**9.6 Hobbs Act—Extortion or Attempted Extortion**

**by Nonviolent Threat (18 U.S.C. § 1951)**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [attempted] extortion by threat of [economic harm] [*specify other nonviolent harm*] in violation of Section 1951 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 [[induced] [intended to induce]] [*name of victim*] to part with property by wrongful threat of [economic harm] [*specify other nonviolent harm*];

Second, the defendant acted with the intent to obtain property;

Third, commerce from one state to another [was] [would have been] affected in some way[.] [; and]

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

A “substantial step” is conduct that strongly corroborates 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 the 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.]

A threat is wrongful [if it is unlawful] [or] [if the defendant knew [he] [she] was not entitled to obtain the property].

**Comment**

*See generally* Comment to Instruction 9.5 (Hobbs Act—Extortion or Attempted Extortion by Force).

A nonviolent threat is prohibited by the Hobbs Act if it is “wrongful.” 18 U.S.C. § 1951(b)(2) (defining extortion as “the obtaining of property from another, with his consent, induced by *wrongful* use of actual or threatened . . . fear” (emphasis added)); *United States v. Villalobos*, 748 F.3d 953, 955 (9th Cir. 2014) (error for jury instruction to essentially read out § 1951’s “wrongful” element). “[T]hreats of sham litigation, which are made to obtain property to which the defendant knows he has no lawful claim, are ‘wrongful’ under the Hobbs Act.” *United States v. Koziol*, 993 F.3d 1160, 1170 (9th Cir. 2021).

If a nonviolent threat is to be carried out by *unlawful* means, then the Hobbs Act’s “wrongful” requirement is satisfied, regardless of whether the defendant had a lawful claim of right to the property demanded. *Villalobos*, 748 F.3d at 957-58. For example, threats to cooperate with, or alternatively, impede an ongoing investigation, contingent on payment, are unlawful and therefore clearly wrongful. *Id.*

If, on the other hand, a nonviolent threat is to be carried out by *lawful* means (for example, a threat of economic harm), a claim of right instruction is necessary. *See United States v. Dischner*, 974 F.2d 1502, 1515 (9th Cir. 1992) (holding that wrongfully obtaining property by threat of economic harm is sufficient to convict of extortion under Hobbs Act and noting that “[o]btaining property is generally ‘wrongful’ if the alleged extortionist has no lawful claim to that property” (citing *United States v. Enmons*, 410 U.S. 396, 400 (1973))), *overruled on other grounds by United States v. Morales*, 108 F.3d 1031 (9th Cir. 1997).

It is unclear whether the claim of right instruction to be given in lawful-threat cases must require that the defendant *knew* he or she was not entitled to obtain the property. At least one other circuit so requires, *see* *United States v. Sturm*, 870 F.2d 769, 773-74 (1st Cir. 1989), but the Ninth Circuit has yet to impose such a requirement. *See United States v. Greer*, 640 F.3d 1011, 1019 n.4 (9th Cir. 2011) (“Because the district court’s instructions satisfied the First Circuit’s requirement in *Sturm*, we need not decide whether to adopt *Sturm* as the law of this circuit.”); *Dischner*, 974 F.2d at 1515 (declining to “decide whether the government must prove that the defendant knew he had no entitlement” to property because district court’s jury instructions necessarily required such finding); *Koziol*, 993 F.3d at 1170 n. 10 (“We do not decide whether the Hobbs Act imposes liability absent proof that the defendant knew he was not entitled to the property.”). Until the Ninth Circuit decides the question, the Committee recommends the above instruction, which requires the government to prove that the defendant knew he or she was not entitled to obtain the property.

A general instruction that the defendant need not have known that his or her conduct was unlawful does not negate the instruction in lawful-threat cases that a threat is wrongful if the defendant knew he or she was not entitled to obtain the property. Knowledge that one has no entitlement to property is distinguishable from knowledge that an act violates the Hobbs Act.  *Greer*, 640 F.3d at 1019-20.

“To 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).

It is unclear whether 18 U.S.C. § 1951 requires specific intent as an element. In *United States v. Ornelas*, 906 F.3d 1138 (9th Cir. 2018), the Ninth Circuit discussed the intent element in statutory offenses that appear to “simply punish” common law crimes. In footnote 2, however, the Ninth Circuit distinguished federal statutes that “simply punish” a common law offense (thus requiring importation of common law elements) from federal statutes that provide their own elements (and thus not requiring importation of common law elements). *Id.* at 1143 n.2. The circuits are currently split as to whether the Hobbs Act requires specific intent to steal. *Compare United States v. Thomas*, 8 F.3d 1552, 1562-63 (11th Cir.1993), *with* *United States v. Nedley*, 255 F.2d 350, 355 (3d Cir. 1958).

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