

24.27 Forced Labor (18 U.S.C. § 1589(a))

The defendant is charged in [Count _____ of] the indictment with forced labor in violation of Section 1589(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 [provided] [obtained] the labor or services of another person; and

Second, that the defendant did so through at least one of the following prohibited means:

a. force, threats of force, physical restraint, or threats of physical restraint to that person or another person;

b. serious harm or threats of serious harm to that person;

c. the abuse or threatened abuse of law or legal process; or

d. a scheme, plan or pattern intended to cause the person to believe that if that person did not perform such labor or services that person or another person would suffer serious harm or physical restraint; and

Third, that the defendant acted knowingly.

Jurors do not need to agree unanimously on which of the prohibited means the defendant did.

Comment

See United States v. Barai, 55 F.4th 1245, 1249–53 (9th Cir. 2022) (affirming district court’s use of substantially similar jury instruction).

The listed alternatives in 18 U.S.C. § 1589(a) are factual means, rather than distinct legal elements. *Barai*, 55 F.4th at 1250. Therefore, a jury need not be unanimous as to which of the four prohibited means in § 1589(a) the defendant used to compel forced labor. *See id.* at 1250, 1253; *see also United States v. Mickey*, 897 F.3d 1173, 1181 (9th Cir. 2018) (“[E]lements [are] those circumstances on which the jury must unanimously agree, while . . . means [are] those circumstances on which the jury may disagree yet still convict.” (quoting *Rendon v. Holder*, 764 F.3d 1077, 1086 (9th Cir. 2014))).

To demonstrate scienter under § 1589(a), the government must show that the defendant “‘knowingly . . . obtain[ed] the labor or services’ of the employee ‘by means of’ one of the four statutorily enumerated methods.” *Martinez-Rodriguez v. Giles*, 31 F.4th 1139, 1156 (9th Cir. 2022) (quoting 18 U.S.C. § 1589(a)); *see also Barai*, 55 F.4th at 1252 (“[T]he forced labor

statute expressly defines the mens rea element: 'knowingly.'"). "The scienter element requires proof that the defendant knew (1) that the enumerated 'circumstance existed' and (2) that the defendant was obtaining the labor in question as a result." *Martinez-Rodriguez*, 31 F.4th at 1156.

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