Rule Paragraphs:

## Entrapment

Entrapment is designed to prevent the “unwary innocent” of conviction where a defendant is induced by government action to commit a crime. United States v. Russell, 411 U.S. 423, 429 (1973). Entrapment consists of two parts: (1) government inducement of the crime, and (2) the absence of predisposition by the defendant. There are two elements to the defense of entrapment: (1) government inducement of the crime, and (2) the absence of predisposition on the part of the defendant. United States v. Davis, 36 F.3d 1424, 1430 (9th Cir. 1994)(citing United States v. Skarie, 971 F.2d 317, 320 (9th Cir.1992)). Once established that the government induced an individual to break the law, then the defense of entrapment is at issue. Id. The government has the burden to prove, beyond a reasonable doubt, that the defendant was predisposed to commit the offense. Id. The defendant’s predisposition must be established as existing prior to being approached by government agents. Id. To establish entrapment as a matter of law, the defendant must point to undisputed evidence to show that an otherwise innocent person was induced to commit the illegal act by trickery, persuasion, or fraud of a government agent. United States v. Smith, 802 F.2d 1119, 1124 (9th Cir. 1986)(citing United States v. Hsieh Hui Mei Chen, 754 F.2d 817, 821 (9th Cir. 1985)).

## Inducement

Inducement must be done by someone acting for the government. Davis, 36 F.3d at 1430. One is a government agent with government authorization, direction, supervision, and awareness of their activities. United States v. Jones, 231 F.3d 508, 517 (9th Cir. 2000)(quoting Ninth Cir. Model Jury Instr. Crim. §6.3 (2000). Factors that determine one is a government agent include “the nature of that person's relationship with the government, the purposes for which it was understood that person might act on behalf of the government, the instructions given to that person about the nature and extent of permissible activities, and what the government knew about those activities and permitted or used.” Id. (quoting Ninth Cir. Model Jury Instr. Crim § 6.3). Inducement is any government conduct that creates a substantial risk where an otherwise law-abiding citizen would commit an offense. Id. Conduct can include but is not limited to: persuasion, fraudulent representations, threats, coercive tactics, harassment, promises of reward, or pleas based on need, sympathy or friendship. Id. Mere suggestions nor the simple offering of an opportunity to commit a crime amount to inducement. Jones, 231 F.3rd at 517 (citing United States v. Simas, 937 F.2d 459, 462 (9th Cir.1991)). But where there is repeated and persistent solicitation or persuasion which overcomes the defendant’s reluctance, there is inducement. Id.

## Predisposition

When inducement is established, the government must prove beyond a reasonable doubt that the defendant was disposed to commit the crime. Jones, 231 F.3rd at 518. Five factors are considered when evaluating predisposition: (1) the character and reputation of the defendant; (2) whether the government made the initial suggestion of criminal activity; (3) whether the defendant engaged in the activity for profit; (4) whether the defendant showed any reluctance; and (5) the nature of the government's inducement. Id. (citing United States v. Tucker, 133 F.3d 1208, 1217 (9th Cir.1998)). Although no factor is controlling, the most important factor is the degree to which the defendant was reluctant to engage in criminal activity. Smith, 802 F.2d at 1124-25 (citing United States v. Busby, 780 F.2d 804, 807 (9th Cir. 1986)). If the defendant is predisposed to commit the crime, then the entrapment defense is unavailable. Id. (citing Hampton v. United States, 425 U.S. 484, 488-89 (1976)).