

**18 U.S.C. § 922(g) UNLAWFUL POSSESSION OR RECEIPT OF A
FIREARM OR AMMUNITION BY A PROHIBITED PERSON – ELEMENTS**

[The indictment charges the defendant[s] with; Count[s] __ of the indictment charge[s] the defendant[s] with] unlawful [possession; receipt] of [a firearm; ammunition] by a [Prohibited Person]. In order for you to find [a; the] defendant guilty of this charge, the government must prove each of the following elements beyond a reasonable doubt:

1. The defendant knowingly [possessed; received] [a firearm; ammunition];
2. At the time of the [possession; receipt], the defendant [was a Prohibited Person];
3. At the time of the [possession; receipt], the defendant [knowledge requirement for the defendant’s alleged prohibited status]; and
4. [The [firearm; ammunition] had been shipped or transported in interstate or foreign commerce before the defendant received it.] [The defendant’s possession of the [firearm; ammunition] was in or affected commerce.]

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt [as to the charge you are considering], then you should find the defendant guilty [of that charge].

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt [as to the charge you are considering], then you should find the defendant not guilty [of that charge].

Committee Comment

The term “Prohibited Person” is used in this instruction in the same way that it is used in the elements instruction for 18 U.S.C. § 922(d). The Committee Comment associated with that instruction also applies to the use of that term in this instruction. The bracketed phrase “was a Prohibited Person” found in element 2 should be replaced with a phrase describing the nature of the prohibition. Suggested language for that description may be found below.

For a definition of “knowingly” see the Pattern Instruction 4.10

In *Rehaif v. United States*, 139 S.Ct. 2191, 2200 (2019), the Supreme Court held that “in a prosecution under 18 U.S.C. § 922(g) and § 924(a)(2), the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm.” Although *Rehaif* specifically concerned § 922(g)(5), which prohibits an “alien” from possessing a firearm or ammunition, the Court

expressed its holding as applying to § 922(g) – without specifying a subparagraph – and as applying to “the relevant category of persons” – not just an alien under § 922(g)(5). In light of *Rehaif*, it is the Committee’s view, that in any prosecution under § 922(g), the trial judge must include the knowledge requirement as to the defendant’s status in the “relevant category” of persons.

Having said that, questions may well arise as to whether the knowledge element applies to every aspect of the definitions and clauses in § 922(g)’s subparagraphs. In responding to the dissent’s questions on that point, the Supreme Court stated, “We express no view, however, about what precisely the Government must prove to establish a defendant’s knowledge of status in respect to other § 922(g) provisions not at issue here. *See post*, at 2207-2208 (ALITO, J., dissenting)(discussing other statuses listed in § 922(g) not at issue here).” 139 S. Ct. at 2200.

Though the full meaning of knowledge requirements following *Rehaif* is unclear, the Committee believes that *Rehaif* applies in a straightforward manner to some frequently charged subsections of the statute and makes the following suggestions for knowledge requirements:

- Subsection (g)(1):
 2. had previously been convicted in a court of a crime punishable by imprisonment for a term exceeding one year; and
 3. knew that [he/she] had been convicted of a crime punishable by imprisonment for more than one year.
- Subsection (g)(5)(A):
 2. was an alien;
 3. knew [he/she] was an alien illegally or unlawfully in the United States.

18 U.S.C. § 922(g) UNLAWFUL SHIPMENT OR TRANSPORTATION OF A FIREARM OR AMMUNITION BY A PROHIBITED PERSON – ELEMENTS

[The indictment charges the defendant[s] with; Count[s] __ of the indictment charge[s] the defendant[s] with] unlawful [shipment; transportation] of [a firearm; ammunition] by a [Prohibited Person]. In order for you to find [a; the] defendant guilty of this charge, the government must prove each of the following elements beyond a reasonable doubt:

1. The defendant knowingly [shipped; transported] [a firearm; ammunition] in interstate or foreign commerce;
2. At the time of the [shipment; transportation], the defendant [was a Prohibited Person]; and
3. At the time of the [shipment; transportation], the defendant [knowledge requirement for the defendant’s alleged prohibited status].]

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt [as to the charge you are considering], then you should find the defendant guilty [of that charge].

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt [as to the charge you are considering], then you should find the defendant not guilty [of that charge].

Committee Comment

The term “Prohibited Person” is used in this instruction in the same way that it is used in the elements instruction for 18 U.S.C. § 922(d). The Committee Comment associated with that instruction also applies to the use of that term in this instruction. The bracketed phrase “was a Prohibited Person” found in element 2 should be replaced with a phrase describing the nature of the prohibition. Suggested language for that description may be found below.

For a definition of “knowingly” see the Pattern Instruction 4.10.

In *Rehaif v. United States*, 139 S.Ct. 2191, 2200 (2019), the Supreme Court held that “in a prosecution under 18 U.S.C. § 922(g) and § 924(a)(2), the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm.” Although *Rehaif* specifically concerned § 922(g)(5), which prohibits an “alien” from possessing a firearm or ammunition, the Court expressed its holding as applying to § 922(g) – without specifying a subparagraph – and as applying to “the relevant category of persons” – not just an alien under § 922(g)(5). In light of *Rehaif*, it is the Committee’s view that in any prosecution

under § 922(g), the trial judge must include the knowledge requirement as to the defendant's status in the "relevant category" of persons.

Having said that, questions may well arise as to whether the knowledge element applies to every aspect of the definitions and clauses in § 922(g)'s subparagraphs. In responding to the dissent's questions on that point, the Supreme Court stated, "We express no view, however, about what precisely the Government must prove to establish a defendant's knowledge of status in respect to other § 922(g) provisions not at issue here. *See post*, at 2207-2208 (ALITO, J., dissenting)(discussing other statuses listed in § 922(g) not at issue here)." 139 S. Ct. at 2200.

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- Subsection (g)(1):
 2. had previously been convicted in a court of a crime punishable by imprisonment for a term exceeding one year; and
 3. knew that [he/she] had been convicted of a crime punishable by imprisonment for more than one year.
- Subsection (g)(2):
 2. was a fugitive from justice; and
 3. knew [he/she] was a fugitive from justice.
- Subsection (g)(5)(A):
 2. was an alien;
 3. knew [he/she] was an alien illegally or unlawfully in the United States.