

5.9 Justification (Legal Excuse)

The defendant contends that [his] [her] conduct was justified. Justification legally excuses the crime charged.

The defendant must prove justification by a preponderance of the evidence. A preponderance of the evidence means that you must be persuaded that the things the defendant seeks to prove are more probably true than not true. This is a lesser burden of proof than the government's burden to prove beyond a reasonable doubt each element of [specify crime charged].

A defendant's conduct was justified only if at the time of the crime charged:

First, the defendant was under an unlawful and present threat of death or serious bodily injury;

Second, the defendant did not recklessly place [himself] [herself] in a situation where [he] [she] would be forced to engage in criminal conduct;

Third, the defendant had no reasonable legal alternative; and

Fourth, there was a direct causal relationship between the conduct and avoiding the threatened harm.

If you find that each of these things has been proved by a preponderance of the evidence, you must find the defendant not guilty.

Comment

In *United States v. Gomez*, 92 F.3d 770, 775 (9th Cir. 1996), the Ninth Circuit set forth the four elements needed to make out a justification defense. *See also United States v. Wofford*, 122 F.3d 787, 790 (9th Cir. 1997); *United States v. Beasley*, 346 F.3d 930, 933 n.2

(9th Cir. 2003).

In *Gomez*, 92 F.3d at 778, the Ninth Circuit held that the defendant presented evidence that, if believed, would have supported a justification defense (specifically, evidence that defendant, a convicted felon, had armed himself with shotgun after receiving several death threats resulting from the government's identification of him as informant).

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