

No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

---

DANIEL JOHNSON,  
*PETITIONER*,

v.

THE UNITED STATES OF AMERICA,  
*RESPONDENT*.

---

**On Petition For A Writ Of Certiorari To  
the United States Court Of Appeals  
For the Ninth Circuit**

**APPENDIX TO  
A PETITION FOR A WRIT OF CERTIORARI**

Laura Graser  
Attorney at Law  
Counsel of Record  
Post Office Box 12441  
Portland, Oregon, 97212  
Telephone: 503-287-7036  
Fax: 503-287-1365  
[graser@lauragraser.com](mailto:graser@lauragraser.com)  
Attorney for Petitioner Johnson

## INDEX TO APPENDICES

APPENDIX A-- Ninth Circuit Memorandum,  
United States v. Daniel Johnson, 19-30028.....App-1

APPENDIX B -- The District Court's rulings:

- (a) Order Re Pretrial Ruling on Jury Instruction (count 8)  
CR 97 2/1/18.....App-12  
(this document was filed "sealed" but the seal was lifted)
- (b) Jury instruction on count 8 (aggravated sexual abuse).....App-13  
(RT 1201-1204)
- (c) Transcript, February 15, 2018: Rule of Specialty  
Ruling: 2/15 RT 209-13.....App-17
- (d) District Court decision, denying motion for a new  
trial (regarding "traveling") (CR 296).....App-24  
2019 WL 267875 (not reported in F. Supp.)

APPENDIX C -- Superseding [final] indictment .....App-32

APPENDIX D -- Second Amended [final] Judgment,  
United States v. Daniel Johnson, 14-cr-00482-MC-1 .....App-38

APPENDIX E -- Full text of the relevant statutes.....App-44

**FILED**

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

AUG 12 2020  
MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DANIEL JOHNSON,

Defendant-Appellant.

No. 19-30028

D.C. No. 6:14-cr-00482-MC-1

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
Michael J. McShane, District Judge, Presiding

Argued and Submitted July 7, 2020  
Portland, Oregon

Before: BENNETT and MILLER, Circuit Judges, and PEARSON, \*\* District Judge.  
Concurrence by Judge BENNETT

Daniel Johnson was convicted of engaging in illicit sexual conduct in a foreign place, in violation of 18 U.S.C. § 2423(c) and (e) (counts 1-6); traveling to a foreign place with the intent to engage in illicit sexual conduct, in violation of 18

---

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Benita Y. Pearson, United States District Judge for the Northern District of Ohio, sitting by designation.

U.S.C. § 2423(b) (count 7); and crossing state lines with the intent to engage in a sexual act with a person under 12, in violation of 18 U.S.C. § 2241(c) (count 8). He timely appeals the district court's denial of his pre-trial motions for discovery and to dismiss the superseding indictment based on the rule of specialty; his proposed jury instruction on count 8; and motion for a new trial or order of acquittal with regard to counts 1 through 6. Johnson also, for the first time on appeal, argues that a prospective juror's statement during voir dire tainted the jury.

We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. Johnson argues that the superseding indictment, which imposed seven of the eight counts on which he was convicted, should have been dismissed as a violation of the rule of specialty. He also avers that discovery was warranted on the doctrine's applicability.

A district court's finding that a superseding indictment does not violate the rule of specialty is reviewed *de novo*. *United States v. Andonian*, 29 F.3d 1432, 1434 (9th Cir. 1994). Discovery rulings are reviewed for an abuse of discretion. *United States v. Soto-Zuniga*, 837 F.3d 992, 998 (9th Cir. 2016) (citation omitted).

The rule of specialty prohibits a requesting nation from prosecuting an "extradited individual for any offense other than that for which the surrendering state agreed to extradite." *Quinn v. Robinson*, 783 F.2d 776, 783 (9th Cir. 1986). For the doctrine to apply, the criminal defendant must have been involved in

“formal extradition proceedings” pursuant to a valid extradition treaty between countries. *See United States v. Valot*, 625 F.2d 308, 310 (9th Cir. 1980). “Neither deportation nor surrender other than in response to a demand pursuant to Treaty constitutes extradition.” *Oen Yin-Choy v. Robinson*, 858 F.2d 1400, 1404 (9th Cir. 1988).

No extradition treaty existed between the United States and the Kingdom of Cambodia at the time of Johnson’s removal. Therefore, the district court properly found the rule of specialty to be inapplicable to his deportation from Cambodia. The district court also correctly found the doctrine to be inapplicable when, in the course of his removal from Cambodia, Johnson was transported through a South Korean airport. Because Johnson was *transited* through the airport pursuant to Article 17 of the United States-South Korea treaty, as opposed to extradited pursuant to another provision, the rule of specialty had no bearing on the superseding indictment.

2. Johnson alleges the district court erred when it empaneled a jury tainted by the comment of a prospective juror.

Ordinarily we review a district court’s determinations as to juror impartiality, the scope and method of voir dire, and the manner of addressing possible jury misconduct for abuse of discretion. *United States v. Shryock*, 342 F.3d 948, 971-73 (9th Cir. 2003); *United States v. Mendoza*, 157 F.3d 730, 733

(9th Cir. 1998). Because Johnson failed to object to jury selection, however, our review is for plain error. *United States v. Lindsey*, 634 F.3d 541, 550 (9th Cir. 2011). Under plain error review, we will reverse only if (1) there was error; (2) the error was plain; (3) the error affected substantial rights; and (4) the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *United States v. Depue*, 912 F.3d 1227, 1232 (9th Cir. 2019) (en banc).

Johnson, relying on our decision in *Mach v. Stewart*, 137 F.3d 630 (9th Cir. 1997), contends that a prospective juror's comment during voir dire—regarding his facial expression—directly contaminated five jurors who rendered verdicts. Johnson's reliance on *Mach* is misplaced. While the prospective juror's comment displayed subjective bias against Johnson, it did not rise to the level of the repeated, inflammatory, expert-like comments made in *Mach*. Also, unlike in *Mach*, defense counsel in the case at bar made no efforts to object to the comment, request a curative instruction, or demand a mistrial. After dismissing the prospective juror for cause, the district court made a number of instructions which mitigated any possible prejudice. Given the overwhelming evidence against him, Johnson has not shown a “reasonable probability” that the comment affected the outcome. *See United States v. Ameline*, 409 F.3d 1073, 1078 (9th Cir. 2005) (en banc).

3. Johnson alleges the district court erred in denying him a new trial or

alternatively a judgment of acquittal on counts 1 through 6 in light of our decision in *United States v. Pepe*, 895 F.3d 679 (9th Cir. 2018), which held that the pre-2013 version of 18 U.S.C. § 2423(c) did not apply to United States citizens living abroad “unless they were traveling—meaning something more than being in transit—when they had illicit sex.” *Id.* at 682.

The denial of a motion for a new trial is reviewed for abuse of discretion. *United States v. King*, 660 F.3d 1071, 1076 (9th Cir. 2011). We review *de novo* a district court’s denial of a motion for acquittal on the sufficiency of the evidence. *United States v. Ubaldo*, 859 F.3d 690, 699 (9th Cir. 2017). “There is sufficient evidence to support a conviction if, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.* (citation omitted).

Johnson argues that given our holding in *Pepe*, § 2423(c) does not reach his conduct because he resided in Cambodia at the time of the sexual offenses and therefore was not “traveling.” When we view the facts in the light most favorable to the government, the record does not bear this characterization. The parties stipulated that Johnson traveled from the United States to Cambodia on ten separate occasions between 2005 and 2013. The periods during which each victim was abused corresponded with the dates Johnson traveled to Cambodia. Johnson would return to the United States after each of the charged acts of abuse.

Jurors also heard evidence that Johnson made approximately 30 trips to other parts of Southeast Asia between 2005 and 2013. Importantly, during the nine-year period in which Johnson avers he resided in Cambodia, he maintained a permanent residence in Oregon, held an Oregon driver's license, and took other actions consistent with that of a citizen of the United States traveling temporarily overseas. On U.S. passport forms, for example, Johnson would describe his "trips abroad" as "temporary" and listed multiple countries he planned to visit.

As the jury was presented with overwhelming evidence that Johnson was in fact traveling when the illicit sexual acts occurred, the district court did not err in denying Johnson a new trial or acquittal on counts 1 through 6.

4. Johnson also challenges the district court's jury instruction on count 8, which charged aggravated sexual abuse under 18 U.S.C. § 2241(c). Johnson objected to the government's proposed jury instruction for count 8—which did not require proof of a sexual act—and requested that the district court instead adopt an instruction requiring the government to prove the commission of a sexual act. The district court overruled his objection and adopted the government's proposed instruction requiring the jury to find that: (1) Johnson crossed a state line (2) with the intent to engage in a sexual act with a person who is less than twelve years old.

We review *de novo* "whether the district court's instructions omitted or misstated an element of the charged offense." *United States v. Cherer*, 513 F.3d

1150, 1154 (9th Cir. 2008) (internal quotation marks omitted).

We identified the “essential conduct elements” of the aggravated sexual abuse statute in *United States v. Lukashov*, 694 F.3d 1107, 1121 (9th Cir. 2012). They are: (1) crossing a state line; (2) with intent to engage in a sexual act with a child [under twelve]; and (3) engaging in or attempting to engage in a sexual act with a child. *Id.* In light of *Lukashov*, the district court’s jury instruction regarding 18 U.S.C. § 2241(c) fell short in that it omitted the third element, requiring jurors to find that Johnson *engaged* or *attempted to engage* in a sexual act with a child.

“Jury instructions, even if imperfect, are not a basis for overturning a conviction absent a showing that they prejudiced the defendant.” *Cherer*, 513 F.3d at 1155 (citation omitted). With its verdict on count three, the jury found that Johnson had engaged in a sexual act with a minor victim. At trial, that victim testified that his passport lists a 2002 birth date, that he lived at Johnson’s orphanage between 2009 and 2013, and that Johnson abused him throughout that entire period. Our review of the record leaves no doubt that the victim was under twelve years old during Johnson’s conduct. We conclude that the omitted element was “supported by uncontroverted evidence,” making it clear beyond a reasonable doubt that the jury verdict would have been the same absent the error. *Neder v. United States*, 527 U.S. 1, 18 (1999).

Accordingly, the omission of an element from the jury instructions

constituted harmless error.

**AFFIRMED.**

---

BENNETT, Circuit Judge, concurring:

In *United States v. Lukashov*, 694 F.3d 1107, 1121 (9th Cir. 2012), a case, which like this one, arose in the District of Oregon, we made clear that the “essential conduct” elements of an offense under 18 U.S.C. § 2241(c) include “engaging in or attempting to engage in a sexual act with a child.” *Id.* We decided *Lukashov* more than five years before this trial. When the government persuaded the district court not to give Ninth Circuit Model Jury Instruction 8.168, which included this element,<sup>1</sup> the government did not identify *Lukashov* to the district

---

<sup>1</sup> The instruction defines the elements as: “First, *the defendant knowingly engaged in a sexual act with [name of victim]*; Second, at the time, [name of victim] was under the age of twelve years; and Third, [the defendant crossed a state line with the intent to engage in a sexual act with a person who was under the age of twelve years] . . . The government need not prove that the defendant knew that the other person engaging in the sexual act was under the age of twelve years.” Model Crim. Jury Instr. 9th Cir. 8.168 (2010 ed.), [http://www3.ce9.uscourts.gov/jury-instructions/sites/default/files/WPD/Criminal\\_Instructions\\_2019\\_12\\_0.pdf](http://www3.ce9.uscourts.gov/jury-instructions/sites/default/files/WPD/Criminal_Instructions_2019_12_0.pdf) (last updated Dec. 2019) (emphasis added).

The instruction which the district court erroneously gave, at the government’s request, read in pertinent part: “In order for you to find him guilty of this charge the government must prove each of the following elements beyond a reasonable doubt: One, Mr. Johnson traveled across a state line between on or about June 23rd, 2011, and May 29, 2013; and two, Mr. Johnson traveled with the intent to engage in a sexual act with a person who is less than 12 years old. Again, *the*

court. It also did not identify *Lukashov* in its brief on appeal. We told the parties before oral argument to be prepared to address *Lukashov*, and the government at oral argument argued *Lukashov* was distinguishable because it was a venue case. The government is wrong. It is wrong that *Lukashov* does not control, and thus the government led the district court astray as to the jury instruction defining the elements of a crime that carried a possible life sentence. And here Johnson was sentenced to life for that crime. There is nothing to suggest that the government intentionally failed to cite *Lukashov*—neither the government *nor* the defendant cited *Lukashov* to either the district court or to us. But I am still very troubled by that failure in the circumstances here.

The government argues on appeal that while the jury instruction was correct, even if it was wrong, any error was harmless.<sup>2</sup> I reluctantly agree that in the circumstances here, the error was harmless “beyond a reasonable doubt.” *Neder v. United States*, 527 U.S. 1, 17 (1999). “[T]he jury verdict would have been the same absent the error.” *Id.*

---

*government does not have to prove that Mr. Johnson actually engaged in a sexual act with a person under 12, but must prove that he traveled with the intent to engage in such conduct.”* (emphasis added).

<sup>2</sup> “In any event, the district court’s refusal to issue the Ninth Circuit model instruction was—at most—harmless error . . . . The jury necessarily found that Johnson had engaged in a sex act with a minor victim who was under 12.”

The relevant issue was whether the defendant engaged in sex acts with a child under 12, victim L.S. The defendant contends “[w]e do not know how old [L.S.] was, and the defense could not explore that because with the court’s ruling, LS age (under 12) was irrelevant. (His age under 18 was relevant for the other counts.)” This argument has some force, and the problem was entirely of the government’s making. But here, the jury saw pictures of L.S. taken during the period of sexual abuse, saw L.S.’s passport photo with his birthdate, heard his testimony, and made a special finding that Johnson knowingly engaged in a sex act with L.S. In addition, L.S. testified that he lived at the Hope Transition Center orphanage from 2009 through 2013,<sup>3</sup> that Johnson began to sexually abuse him just after his arrival, and that this abuse happened several times a week for four years. The pictures of L.S. alone are compelling as to his age when the defendant abused him. The omitted element from the jury instruction is thus “supported by overwhelming evidence,” *Neder*, 527 U.S. at 17, and Johnson has shown no evidence in the record to the contrary, nor has he shown what such evidence could be.<sup>4</sup>

---

<sup>3</sup> Based on his passport birthdate, L.S. was 7 years old when he arrived at the orphanage in 2009.

<sup>4</sup> Johnson admits that L.S. “was under 12 for most of his time at [the orphanage],” but also argues that as a result of the erroneous jury instruction, the government didn’t need to prove that there was any actual victim to convict on Count 8. True, but it does not affect our harmless error analysis.

I thus concur because the error here was harmless. But the government should have done better than it did.

RECEIVED

IN THE UNITED STATES DISTRICT COURT

FEB 5 2018

FOR THE DISTRICT OF OREGON

FEDERAL PUBLIC DEFENDER  
EUGENE

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL STEPHEN JOHNSON,

Defendant.

Case No. 6:14-cr-00482-MC

ORDER RE: Pretrial Ruling on  
Jury Instructions

MCSHANE, Judge:

Government moves for a pretrial ruling on jury instructions. Defendant is charged on Count 8 of the superseding indictment (Dkt. 40) with knowingly crossing a state line with the intent to engage in a sexual act with a person who had not attained the age of 12 years in violation of 18 U.S.C. § 2241(c).

The Ninth Circuit Model Jury Instruction for 18 U.S.C. § 2241(c) does not accurately reflect the elements of proof required by 18 U.S.C. § 2241(c) as charged in Count 8. Specifically, the Model Jury Instructions adds a third element of proof that is not required: “defendant knowingly engaged in a sexual act with [name of victim]”.

Government’s motion is GRANTED. The government will submit a proposed special instruction that accurately reflects the elements found in § 224 (c).

IT IS SO ORDERED.

DATED this 1st day of February, 2018.

s/Michael J. McShane

Michael J. McShane

United States District Judge

1 United States citizen at birth. A United States passport  
2 issued by the Secretary of State to a citizen of the United  
3 States is proof of a United States citizenship for the period  
4 during which the passport is valid.

5 For this offense, the government does not have to  
6 prove that Mr. Johnson actually engaged in illicit sexual  
7 conduct, but must prove that he travelled for the purpose of  
8 engaging in such conduct. In doing so, the government need  
9 not prove that Mr. Johnson traveled in foreign commerce for  
10 the sole and exclusive purpose of engaging in illicit sexual  
11 conduct. A person may have different purposes or motives for  
12 travel, and each may prompt in varying degrees the act of  
13 making the journey.

14 For this count, the government must prove beyond a  
15 reasonable doubt that a dominant, significant, or motivating  
16 purpose of Mr. Johnson's travel in foreign commerce was to  
17 engage in illicit sexual conduct. In other words, the  
18 government must prove the sexual act was not merely  
19 incidental to travel. The government does not have to prove  
20 the illicit sexual conduct is illegal in the country to which  
21 Mr. Johnson traveled.

22 Count 8 of the indictment. Mr. Johnson is charged  
23 in Count 8 of traveling across a state line with the intent  
24 to engage in a sexual act with a person who was less than  
25 12 years old.

DEBORAH COOK, OFFICIAL COURT REPORTER

deborah\_cook@uscourts.gov

1                   In order for you to find him guilty of this charge  
2 the government must prove each of the following elements  
3 beyond a reasonable doubt: One, Mr. Johnson traveled across  
4 a state line between on or about June 23rd, 2011, and May 29,  
5 2013; and two, Mr. Johnson traveled with the intent to engage  
6 in a sexual act with a person who is less than 12 years old.

7                   Again, the government does not have to prove that  
8 Mr. Johnson actually engaged in a sexual act with a person  
9 under 12, but must prove that he traveled with the intent to  
10 engage in such conduct.

11                  In doing so, the government need not prove that  
12 Mr. Johnson traveled across a state line for the sole and  
13 exclusive purpose of engaging in a sexual act with a person  
14 under 12. A person may have different purposes or motives  
15 for travel, and each may prompt in varying degrees the act of  
16 making the journey.

17                  For this Count, the government must prove beyond a  
18 reasonable doubt that a dominant, significant, or motivating  
19 purpose of Mr. Johnson's travel across a state line was to  
20 engage in a sexual act with a person under 12. In other  
21 words, the government must prove the sexual act was not  
22 merely incidental to the travel.

23                  Some definitions. The term "illicit sexual conduct"  
24 means knowingly engaging in a commercial sex act with a  
25 person, the victim, who is under 18 years of age; the

1 government does not have to prove the defendant knew the  
2 victim was under the age of 18.

3 Or illicit sexual conduct means knowingly causing a  
4 person who is under 18 years of age to engage in a sexual  
5 act, one, by using force against that person, or two, by  
6 threatening or placing that person in fear.

7 Or the term illicit sexual conduct means knowingly  
8 engaging in a sexual act with a person, the victim, who has  
9 attained the age of 12 years, but has not attained the age of  
10 16 years, and is at least four years younger than the  
11 defendant; the government does not have to prove that the  
12 defendant knew the age of the victim, nor does it have to  
13 prove the defendant knew the requisite age difference  
14 existed.

15 Illicit sexual conduct also means knowingly engaging  
16 in a sexual act with a person, the victim, who is under  
17 12 years of age; the government does not have to prove the  
18 defendant knew the victim was under the age of 12.

19 The term "sexual act" means contact between the  
20 penis and the anus, involving penetration, however slight, or  
21 contact between the mouth and the penis, or the mouth and the  
22 anus, or penetration, however slight, of the anal opening by  
23 a hand, finger, or any object, with the attempt to abuse,  
24 humiliate, harass, or degrade the person, or to arouse or  
25 gratify the sexual desire of the defendant or any other

1 person.

2 Or an intentional touching, not through the  
3 clothing, of the genitalia of the person younger than  
4 16 years old, with the intent to abuse, humiliate, harass, or  
5 degrade the person, or to arouse or gratify the sexual desire  
6 of the defendant, or any other person.

7 The term "commercial sex act" means any sex act, on  
8 account of which anything of value is given or received by  
9 any person.

10 The term "travel in foreign commerce" means travel  
11 between any part of the United States and a foreign country.

12 On or about, the indictment charges the offenses  
13 alleged occurred on or about a certain date. Although it is  
14 necessary for the government to prove beyond a reasonable  
15 doubt that the offense was committed on a date reasonably  
16 near the date alleged in the indictment, it is not necessary  
17 for the government to prove that the offense was committed  
18 precisely on the date charged.

19 Venue, Counts 1 through 6, for the offenses charged  
20 in Counts 1 through 6, the government must prove it is more  
21 likely true than not that Mr. Johnson was first brought to or  
22 arrested in the District of Oregon, or that his last known  
23 residence was in the District of Oregon. You decide these  
24 facts by considering all the evidence and deciding what  
25 evidence is more believable. This is a lower standard of

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

## EUGENE DIVISION

HON. MICHAEL J. MCSHANE

COURTROOM NO. 2

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, FEBRUARY 14, 2018

THURSDAY, FEBRUARY 15, 2018

## APPEARANCES:

( See next page )

1 Government argues, that it's a standalone position  
2 and all that happened was there was a  
3 transportation.

4 So we feel the Court decides that  
5 issue, not Mr. Olson, not Mr. Purkey, and not  
6 anybody else.

7 THE COURT: All right.

8 MR. WEINERMAN: So just --  
9 obviously, I would like the Court to rule in our  
10 favor, but if the Court doesn't, we're requesting  
11 the right to question both Mr. Olson and  
12 Mr. Purkey. Thank you.

13 THE COURT: Will they be coming for  
14 trial in any event?

15 MR. SWEET: No, your Honor. Jeff  
16 Olson would not, and we do not anticipate Special  
17 Agent Purkey coming either.

22 MR. SWEET: Okay. Thank you, your  
23 Honor.

24 THE COURT: I went through and --  
25 I'm sorry. You know, last night I was getting a

1 little confused by some of the exhibits, the  
2 numbering of them. I went through them last night  
3 and this morning to try to get an understanding of  
4 the arguments that's being put forward by the  
5 defense. I think I have a much better  
6 understanding now of the facts.

7 Mr. Johnson was transferred through  
8 South Korea pursuant to Article 17 of the  
9 extradition treaty between the United States and  
10 South Korea. The treaty does allow either South  
11 Korea to authorize transportation through its  
12 territory -- excuse me. The treaty allows South  
13 Korea to authorize transportation through its  
14 territory a person surrendered to the United  
15 States by a third state.

16 Under Article 17 -- get the language  
17 here -- the request for transit shall be  
18 transmitted through diplomatic channel or directly  
19 between the Department of Justice in the United  
20 States and the Ministry of Justice in Korea. The  
21 request for a transit must be -- must contain a  
22 description of the person being transported and a  
23 brief statement of the facts of the case.

1 it's either Exhibit 2 in the old packet or 37  
2 maybe in the new packet. The Government did  
3 request transit through diplomatic channels  
4 through the Department of Justice in the United  
5 States to the Ministry of Justice in South Korea,  
6 and the request at various times either indirectly  
7 or through emails by others described Mr. Johnson  
8 and included a statement regarding his case.

16 So the defense argues a number of  
17 things. First, it relies on Exhibit 7, which is  
18 the verdict or judgment reached by the trial court  
19 in Cambodia dealing with the criminal charges  
20 there relating to minors -- related to minor  
21 children against Mr. Johnson. And on page 7 of  
22 that document, Exhibit 7, page 7, it's clear that  
23 the attorneys representing the victims and the  
24 plaintiffs are requesting the maximum sentence  
25 allowed by laws because the acts were against the

1       kids, and that the judge decided to permanently  
2       ban the defendant from residing in Cambodia in  
3       accordance with Article 48 of the law on  
4       suppression of human trafficking and sexual  
5       exploitation.

6                   So it seems to me they were asking  
7       the trial court as part of the criminal judgment  
8       to ban Mr. Johnson from residing in Cambodia under  
9       a specific criminal law.

10                  Looking at the document further, the  
11       judge declined -- that's on page 10 of that  
12       document -- the judge declined the request. The  
13       court went on to sentence Mr. Johnson to one year  
14       in jail for the crime of indecent acts against a  
15       minor under the age of 15. Mr. Johnson appealed  
16       to the Phnom Penh Court of Appeal and the Court of  
17       Appeals upheld his conviction.

18                  So the only thing I really take away  
19       from that document is that the sentencing judge  
20       did not permanently ban Mr. Johnson from Cambodia  
21       as part of his criminal sentence. However, it's  
22       clear he also did not enjoin other government  
23       actors from deporting Mr. Johnson. The word  
24       "deportation" is not used. And the fact remained  
25       that Mr. Johnson was in Cambodia in violation of

1 Cambodian law because he failed to possess a  
2 passport.

3 So looking at a combination of  
4 exhibits and, yes, I mean, would I like a more  
5 concrete document that puts forth the actual order  
6 of deportation or the letter of notice? That's  
7 not part of the exhibits, but I have numerous  
8 exhibits in which these documents are referenced,  
9 and they are in evidence. There was no objection  
10 to them.

11 And from those exhibits,  
12 specifically looking at, for instance, Defendant's  
13 Exhibit 12 and Exhibit 9, I can glean from the  
14 facts that upon his release from custody upon his  
15 criminal sentence, Mr. Johnson was taken into  
16 custody by the Cambodian General Department of  
17 Immigration. It appears he was taken, albeit, I  
18 think briefly, to an immigration facility. A  
19 letter of deportation was served and he was turned  
20 over to the FBI for escort on his deportation to  
21 the United States.

22 There's nothing in the record to  
23 suggest the sentencing court, in failing to ban  
24 Mr. Johnson under a sex trafficking section of  
25 their criminal code, had any jurisdiction to

1 enjoin the Immigration Department from deporting  
2 Mr. Johnson for being in the country without a  
3 passport.

4 Defense also relies on an email  
5 exchange between Michael Surgalla, an attorney  
6 with the Department of Justice, and Joo-yeon Jo --  
7 this is Exhibit 3. Joo-yeon Jo is deputy director  
8 prosecutor with the International Criminal Affairs  
9 Division in South Korea. From the emails, it's  
10 clear that Ms. Joo-yeon Jo had a concern over an  
11 issue of dual criminality. I'm finding that  
12 concern, however real -- I'm not doubting she  
13 expressed what she expressed, but the concern was  
14 misplaced under Article 17 of the extradition  
15 treaty.

21 So I'm denying the motion to dismiss  
22 counts. I'm finding this was not an extradition  
23 from South Korea, but a transit under Article 17.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 6:14-cr-00482-MC

v.

ORDER

DANIEL JOHNSON,

Defendant.

---

MCSHANE, Judge:

After eleven days of trial in May of 2018, a jury found Defendant Daniel Johnson guilty of crimes involving the sexual assault of multiple children in the Kingdom of Cambodia. As to Counts 1 through 6 of the Superseding Indictment, the jury found Mr. Johnson guilty of “traveling in foreign commerce and engaging in illicit sexual conduct in a foreign place” in violation of Title 18, U.S.C. § 2423(c) and (e).” Verdict Form 1–4, ECF No. 234.

Following Mr. Johnson’s convictions and prior to the imposition of sentence, the Ninth Circuit clarified the scope of § 2423(c) in *United States v. Pepe*, 895 F.3d 679 (9th Cir. 2018). Mr. Johnson now argues, among other things, that he is entitled to a new trial or post-verdict acquittal because he was a resident of Cambodia at the time of the sexual assaults and that *Pepe* requires that the illicit sexual conduct occur during a period of travel. Def.’s Mot. 1–2, ECF No. 267. Because the evidence at trial supported a finding that Mr. Johnson was guilty of “traveling in foreign commerce and engaging in illicit sexual conduct in a foreign place,” Mr. Johnson’s motion is DENIED.

1—ORDER

## STANDARDS

A court “may vacate any judgment and grant a new trial if the interest of justice so requires.” Fed. R. Crim. P. 33(a). Motions for a new trial should only be granted in exceptional cases “in which the evidence weighs heavily against the verdict.” *See United States v. Del Toro-Barboza*, 673 F.3d 1136, 1153 (9th Cir. 2012). A court also may set aside a guilty verdict and enter an acquittal. Fed. R. Crim. P. 29(c). A court may do so where, viewing the evidence in the light most favorable to the prosecution, no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (citation omitted); *United States v. Nevils*, 598 F.3d 1158, 1163–64 (9th Cir. 2010) (en banc).

## DISCUSSION

### I. The “Travel” Element

Mr. Daniel Johnson is a U.S. citizen. Def.’s Mot. 6. At trial he stipulated that his last known domestic residence was in the State of Oregon. *Id.*; Jury Instructions 20, ECF No. 230. Although he travelled extensively to and from Cambodia, he maintained an Oregon driver’s license, listed Oregon as his permanent address on his U.S. Passport, held a bank account in Oregon, applied for credit using his Oregon address, and owned a car in Oregon. Gov.’s Resp. 6–8, ECF No. 292.

The evidence at trial did not support Mr. Johnson’s contention that he was a resident of Cambodia. Mr. Johnson stipulated that between November of 2005 and January of 2011, he travelled back and forth between the United States and Cambodia numerous times:

Mr. Johnson traveled in interstate and foreign commerce between the United States and Cambodia between on or about the following dates:

- November 28, 2005 (departing the U.S.) - December 6, 2005 (arriving in Cambodia)
- January 11, 2007 (departing the U.S.) - January 12, 2007 (arriving in

Cambodia)

- October 10, 2008 (departing the U.S.) - October 11, 2008 (arriving in Cambodia)
- October 22, 2009 (departing the U.S.) - October 23, 2009 (arriving in Cambodia)
- June 8, 2010 (departing U.S.) - June 10, 2010 (arriving in Cambodia)
- January 18, 2011 (departing the U.S.) - January 19, 2011 (arriving in Cambodia).

...

Mr. Johnson was present within the District of Oregon and then traveled in interstate and foreign commerce between the United States and Cambodia on or about the following dates:

- June 21, 2011 (in Oregon); July 5, 2011, (departed the U.S.) - July 7, 2011 (arrived in Cambodia)
- December 1, 2011 (in Oregon); December 20, 2011 (departed the U.S.) - December 22, 2011 (arrived in Cambodia)
- July 24, 2012 (in Oregon); August 24, 2012 (departed the U.S.) - August 27, 2012 (arrived in Cambodia)
- November 19, 2012 (in Oregon); December 5, 2012 (departed the U.S.) - December 7, 2012 (arrived in Cambodia)
- May 28, 2013 (in Oregon); May 29, 2013 (departed the U.S.) - May 30, 2013 (arrived in Cambodia).

Jury Instructions 20-21.

In addition to the stipulated travel, the evidence established two additional trips during this same time period, as well as approximately thirty trips to Vietnam and Thailand. Gov.'s Resp. 6.; *see* Def.'s Mot. 3. In his application forms for passports and visas documents, he continued to list his permanent address during the relevant time period as 63341 Shasta Road in Coos Bay, Oregon. Gov.'s Resp. 7. In 2006, he stated that he would be traveling for four months in Cambodia, Thailand, Taiwan, and Vietnam in an application form he submitted to the U.S. government. *Id.* In 2010 and 2013 he stated in similar applications that he was traveling in the same countries for a six-month period. *Id.*

Mr. Johnson's ongoing travel between the United States and Cambodia was consistent with his purported role as a missionary. While in Cambodia, Mr. Johnson would preach, engage

3—ORDER

in building projects, and maintain an unlicensed orphanage for select children whose parents lacked the finances to raise them. *See* Def.'s Mot. 3, 6. To finance the orphanage, he would regularly return to Oregon and Texas to raise funds. *See* Def.'s Mot. 2. Sadly, the institution he was financing was one where the boys under his charge were subject to Mr. Johnson's sexual predation. The evidence at trial established that young boys were subject to repeated acts of oral and anal rape with systematic regularity. In at least one instance, we know that a boy who refused to sexually pleasure Mr. Johnson was evicted to the streets. Mr. Johnson took advantage of the most vulnerable residents of a country whose government is either unable or unwilling to defend them. To say he was a resident of Cambodia would be calling the fox a resident of the henhouse.

The facts that were presented to the jury in Mr. Johnson's case are not a reproduction of the facts in *United States v. Pepe*, 895 F.3d 679 (9th Cir. 2018). *Pepe* is instructive in that it illustrates the limitation on the prosecution of American citizens who live abroad and commit sex crimes against children. What is clear from the holding in *Pepe* is that prior to its amendment in 2013,<sup>1</sup> § 2423(c) did not extend to citizens who were merely living abroad; rather, it was aimed at prosecuting citizens who were traveling when they committed illicit sexual conduct. *Pepe*, 895 F.3d at 682. The focus of the statute is not on residency, but on travel. *See id.* at 691 (holding that "a conviction under § 2423(c), when based on a defendant's travel in foreign commerce, requires proof that the illicit sexual conduct occurred while the defendant was traveling.").

Mr. Pepe travelled from the United States to Cambodia in March 2003. *Pepe*, 895 F.3d at 682. He gave away his vehicle, his computer, and other valuable items before leaving the United

---

<sup>1</sup> Section 2423(c) originally targeted only U.S. citizens who resided in the United States, traveled overseas, and committed sex crimes with minors. *Pepe*, 895 F.3d at 687. Congress' March 7, 2013 amendment expanded the statute to encompass U.S. citizens who temporarily or permanently relocated overseas. *See id.*

States. Appellant's Reply Brief at 11 n.28, *Pepe*, 895 F.3d 679 (No. CR-07-00168-DSF). He rented a house, obtained a Cambodian driver's license, bought a car, got a job teaching at a university, became involved with the Phnom Penh Veterans of Foreign Wars Post and the local Catholic Church, and married a Cambodian woman. *Pepe*, 895 F.3d at 682. He occasionally returned to the United States to visit family. *Id.* His last visit was to Los Angeles in August 2005, where he stayed for one week to attend his daughter's wedding. *Id.* His illicit sexual conduct occurred between three and nine months after he returned to Cambodia. *Id.* at 681. The Ninth Circuit concluded that § 2423(c) would not apply to Mr. Pepe if he resided in Cambodia and was no longer traveling. *Id.* at 682. The Ninth Circuit overturned Mr. Pepe's conviction because the Government had not met its burden with respect to the travel element. *Id.* at 691.

In contrast to *Pepe*, the jury here was presented with overwhelming evidence that Mr. Johnson was still traveling at the time of the illicit conduct. While in Cambodia, Mr. Johnson lived at the orphanage. Def.'s Mot. 3. He traveled from the United States to Cambodia eleven times between 2005 and 2013. Gov.'s Resp. 5; *see* Jury Instructions 20–21. He never spent a year in Cambodia without returning to the United States during the relevant time frame. Gov.'s Resp. 6; *see* Jury Instructions 20–21. The periods during which each victim was abused correspond with Mr. Johnson's trips to Cambodia, each of which involved a return to the United States. Gov.'s Resp. 9. He had a car in the United States and applied for three credit cards using his Oregon address in 2009 and 2011. *Id.* at 6–8. Finally, his own statements to the U.S. government in 2006, 2010, and 2013 demonstrate that his travel in Cambodia and other neighboring countries was intended to be temporary. *Id.* at 8.

While it has limited precedential value, the Ninth Circuit has reviewed the applicability of § 2423(c) in a Memorandum Opinion at least once since deciding *Pepe*. *See United States v.*

*Abromov*, 741 Fed.Appx. 532 (9th Cir. 2018). As with Mr. Pepe and Mr. Johnson, Mr. Abromov argued that the illicit acts that were alleged to have occurred abroad occurred when he resided in Russia. The Ninth Circuit concluded that Abromov resided in Los Angeles because he had a Los Angeles driver's license, his children and ex-wife lived there, and in 2013 he wrote to a member of Congress that he had been a permanent resident there since 2000, though he had "visited" Russia several times. *Id.* at 532. Moreover, each of the charged acts took place soon after Abramov traveled from California to Russia and soon before he returned to California. *Id.* Mr. Johnson's case has much more in common with the facts that sustained Mr. Abromov's conviction than that of *Pepe*.

As to Counts 1 through 6, the jury found Mr. Johnson guilty of "traveling in foreign commerce and engaging in illicit sexual conduct in a foreign place." Verdict Form 1–4. The jury was instructed that "travel in foreign commerce" means "travel between any part of the United States and a foreign country." Jury Instructions 34. There was ample evidence before the jury to support their finding that Mr. Johnson was traveling in Cambodia at the time of the illicit acts. Mr. Johnson has not presented evidence that "weighs heavily" against the verdict. *See Del-Toro-Barboza*, 673 F.3d at 1153. Mr. Johnson has not met his burden of persuading this Court to grant a new trial, and certainly not to enter an acquittal.

Given the ruling regarding Counts 1 through 6, this Court need not address Mr. Johnson's spillover argument pertaining to Counts 7 and 8. *See* Def.'s Mot. 13–15; Gov.'s Resp. 10–14.

## II. Constitutionality of § 2423(c)

Mr. Johnson renews his Motion to Dismiss Counts 1 through 6 of the Superseding Indictment (ECF No. 59), arguing that § 2423(c) is unconstitutional as applied to him because he resided abroad and engaged in non-commercial sexual conduct. Def.'s Mot. 15–18.

The Ninth Circuit upheld § 2423(c) in *United States v. Clark*. 435 F.3d 1100, 1116 (holding that Mr. Clark's travel in foreign commerce and illicit commercial sex act "put the statute squarely within Congress's Foreign Commerce Clause authority."), *rev'd on other grounds in Pepe*, 895 F.3d 679. The Ninth Circuit declined to address the statute's constitutionality in *Pepe*. *See* 895 F.3d at 690.

Further, as explained above, Mr. Johnson was not a resident of Cambodia at the time of the illicit sexual conduct. He also gave food and shelter to each victim, in addition to money and gifts in some cases. This falls under the definition of "commercial sex act." *See* Jury Instructions 34 (instructing that it is "any sex act, on account of which anything of value is given to or received by any person."). The jury accordingly found that Mr. Johnson "knowingly engaged in a commercial sex act" with each of the minors in Counts 1 through 6. Verdict Form, 1–4. Section 2423(c) is constitutional as applied to Mr. Johnson.

### **III. Alleged *Brady* Violations**

Lastly, Mr. Johnson alleges that the Government failed to produce material impeachment evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Def.'s Mot. 19–22. Specifically, he alleges that the Government was required to disclose any post-verdict communications between government agents and witnesses who testified that he abused them because they may have testified in pursuit of immigration-related benefits. *Id.* at 21. He also alleges that the Government has failed to fully disclose payments made to witnesses and the Cambodian National Police. *Id.*

*Brady* requires that the prosecution disclose exculpatory and impeachment evidence to the defendant. *United States v. Alvarez*, 358 F.3d 1194, 1206 n.4 (9th Cir. 2004) (citing *Brady*, 373 U.S. at 87; *United States v. Bagley*, 473 U.S. 667 (1985)). A new trial is warranted where the

evidence undermines the court's confidence in the outcome of the trial and there is a "reasonable probability" of a different result. *United States v. Doe*, 705 F.3d 1134, 1152–53 (9th Cir. 2013) (citing *Bagley*, 473 U.S. at 682). In determining whether a new trial is warranted, courts consider the cumulative effect of all the violations. *Kyles v. Whitley*, 514 U.S. 419, 436 n.10 (1995).

Mr. Johnson cannot show that any potential *Brady* violation impacted the outcome of the trial. The Government concedes that a witness asked an FBI victim witness specialist about possible immigration benefits after the trial. Gov.'s Resp. 18. However, this does not raise questions about his testimony, and it is consistent with the desires he evinced on the stand. He and several other victims testified that they were interested in possible immigration benefits post-trial. *Id.* Therefore, Mr. Johnson's counsel had the opportunity to, and in fact did, cross-examine them about their interests and discussed the issue at closing. *Id.* at 18–19. The Government also maintains that it has disclosed all known payments to other entities and Mr. Johnson's counsel discussed that in closing as well. *Id.* at 20–21. For these reasons, a new trial based upon newly discovered evidence is not warranted.

#### CONCLUSION

Mr. Johnson has not shown that *Pepe* warrants a new trial, that § 2423(c) is unconstitutional, or that the Government committed a *Brady* violation warranting a new trial. Therefore, Mr. Johnson's Motion is DENIED.

IT IS SO ORDERED.

DATED this 17th day of January, 2019.



\_\_\_\_\_  
Michael J. McShane  
United States District Judge

FILED 17 MAY 17 2017 USDC-ORE

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

UNITED STATES OF AMERICA

6:14-CR-00482-MC

v.

SUPERSEDING INDICTMENT

**DANIEL STEPHEN JOHNSON,**  
**Defendant.**

**18 U.S.C. § 2423(c) and (e)**  
**18 U.S.C. § 2423(b)**  
**18 U.S.C. § 2241(c)**

**Forfeiture Allegation**

**THE GRAND JURY CHARGES:**

**COUNT ONE**  
**(Engaging in Illicit Sexual Conduct in a Foreign Place)**  
**(18 U.S.C. § 2423(c) and (e))**

Between on or about November 28, 2005 and on or about November 12, 2008, defendant **DANIEL STEPHEN JOHNSON**, a citizen of the United States, whose last known residence is in the state of Oregon and who was first brought into the District of Oregon, traveled in foreign commerce, from the United States to the Kingdom of Cambodia, and engaged in illicit sexual conduct, as defined in Title 18, United States Code, Section 2423(f), with Minor #1, a boy who was under 18 years of age at the time that Defendant engaged in illicit sexual conduct with him, and attempted to do so;

In violation of Title 18, United States Code, Section 2423(c) and (e).

Revised 03/2017

**COUNT TWO**  
**(Engaging in Illicit Sexual Conduct in a Foreign Place)**  
**(18 U.S.C. § 2423(c) and (e))**

Between on or about October 22, 2009 and on or about December 9, 2013, defendant **DANIEL STEPHEN JOHNSON**, a citizen of the United States, whose last known residence is in the state of Oregon and who was first brought into the District of Oregon, traveled in foreign commerce, from the United States to the Kingdom of Cambodia, and engaged in illicit sexual conduct, as defined in Title 18, United States Code, Section 2423(f), with Minor #2, a boy who was under 18 years of age at the time that Defendant engaged in illicit sexual conduct with him, and attempted to do so;

In violation of Title 18, United States Code, Section 2423(c) and (e).

**COUNT THREE**  
**(Engaging in Illicit Sexual Conduct in a Foreign Place)**  
**(18 U.S.C. § 2423(c) and (e))**

Between on or about October 22, 2009 and on or about December 9, 2013, defendant **DANIEL STEPHEN JOHNSON**, a citizen of the United States, whose last known residence is in the state of Oregon and who was first brought into the District of Oregon, traveled in foreign commerce, from the United States to the Kingdom of Cambodia, and engaged in illicit sexual conduct, as defined in Title 18, United States Code, Section 2423(f), with Minor #3, a boy who was under 18 years of age at the time that Defendant engaged in illicit sexual conduct with him, and attempted to do so;

In violation of Title 18, United States Code, Section 2423(c) and (e).

**COUNT FOUR**  
**(Engaging in Illicit Sexual Conduct in a Foreign Place)**  
**(18 U.S.C. § 2423(c) and (e))**

Between on or about July 5, 2011 and on or about December 9, 2013, defendant

**DANIEL STEPHEN JOHNSON**, a citizen of the United States, whose last known residence is in the state of Oregon and who was first brought into the District of Oregon, traveled in foreign commerce, from the United States to the Kingdom of Cambodia, and engaged in illicit sexual conduct, as defined in Title 18, United States Code, Section 2423(f), with Minor #4, a boy who was under 18 years of age at the time that Defendant engaged in illicit sexual conduct with him, and attempted to do so;

In violation of Title 18, United States Code, Section 2423(c) and (e).

**COUNT FIVE**  
**(Engaging in Illicit Sexual Conduct in a Foreign Place)**  
**(18 U.S.C. § 2423(c) and (e))**

Between on or about December 22, 2011 and on or about December 9, 2013, defendant

**DANIEL STEPHEN JOHNSON**, a citizen of the United States, whose last known residence is in the state of Oregon and who was first brought into the District of Oregon, traveled in foreign commerce, from the United States to the Kingdom of Cambodia, and engaged in illicit sexual conduct, as defined in Title 18, United States Code, Section 2423(f), with Minor #5, a boy who was under 18 years of age at the time that Defendant engaged in illicit sexual conduct with him, and attempted to do so;

In violation of Title 18, United States Code, Section 2423(c).

**COUNT SIX**  
**(Engaging in Illicit Sexual Conduct in a Foreign Place)**  
**(18 U.S.C. § 2423(c) and (e))**

Between on or about August 24, 2012 and on or about December 9, 2013, defendant **DANIEL STEPHEN JOHNSON**, a citizen of the United States, whose last known residence is in the state of Oregon and who was first brought into the District of Oregon, traveled in foreign commerce, from the United States to the Kingdom of Cambodia, and engaged in illicit sexual conduct, as defined in Title 18, United States Code, Section 2423(f), with Minor #6, a boy who was under 18 years of age at the time that Defendant engaged in illicit sexual conduct with him, and attempted to do so;

In violation of Title 18, United States Code, Section 2423(c) and (e).

**COUNT SEVEN**  
**(Travel With Intent to Engage in Illicit Sexual Conduct)**  
**(18 U.S.C. § 2423(b))**

Between on or about June 23, 2011 and on or about May 29, 2013, in the District of Oregon and elsewhere, defendant **DANIEL STEPHEN JOHNSON**, a United States citizen, traveled in interstate and foreign commerce for the purpose of engaging in illicit sexual conduct, as defined in Title 18, United States Code, Section 2423(f), with another person under 18 years of age;

In violation of Title 18, United States Code, Section 2423(b).

\\

\\

\\

\\

\\

\\

**COUNT EIGHT**  
**(Aggravated Sexual Abuse)**  
**(18 U.S.C. § 2241(c))**

Between on or about June 23, 2011 and on or about May 29, 2013, in the District of Oregon and elsewhere, defendant **DANIEL STEPHEN JOHNSON**, did knowingly cross a state line with the intent to engage in a sexual act, as defined in Title 18, United States Code, Section 2246(2), with a person who had not attained the age of 12 years, and attempted to do so;

In violation of Title 18, United States Code, Section 2241(c).

**FORFEITURE ALLEGATION**

Upon conviction of one or more of the offenses alleged in Counts One through Eight of this Superseding Indictment, defendant **DANIEL STEPHEN JOHNSON** shall forfeit to the United States pursuant to 18 U.S.C. § 2428 any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of the said violation(s), and any property, real or personal, constituting or derived from proceeds obtained directly or indirectly as a result of the said violations.

If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the court;
- (d) has been substantially diminished in value; or

\\

\\

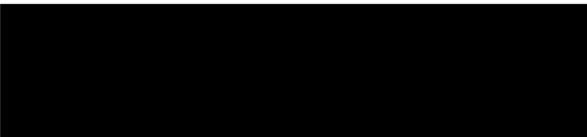
\\

\\

(e) has been commingled with other property which cannot be divided without difficulty; it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek forfeiture of any other property of said defendant(s) up to the value of the forfeitable property described above.

Dated this 17 day of May 2017.

A TRUE BILL.



OFFICIATING FOREPERSON

Presented by:

BILLY J. WILLIAMS  
United States Attorney

The signature of Jeffrey S. Sweet, which is handwritten and appears to read "Jeff S. Sweet".  
JEFFREY S. SWEET  
RAVI SINHA  
Assistant United States Attorneys

LAUREN E. BRITSCH  
Trial Attorney  
United States Department of Justice  
Child Exploitation and Obscenity Section

AO 245C

Second Amended Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 9/2017)  
Sheet 1**Date of Original Judgment: February 1, 2019  
(Or Date of Last Amended Judgment)****Reason for Amendment:**

Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))

Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))

Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))

Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))

Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))

Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))

Direct Motion to District Court Pursuant to  
     28 U.S.C. § 2255 or  
     18 U.S.C. § 3559(c)(7)  
     First Step Act

Modification of Restitution Order (18 U.S.C. § 3664)

**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON****UNITED STATES OF AMERICA**

Plaintiff,

v.

**DANIEL STEPHEN JOHNSON**

Defendant.

**SECOND AMENDED JUDGMENT IN A  
CRIMINAL CASE****Case No.: 6:14-CR-00482-MC-1****USM Number: 76661-065**Kurt David Hermansen,  
Defendant's AttorneyAmy E. Potter,  
Assistant U.S. Attorney**THE DEFENDANT:**

was found guilty on counts 1 - 8 of the Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of the following offense(s):

<u>Title, Section &amp; Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
18:2423(c) and (e) - Engaging in Illicit Sexual Conduct in a Foreign Place	Beginning on or about 11/28/2005 and continuing until 11/12/2008	1s
18:2423(c) and (e) - Engaging in Illicit Sexual Conduct in a Foreign Place	Beginning on or about 10/22/2009 and continuing until 12/9/2013	2s
18:2423(c) and (e) - Engaging in Illicit Sexual Conduct in a Foreign Place	Beginning on or about 10/22/2009 and continuing until 12/9/2013	3s
18:2423(c) and (e) - Engaging in Illicit Sexual Conduct in a Foreign Place	Beginning on or about 7/5/2011 and continuing until 12/9/2013	4s
18:2423(c) and (e) - Engaging in Illicit Sexual Conduct in a Foreign Place	Beginning on or about 12/22/2011 and continuing until 12/9/2013	5s
18:2423(c) and (e) - Engaging in Illicit Sexual Conduct in a Foreign Place	Beginning on or about 8/24/2012 and continuing until 12/9/2013	6s
18:2423(b) - Travel with Intent to Engage in Illicit Sexual Conduct	Beginning on or about 10/22/2009 and continuing until 12/9/2013	7s
18:2241(c) - Aggravated Sexual Abuse	Beginning on or about 6/23/2011 and continuing until 5/29/2013	8s

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) and is discharged as to such count(s).

Count 1 of the Indictment dismissed on the motion of the United States.

AO 245C

Second Amended Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 9/2017)  
Sheet 1

The defendant shall pay a special assessment in the amount of \$800.00 for Counts 1 – 8 of the Superseding Indictment payable to the Clerk of the U.S. District Court. (See also the Criminal Monetary Penalties Sheet.)

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

January 18, 2019

Date of Imposition of Sentence

Signature of Judicial Officer

Michael J. McShane, U.S. District Judge

Name and Title of Judicial Officer

July 30, 2019

Date

AO 245B

Second Amended Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 9/2017)  
Sheet 2 - ImprisonmentDEFENDANT: DANIEL STEPHEN JOHNSON  
CASE NUMBER: 6:14-CR-00482-MC-1

Judgment-Page 3 of 6

**IMPRISONMENT**

As to counts 1 thru 6 the defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of thirty (30) years to served consecutive to each other. As to count 7 the defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of thirty (30) years to served concurrent to the sentence imposed in counts 1 thru 6. As to count 8, the defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of life to be served concurrent to the sentence imposed in counts 1 thru 8.

The court makes the following recommendations to the Bureau of Prisons:

1. That the defendant be incarcerated in FCI Sheridan
2. That deduction of funds for payment of restitution be prioritized over deductions from the inmate account for other purposes.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the custody of the United States Marshal for this district:

at \_\_\_\_\_ on \_\_\_\_\_.  
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before \_\_\_\_\_ on \_\_\_\_\_.  
 as notified by the United States Marshal.  
 as notified by the Probation or Pretrial Services Office.

The Bureau of Prisons will determine the amount of prior custody that may be credited towards the service of sentence as authorized by Title 18 USC §3585(b) and the policies of the Bureau of Prisons.

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
 \_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
 at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
**UNITED STATES MARSHAL**

By: \_\_\_\_\_  
**DEPUTY UNITED STATES MARSHAL**

AO 245B

Second Amended Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 9/2017)  
Sheet 3D - Supervised Release

DEFENDANT: DANIEL STEPHEN JOHNSON  
CASE NUMBER: 6:14-CR-00482-MC-1

Judgment-Page 4 of 6

**SUPERVISED RELEASE**

No term of supervised release was imposed.

AO 245B

Second Amended Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 9/2017)  
Sheet 5 - Criminal Monetary PenaltiesDEFENDANT: DANIEL STEPHEN JOHNSON  
CASE NUMBER: 6:14-CR-00482-MC-1

Judgment-Page 5 of 6

**CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments set forth in this judgment.

<u>Assessment</u> <u>(as noted on Sheet 1)</u>	<u>Fine</u>	<u>Restitution</u>	<u>TOTAL</u>
<b>TOTALS</b>	\$800.00	\$0.00	\$26,134.00

The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* will be entered after such determination.

The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid in full prior to the United States receiving payment.

If applicable, restitution amount ordered pursuant to plea agreement: \$0.00.

The defendant must pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that

The interest is waived for the  fine and/or  restitution.

The interest requirement for the  fine and/or  restitution is modified as follows:

See Amended Statement of Reasons for Complete List of Victims

Any payment shall be divided proportionately among the payees named unless otherwise specified.

AO 245B

Second Amended Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 9/2017)  
Sheet 6 - Schedule of PaymentsDEFENDANT: DANIEL STEPHEN JOHNSON  
CASE NUMBER: 6:14-CR-00482-MC-1

Judgment-Page 6 of 6

**SCHEDULE OF PAYMENTS**Having assessed the defendant's ability to pay, payment<sup>1</sup> of the total criminal monetary penalties shall be as follows:

- A.  Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance with  C,  D, or  E below; or
- B.  Payment to begin immediately (may be combined with  C,  D, or  E below); or
- C.  If there is any unpaid balance at the time of defendant's release from custody, it shall be paid in monthly installments of not less than \$ \_\_\_\_\_, or not less than 10% of the defendant's monthly gross earnings, whichever is greater, until paid in full to commence immediately upon release from imprisonment.
- D.  Any balance at the imposition of this sentence shall be paid in monthly installments of not less than \$, or not less than 10% of the defendant's monthly gross earnings, whichever is greater, until paid in full to commence immediately.
- E.  Special instructions regarding the payment of criminal monetary penalties:

---

Unless the Court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties, including restitution, shall be due during the period of imprisonment as follows: (1) 50% of wages earned if the defendant is participating in a prison industries program; (2) \$25 per quarter if the defendant is not working in a prison industries program. If the defendant received substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, the defendant shall be required to apply the value of such resources to any restitution or fine still owed, pursuant to 18 USC § 3664(n).

Nothing ordered herein shall affect the government's ability to collect up to the total amount of criminal monetary penalties imposed, pursuant to any existing collection authority.

All criminal monetary penalties, including restitution, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of Court at the address below, unless otherwise directed by the Court, the Probation Officer, or the United States Attorney.

**Clerk of Court**  
**U.S. District Court - Oregon**  
**405 E. 8th Ave., Ste. 2100**  
**Eugene, OR 97401**

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

**Joint and Several**

**Case Number**  
**Defendant and Co-**  
**Defendant Names**  
 (including Defendant number)

**Total Amount****Joint and Several Amount****Corresponding Payee, if appropriate**

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court costs:

The defendant shall forfeit the defendant's interest in the following property to the United States: **One white iPhone**

---

<sup>1</sup>Payments shall be applied in the following order: (1) restitution principal, (2) restitution interest, (3) assessment, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

## Statutory appendix

**18 U.S. C. § 2423 (current) Transportation of minors**

**(a) Transportation with intent to engage in criminal sexual activity.**--A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned not less than 10 years or for life.

**(b) Travel with intent to engage in illicit sexual conduct.**--A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, with a motivating purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

**(c) Engaging in illicit sexual conduct in foreign places.**--Any United States citizen or alien admitted for permanent residence who travels in foreign commerce or resides, either temporarily or permanently, in a foreign country, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

**(d) Ancillary offenses.**--Whoever, for the purpose of commercial advantage or private financial gain, arranges, induces, procures, or facilitates the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce with a motivating purpose of engaging in illicit sexual conduct shall be fined under this title, imprisoned not more than 30 years, or both.

**(e) Attempt and conspiracy.**--Whoever attempts or conspires to violate subsection (a), (b), (c), or (d) shall be punishable in the same manner as a completed violation of that subsection.

**(f) Definition.**--As used in this section, the term “illicit sexual conduct” means--

**(1)** a sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States;

(2) any commercial sex act (as defined in section 1591) with a person under 18 years of age; or

(3) production of child pornography (as defined in section 2256(8)).

**(g) Defense.**--In a prosecution under this section based on illicit sexual conduct as defined in subsection (f)(2), it is a defense, which the defendant must establish by clear and convincing evidence, that the defendant reasonably believed that the person with whom the defendant engaged in the commercial sex act had attained the age of 18 years.

#### **CREDIT(S)**

(June 25, 1948, c. 645, 62 Stat. 812; Pub.L. 95-225, § 3(a), Feb. 6, 1978, 92 Stat. 8; Pub.L. 99-628, § 5(b)(1), Nov. 7, 1986, 100 Stat. 3511; Pub.L. 103-322, Title XVI, § 160001(g), Sept. 13, 1994, 108 Stat. 2037; Pub.L. 104-71, § 5, Dec. 23, 1995, 109 Stat. 774; Pub.L. 104-294, Title VI, §§ 601(b)(4), 604(b)(33), Oct. 11, 1996, 110 Stat. 3499, 3508; Pub.L. 105-314, Title I, § 103, Oct. 30, 1998, 112 Stat. 2976; Pub.L. 107-273, Div. B, Title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808; Pub.L. 108-21, Title I, §§ 103(a)(2)(C), (b)(2)(B), 105, Apr. 30, 2003, 117 Stat. 652, 653; Pub.L. 109-248, Title II, § 204, July 27, 2006, 120 Stat. 613; Pub.L. 113-4, Title XIII, § 1211(b), Mar. 7, 2013, 127 Stat. 142; Pub.L. 114-22, Title I, § 111, May 29, 2015, 129 Stat. 240; Pub.L. 115-392, § 14, Dec. 21, 2018, 132 Stat. 5256.)

## **18 U.S.C. § 2423: Effective: July 27, 2006 to March 6, 2013**

### **Transportation of minors**

**(a) Transportation with intent to engage in criminal sexual activity.**--A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned not less than 10 years or for life.

**(b) Travel with intent to engage in illicit sexual conduct.**--A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in

foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

**(c) Engaging in illicit sexual conduct in foreign places.**--Any United States citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

**(d) Ancillary offenses.**--Whoever, for the purpose of commercial advantage or private financial gain, arranges, induces, procures, or facilitates the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in illicit sexual conduct shall be fined under this title, imprisoned not more than 30 years, or both.

**(e) Attempt and conspiracy.**--Whoever attempts or conspires to violate subsection (a), (b), (c), or (d) shall be punishable in the same manner as a completed violation of that subsection.

**(f) Definition.**--As used in this section, the term "illicit sexual conduct" means (1) a sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States; or (2) any commercial sex act (as defined in section 1591) with a person under 18 years of age.

**(g) Defense.**--In a prosecution under this section based on illicit sexual conduct as defined in subsection (f)(2), it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the person with whom the defendant engaged in the commercial sex act had attained the age of 18 years.

## **CREDIT(S)**

(June 25, 1948, c. 645, 62 Stat. 812; Feb. 6, 1978, Pub.L. 95-225, § 3(a), 92 Stat. 8; Nov. 7, 1986, Pub.L. 99-628, § 5(b)(1), 100 Stat. 3511; Sept. 13, 1994, Pub.L. 103-322, Title XVI, § 160001(g), 108 Stat. 2037; Dec. 23, 1995, Pub.L. 104-71, § 5, 109 Stat. 774; Oct. 11, 1996, Pub.L. 104-294, Title VI, §§ 601(b)(4), 604(b)(33), 110 Stat. 3499, 3508; Oct. 30, 1998, Pub.L. 105-314, Title I, § 103, 112 Stat. 2976; Nov. 2, 2002, Pub.L. 107-273, Div. B, Title IV, § 4002(c)(1), 116 Stat. 1808; Apr. 30, 2003, Pub.L. 108-21, Title I, §§ 103(a)(2)(C), (b)(2)(B), 105, 117 Stat. 652, 653, 654; July 27, 2006, Pub.L. 109-248, Title II, § 204, 120 Stat. 613.)

## 18 U.S.C. § 2241 Aggravated sexual abuse

**(a) By force or threat.**--Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly causes another person to engage in a sexual act--

- (1) by using force against that other person; or
- (2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

**(b) By other means.**--Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly--

- (1) renders another person unconscious and thereby engages in a sexual act with that other person; or
- (2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby--
  - (A) substantially impairs the ability of that other person to appraise or control conduct; and
  - (B) engages in a sexual act with that other person;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

**(c) With children.**--Whoever crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or

in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or knowingly engages in a sexual act under the circumstances described in subsections (a) and (b) with another person who has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years younger than the person so engaging), or attempts to do so, shall be fined under this title and imprisoned for not less than 30 years or for life. If the defendant has previously been convicted of another Federal offense under this subsection, or of a State offense that would have been an offense under either such provision had the offense occurred in a Federal prison, unless the death penalty is imposed, the defendant shall be sentenced to life in prison.

**(d) State of mind proof requirement.**--In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

## CREDIT(S)

(Added Pub.L. 99-646, § 87(b), Nov. 10, 1986, 100 Stat. 3620, and Pub.L. 99-654, § 2, Nov. 14, 1986, 100 Stat. 3660; amended Pub.L. 103-322, Title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 2150; Pub.L. 104-208, Div. A, Title I, § 101(a) [Title I, § 121[7(b)]], Sept. 30, 1996, 110 Stat. 3009, 3009-26, 3009-31; Pub.L. 105-314, Title III, § 301(a), Oct. 30, 1998, 112 Stat. 2978; Pub.L. 109-162, Title XI, § 1177(a)(1), (2), Jan. 5, 2006, 119 Stat. 3125; Pub.L. 109-248, Title II, §§ 206(a)(1), 207(2), July 27, 2006, 120 Stat. 613, 615; Pub.L. 110-161, Div. E, Title V, § 554, Dec. 26, 2007, 121 Stat. 2082.)