

18.9 Racketeering Enterprise—Enterprise Affecting Interstate Commerce—Defined (18 U.S.C. § 1959)

With respect to the first element in Instruction _____ [*insert cross reference to pertinent instruction, e.g., Instruction 18.8*], the government must prove that an “enterprise” existed that was engaged in or had an effect on interstate commerce. An enterprise is a group of people who have associated together for a common purpose of engaging in a course of conduct over a period of time. This group of people, in addition to having a common purpose, must have an ongoing organization, either formal or informal. The personnel of the enterprise, however, may change and need not be associated with the enterprise for the entire period alleged in the indictment. This group of people does not have to be a legally recognized entity, such as a partnership or corporation. This group may be organized for a legitimate and lawful purpose, or it may be organized for an unlawful purpose. [The name of the organization itself is not an element of the offense and does not have to be proved.]

Therefore, the government must prove beyond a reasonable doubt that this was a group of people (1) associated for a common purpose of engaging in a course of conduct; (2) that the association of these people was an ongoing formal or informal organization, and (3) the group was engaged in or had an effect upon interstate or foreign commerce. The government need not prove that the enterprise had any particular organizational structure.

Interstate commerce includes the movement of goods, services, money, and individuals between states. These goods can be legal or illegal. Only a minimal effect on commerce is required and the effect need only be probable or potential, not actual. It is not necessary to prove that the defendant’s own acts affected interstate commerce as long as the enterprise’s acts had such effect.

Comment

Use this instruction in conjunction with Instructions 18.8 (Violent Crime or Attempted Violent Crime in Aid of Racketeering Enterprise), 18.10 (Racketeering Activity—Defined), and 18.11 (Racketeering Enterprise—Proof of Purpose).

Definitions of “enterprise” are found in 18 U.S.C. §§ 1959(b)(2) and 1961(4). *See also United States v. Turkette*, 452 U.S. 576, 583 (1981); *Odom v. Microsoft Corp.*, 486 F.3d 541, 550-52 (9th Cir. 2000); *United Energy Owners Comm., Inc. v. U.S. Energy Mgmt. Sys., Inc.*, 837 F.2d 356, 362 (9th Cir. 1988).