

## House

While the Courts of Appeals articulate the doctrine of willful blindness in slightly different ways, all appear to agree on two basic requirements: (1) The defendant must subjectively believe that there is a high probability that a fact exists and (2) the defendant must take deliberate actions to avoid learning of that fact.<sup>9</sup> We think these requirements give willful blindness an appropriately limited scope that surpasses recklessness and negligence. Under this formulation, a willfully blind defendant is one who takes deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to *\*\*2071* have actually known the critical facts. See G. Williams, *Criminal Law* § 57, p. 159 (2d ed. *\*770* 1961) (“A court can properly find wilful blindness only where it can almost be said that the defendant actually knew”). By contrast, a reckless defendant is one who merely knows of a substantial and unjustified risk of such wrongdoing, see ALI, [Model Penal Code § 2.02\(2\)\(c\)](#) (1985), and a negligent defendant is one who should have known of a similar risk but, in fact, did not, see [§ 2.02\(2\)\(d\)](#).

*Global-Tech*; 563 U.S. 754 (2011)

## Senate

The standard for giving the instruction logically should derive from the content of the instruction itself. Thus, since the instruction permits the jurors to infer knowledge only when persuaded beyond a reasonable doubt that the defendant was aware of a high probability of the fact in dispute and consciously avoided confirming that fact, the charge is warranted only if the evidence is such that a rational juror may reach that conclusion beyond a reasonable doubt. See [Jackson v. Virginia](#), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The issue for us, therefore, is whether Judge Nickerson properly concluded that a rational juror could find beyond a reasonable doubt that Rodriguez was aware of a high probability that the suitcase contained a controlled substance and consciously avoided confirming that fact. The defendant retains the opportunity, but has no obligation, to defeat the inference of knowledge by persuading the jury that she actually believed that it did not contain a controlled substance. See [Model Penal Code § 2.02](#) comment 9 (1985).

*Rodriguez*; 983 F.2d 455 (1993)