].]

There is a forcible assault when one person intentionally strikes another, or willfully attempts to inflict injury on another, or intentionally threatens another coupled with an apparent ability to inflict injury on another which causes a reasonable apprehension of immediate bodily harm.

**Comment**

When the crime is charged under the enhanced penalty provisions of 18 U.S.C. § 111(b), use Instruction 8.2 (Assault on Federal Officer or Employee [With a Deadly or Dangerous Weapon] [Which Inflicts Bodily Injury]).

*See* 18 U.S.C. § 1114 for the definition of federal officer or employee referenced in 18 U.S.C. § 111.

The third element is to be used only when the charge is a felony. A felony charge requires actual physical contact or action with the intent to commit another felony.

A reasonable apprehension of immediate bodily harm is determined with reference to a reasonable person aware of the circumstances known to the victim, not with reference to all circumstances, including circumstances unknown to the victim. *United States v. Acosta-Sierra*, 690 F.3d 1111, 1121 (9th Cir. 2012).

The statutory language states that the crime can be committed by one who “forcibly assaults, resists, opposes, impedes, intimidates or interferes,” but the Ninth Circuit has held that regardless of the circumstances, “convictions under [111(a)] require at least some form of assault.” *United States v. Chapman*, 528 F.3d 1215, 1221 (9th Cir. 2008). Similarly, the court has held that a proper instruction may not reduce the concept of force or threatened force to the mere appearance of physical intimidation. *United States v. Harrison*, 585 F.3d 1155, 1160 (9th Cir. 2009).

There is no requirement that an assailant be aware that the victim is a federal officer. *United States v. Feola*, 420 U.S. 671, 684 (1975); *see also United States v. Mobley*, 803 F.3d 1105, 1109 (9th Cir. 2015) (citing *Feola* and holding that defendant’s lack of knowledge as to victim’s status as federal officer was “irrelevant to establishing the wrongfulness of the defendant’s conduct” in prosecution for assault of federal officer). If the defendant denies knowledge that the person assaulted was a federal officer and claims to have acted in self-defense, Instruction 8.3 (Assault on Federal Officer or Employee—Defenses) should be used.

Violation of § 111 is a general intent crime in this circuit. *United States v. Jim*, 865 F.2d 211, 215 (9th Cir. 1989). Among other things, this means that voluntary intoxication is not a defense. *Id.*

For an instruction defining “official duties,” *see United States v. Ornelas*, 906 F.3d 1138, 1149 (9th Cir. 2018) (upholding “official duties” instruction providing that: “the test” for determining whether officer is “[e]ngaged in the performance of official duties” is “whether the officer is acting within the scope of his employment, that is, whether the officer’s actions fall within his agency’s overall mission, in contrast to engaging in a personal frolic of his own”); *see also United States v. Juvenile Female*, 566 F.3d 943, 950 (9th Cir. 2009) (describing official duties test as “whether [the officer] is acting within the scope of what he is employed to do, as distinguished from engaging in a personal frolic of his own”).

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