

## 17.7 Hostage Taking (18 U.S.C. § 1203(a))

The defendant is charged in [Count \_\_\_\_\_ of] the indictment with taking a person hostage in violation of Section 1203(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 intentionally seized or detained a person;

Second, the defendant threatened to kill, injure, or continue to detain that person; and

Third, the defendant did so with the purpose and intention of compelling [a third person] [a government organization] to act, or refrain from acting, in some way, as an explicit or implicit condition for the release of the seized or detained person.

A person is “seized” or “detained” when the person is held or confined against his or her will by physical restraint, fear, or deception for an appreciable period of time.

[The fact that the person may initially agree to accompany the hostage taker does not prevent a later “seizure” or “detention.”]

### Comment

In a case involving foreign national defendants, the Ninth Circuit has held that along with these three elements, 18 U.S.C. § 1203(b) “requires some international element,” but does not require proof of nexus to international terrorism. *United States v. Mikhel*, 889 F.3d 1003, 1022 (9th Cir. 2018).

The crime of hostage taking is not limited to taking aliens as hostages. *United States v. Sierra-Velasquez*, 310 F.3d 1217, 1220 (9th Cir. 2002). In the context of alien smuggling, it is not necessary that the smuggler demand an increase in fee for the smuggler to be found guilty of hostage taking. *Id.*; see 18 U.S.C. § 1203(b)(1), (2) limiting the application of this offense).

As to the specific intent element, see *United States v. Fei Lin*, 139 F.3d 1303, 1305-06 (9th Cir. 1998) (holding that statute “does contemplate that the defendant must not merely engage in conduct knowingly, but purposefully and intentionally”).

As to the penultimate paragraph of the instruction, see *United States v. Carrion-Caliz*, 944 F.2d 220, 225 (5th Cir. 1991) (holding that hostage is “seized” or “detained” within meaning of Hostage Taking Act “when she is held or confined against her will for an appreciable period of time”).

As to the last paragraph of the instruction, see *United States v. Lopez-Flores*, 63 F.3d 1468, 1477 (9th Cir. 1995) (“[T]hat the hostage may initially agree to accompany the hostage taker does not prevent a later ‘seizure’ or ‘detention’ within the meaning of the Hostage Taking

Act” (quoting *Carrion-Caliz*, 944 F.2d at 226)); *see also* *Sierra-Valasquez*, 310 F.3d at 1220 (“There was a seizure or detention within the meaning of § 1203(a) from the time the defendants began to hold the aliens in a manner that was not contemplated in the alien smuggling agreement. At that point, the aliens were no longer consensually in the custody of the smuggling defendants.”).

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