**8.192A USING OR ATTEMPTING TO USE THE MAIL OR A MEANS OF INTERSTATE COMMERCE TO PERSUADE OR COERCE A MINOR TO TRAVEL**

**TO ENGAGE IN PROSTITUTION OR SEXUAL ACTIVITY**

**(18 U.S.C. § 2422(b))**

The defendant is charged in [Count \_\_\_\_ of] the indictment with Coercion and Enticement of a Minor in violation of Section 2422(b) of Title 18 of the United States Code. For the defendant to be found guilty of that charge the government must prove beyond a reasonable doubt:

First, that [on][between] [*insert dates alleged*] the defendant [used] [attempted to use] [the mail] [a means or facility of [interstate][foreign] commerce, that is [*insert means or facility of interstate or foreign commerce*]], to knowingly [persuade] [induce] [entice] [coerce] an individual to engage in [prostitution][describe proposed sexual activity]; [and]

[Second, that [if the sexual activity had occurred] [based upon the sexual activity that occurred], the defendant could have been charged with a criminal offense under the laws of [the United States] [*insert the state or territory*]. [In [*state or territory*], it is a criminal offense to [*describe proposed sexual activity*]; [and]]

[[Second/Third], the individual the defendant [persuaded] [induced] [enticed] [coerced] was under the age of 18.]

*or*

[[Second/Third], the defendant believed that the individual [he][she] attempted to [persuade] [induce] [entice] [coerce] was under the age of 18; and

[[Third/Fourth], the defendant did something that was a substantial step toward committing the

crime and that strongly corroborated the defendant’s intent to commit the crime.

Mere preparation is not a substantial step toward committing the crime. To constitute a

substantial step, a defendant’s act or actions must unequivocally demonstrate that the crime will

take place unless interrupted by independent circumstances.

Jurors do not need to agree unanimously as to which particular act or actions constituted

a substantial step toward the commission of a crime.]

**Comment**

Both 18 U.S.C. § 2422(a) and (b) use the common terms “persuade,” “induce,” and

“entice.” Those terms “have plain and ordinary meanings within the statute, and [a] court [has]

no obligation to provide further definitions.” *See United States v. Dhingra*, 371 F.3d 557, 567

(9th Cir. 2004) (involving prosecution under 18 U.S.C. § 2422(b)).

The fact that a group of women desired to leave Russia and travel to the United States did not preclude the finding that defendant persuaded, induced, enticed or coerced them to do so. *United States v. Rashkovski*, 301 F.3d 1133, 1136–37 (9th Cir. 2002). The statutory language does not require defendant to “have created out of whole cloth the women’s desire to go to the United States; it merely requires that he have convinced or influenced [them] to actually undergo the journey, or made the possibility more appealing.” *Id*. “[I]t is the defendant’s intent that forms the basis for his criminal liability, not the victims’.”  *Id*. at 1137.

The bracketed language setting forth the first option for the second element is to be used when the defendant is charged with persuading or coercing a minor to engage in “any sexual activity for which any person can be charged with a criminal offense.” Further, “[w]here a federal prosecution hinges on an interpretation or application of state law, it is the district court’s function to explain the relevant state law to the jury.” *United States v. Lopez*, 4 F.4th 706 (9th Cir. 2021) (quoting United States v. Davila-Nieves, 670 F.3d 1, 8 (1st Cir. 2012)). For instance, in *Lopez*, the evidence against the defendant implicated a sexual conduct offense in Guam. 4 F.4th 706*.* The panel found that while the district court was not required to instruct the jury on the elements of the particular predicate offense as if they were elements of the offense charged, the district court nonetheless erred in failing to instruct the jury on the applicable criminal laws of Guam against which the defendant’s proposed sexual conduct was to be evaluated. *Id.*

The bracketed language regarding an “attempt” or “substantial step” applies only when the charge is an attempt. In attempt cases, “[t]o constitute a substantial step, a defendant’s actions must cross the line between preparation and attempt by unequivocally demonstrating that the crime will take place unless interrupted by independent circumstances.” *United States v. Goetzke*, 494 F.3d 1231, 1237 (9th Cir. 2007) (internal quotations omitted).

“[A]n actual minor victim is not required for an attempt conviction under 18 U.S.C. § 2422(b).” *United States v. Meek*, 366 F.3d 705, 717 (9th Cir. 2004) (internal quotations omitted).

The “strongly corroborated” language in this instruction is taken from *United States v.*

*Snell*, 627 F.2d 186, 187 (9th Cir. 1980) (“A conviction for attempt requires proof of culpable

intent and conduct constituting a substantial step toward commission of the crime that strongly

corroborates that intent”) and *United States v. Darby*, 857 F.2d 623, 625 (9th Cir. 1988) (same).

Jurors do not need to agree unanimously as to which particular act or actions constituted

a substantial step toward the commission of a crime. *United States v. Hofus*, 598 F.3d 1171,

1176 (9th Cir. 2010).

“[A] person may be convicted of an attempt to commit a crime even though that person

may have actually completed the crime.” *United States v. Rivera-Relle*, 333 F.3d 914, 921 (9th

Cir. 2003).

*Approved 9/2021*