

9.28 Particular Rights—Sixth Amendment—Right to Compulsory Process—Interference with Witness

Under the Sixth Amendment, a criminal defendant has the right to have compulsory process for obtaining witnesses in his or her favor. This right includes both the right to offer the testimony of witnesses, and to compel their attendance, if necessary. The plaintiff asserts [name] that the defendant [name] interfered with this right and caused a favorable witness not to testify in the plaintiff's trial.

To prove that the defendant [name] unlawfully interfered with the plaintiff [name]'s right to present testimony, the plaintiff [name] must prove by a preponderance of the evidence:

First, that the defendant [name]'s conduct substantially interfered with the plaintiff [name]'s witness;

Second, that the defendant [name]'s conduct caused the witness not to testify; and

Third, that the witness' testimony would have been favorable and material.

Testimony is material if it would have been sufficient to cast doubt on the government's case.

[Testimony could have been material to the plaintiff [name]'s trial even if the plaintiff [name] was not convicted.]

Comment

This instruction is based on *Park v. Thompson*, 851 F.3d 910 (9th Cir. 2017). As discussed in *Park*, the Ninth Circuit has not yet decided what the appropriate standard is to satisfy the causation element of this claim. *See id.* at 921-22 (comparing the various circuit court tests, including “plausible showing,” “plausible nexus,” “but for,” and “decisive factor”). Although the Committee recognizes that trial courts may need to instruct juries regarding the standard for proving causation, it takes no position on the appropriate test pending further guidance from the Ninth Circuit or the Supreme Court.

In a multi-plaintiff or multi-defendant case, the trial judge should consider naming each individual specifically in lieu of using the generic term “officers” or “defendants.” In *Chinaryan*, the Ninth Circuit explained that the jury instructions were “confusing” where the instructions stated that “to establish an unreasonable seizure in this case, the plaintiffs must prove by a preponderance of the evidence that the officers”—plural—“used excessive force.” *Chinaryan v. City of Los Angeles*, 113 F.4th 888, 905 (9th Cir. 2024) (emphasis in original). The “officers” jury instruction language was confusing because it “required the jury to evaluate the excessiveness of the force used by the officers collectively rather than consider whether any single officer used excessive force.” *Id.* In light of *Chinaryan*, the trial judge may

consider using a special verdict to identify the specific findings as to each plaintiff and defendant.

Revised June 2025