

4.6 Willfully

Comment

As the Supreme Court has observed, “willful” is a word of “many meanings” and “its construction [is] often . . . influenced by its context.” *Ratzlaf v. United States*, 510 U.S. 135, 141 (1994). Accordingly, Ninth Circuit cases have defined “willful” in different terms depending on the particular crime charged. *See, e.g., United States v. Hernandez*, 859 F.3d 817 (9th Cir. 2017) (holding that in criminal prosecution for transporting firearms into one’s state of residence, “willfully” requires that defendant knew transportation itself, not some later intended crime, was unlawful); *United States v. Lloyd*, 807 F.3d 1128, 1166 (9th Cir. 2015) (in criminal prosecution for selling unregistered securities in violation of 15 U.S.C. § 77e, “willfully” does not require actor to have known conduct was unlawful (citing *Reyes*, 577 F.3d 1069)); *United States v. Anguiano-Morfin*, 713 F.3d 1208, 1210 (9th Cir. 2013) (in prosecution for falsely claiming United States citizenship, defendant’s subjective belief is dispositive on issue of willfulness); *United States v. Berry*, 683 F.3d 1015, 1021 (9th Cir. 2012) (in prosecution for social security fraud, “willfully” connotes “culpable state of mind”); *United States v. Reyes*, 577 F.3d 1069, 1080 (9th Cir. 2009) (in prosecution for securities fraud, “willfully” means “intentionally undertaking an act that one knows to be wrongful; ‘willfully’ in this context does *not* require that the actor know specifically that the conduct was unlawful,” quoting *United States v. Tarallo*, 380 F.3d 1174, 1188 (9th Cir. 2004) (emphasis in original)). *See also United States v. Easterday*, 564 F.3d 1004, 1006 (9th Cir. 2009) (for crime of failure to pay employee payroll taxes, “willful” defined as “a voluntary, intentional violation of a known legal duty”); *United States v. Awad*, 551 F.3d 930, 939 (9th Cir. 2009) (in health care fraud case, “willful” act is one undertaken with “bad purpose” with knowledge that conduct was unlawful); *but see United States v. Ajoku*, 718 F.3d 882 (9th Cir. 2013), *judgment vacated*, 134 S. Ct. 1872 (mem.) (U.S. April 21, 2014). After the Solicitor General confessed error, the Supreme Court vacated the decision of the Ninth Circuit in *Ajoku*. As a result, in cases alleging a false statement to a government agency in violation of 18 U.S.C. § 1001, as well as cases alleging a false statement relating to health care matters in violation of 18 U.S.C. § 1035, the government must prove, among other things, that a defendant acted deliberately and with knowledge both that the statement was untrue and that his or her conduct was unlawful.

As the meaning of “willfully” necessarily depends on particular facts arising under the applicable statute, the Committee has not provided a generic instruction defining that term. In the context of tax crimes, however, *see* Instruction 22.6 (Willfully—Defined).

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