**20.30 Transportation of Minor for Prostitution or Criminal Sexual Activity**

**(18 U.S.C. § 2423(a))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with transporting a minor with intent that [he] [she] engage in [prostitution] [criminal sexual activity] in violation of Section 2423(a) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly transported [*name of victim*] from [*specify location*] to[*specify location*];

Second, the defendant did so with the intent that [*name of victim*] engage in [prostitution] [*describe criminal sexual activity*] [;] [; and]

[Third, 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 criminaloffense to [*describe proposed sexual activity*]; and]

[Third/Fourth], [*name of victim*] was under the age of eighteen years at the time.

A defendant transports a person with the intent that such person engage in [prostitution] [*describe criminal sexual activity*] if the intended [prostitution] [*describe criminal sexual activity*] was a dominant, significant, or motivating purpose of the transportation.

**Comment**

The bracketed language setting forth the first option for the third element is to be used when the defendant is charged with transporting a minor with intent that the minor engages in “any sexual activity for which any person can be charged with a criminal offense.” 18 U.S.C. § 2423(a). 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.

“In interpreting the elements for transportation and travel offenses, we have consistently held that a dominant, significant, or motivating purpose to engage in criminal sexual activity satisfies the intent requirement.” *United States v. Flucas*, 22 F.4th 1149, 1154 (9th Cir. 2022). In *Flucas*, the court held that the district court “correctly instructed the jury . . . with respect to the intent requirement[]” in § 2423(a) when the district court instructed that it was “sufficient if the government proves beyond a reasonable doubt that the sexual activity was a significant, dominating or motivating purpose.” *Id.* at 1154-55, 1164. *See also United States v. Pepe*, 81 F.4th 961, 977 (9th Cir. 2023) (“Ninth Circuit precedent clearly establishes that a defendant can have mixed motives for traveling.”).

It is not a defense to the crime of transporting a minor for purposes of prostitution that the defendant was ignorant of the child’s age. *United States v. Taylor*, 239 F.3d 994, 997 (9th Cir. 2001). “If someone knowingly transports a person for the purposes of prostitution or another sex offense, the transporter assumes the risk that the victim is a minor, regardless of what the victim says or how the victim appears.” *Id.*

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