**8.3 Assault on Federal Officer or Employee—Defenses**

The defendant asserts that [he] [she] acted in self-defense. It is a defense to the charge if (1) the defendant did not know that [*name of federal officer or employee*] was a federal [officer] [employee], (2) the defendant reasonably believed that use of force was necessary to defend oneself against an immediate use of unlawful force, and (3) the defendant used no more force than appeared reasonably necessary in the circumstances.

Force which is likely to cause death or great bodily harm is justified in self-defense only if a person reasonably believes that such force is necessary to prevent death or great bodily harm.

In addition to proving all the elements of the crime beyond a reasonable doubt, the government must also prove beyond a reasonable doubt either (1) that the defendant knew that [*name of federal officer* *or employee*] was a federal [officer] [employee] or (2) that the defendant did not reasonably believe force was necessary to defend against an immediate use of unlawful force or (3) that the defendant used more force than appeared reasonably necessary in the circumstances.

**Comment**

In *United States v. Feola*, 420 U.S. 671, 684 (1975), the Supreme Court held that there is no “requirement that an assailant be aware that his victim is a federal officer” but went on to point out that there could be circumstances where ignorance of the official status of the person assaulted might justify a defendant acting in self-defense. “The jury charge in such a case, therefore, should include (1) an explanation of the essential elements of a claim of self-defense, and (2) an instruction informing the jury that the defendant cannot be convicted *unless* the government proves, beyond a reasonable doubt, *either* (a) that the defendant knew that the victim was a federal agent, *or* (b) that the defendant’s use of deadly force would not have qualified as self-defense even if the agent had, in fact, been a private citizen.” *United States v. Alvarez*, 755 F.2d 830, 847 (11th Cir. 1985) (emphasis in original).

In *United States v. Span*, 970 F.2d 573 (9th Cir. 1992), the Ninth Circuit upheld this instruction. The court cautioned, however, that “the model instruction would be inappropriate in a case where a defendant’s theory of the case is self-defense against the use of *excessive* force by a federal law enforcement officer.”  *Id.* at 577 (emphasis in original). In such a case, the instruction must be modified appropriately.