**20.28 Persuading or Coercing to Travel to Engage in**

**Prostitution or Sexual Activity** **(18 U.S.C. § 2422(a))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [persuading] [inducing] [enticing] [coercing] travel to engage in [prostitution] [sexual activity] in violation of Section 2422(a) 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 knowingly [persuaded] [induced] [enticed] [coerced] an individual to travel in [interstate] [foreign] commerce 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*]]].

*or*

[First, that [[on] [between]] [*insert dates alleged*] the defendant knowingly attempted to [persuade] [induce] [entice] [coerce] an individual to travel in [interstate] [foreign] commerce 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 defendant did something that was a substantial step toward committing the crime. ]

A “substantial step” is conduct that strongly corroborated the defendant’s intent to commit 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. Mere preparation is not a substantial step toward committing the crime.

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).

The fact that 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.* at 1137. “[I]t is the defendant’s intent that forms the basis for his criminal liability, not the victims’.” *Id.*

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, 730 (9th Cir. 2021) (quoting United States v. Davila-Nieves, 670 F.3d 1, 8 (1st Cir. 2012)). While the court in *Lopez* considered a conviction under 18 U.S.C. § 2422(b), its conclusions with respect to the jury instructions are also applicable here. In *Lopez*, the evidence against the defendant implicated a sexual conduct offense in Guam. 4 F.4th at 713, 724*.* The court held 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.* at 729-31.

The bracketed language stating alternative elements (starting with “Second/Third”) 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) (per curiam) (quoting *United States v. Nelson*, 66 F.3d 1036, 1042 (9th Cir. 1995)).

The “strongly corroborated” language in this instruction comes from *United States v. Snell*, 627 F.2d 186, 187 (9th Cir. 1980) (per curiam) (“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).

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