APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. LUIS ALFREDO MOREIRA BRAVO, Defendant.	)	Case No. 3:20-cr-00087-SMR-SBJ-1 ORDER

Defendant Luis Moreira-Bravo is charged with one count of transportation of a minor with intent to engage in criminal sexual activity, in violation of 18 U.S.C. § 2423(a). He requests the Court issue a pre-trial ruling to specify the elements of 18 U.S.C. § 2423(a) so he can properly evaluate his case and prepare his defense. [ECF No. 28]. Defendant's position is the Government must prove his knowledge of the victim's age. For support, he relies on the Supreme Court's recent decision in *Rehaif v. United States,* 139 S. Ct. 2191, 2200 (2019), in which the Court held that "in a prosecution under 18 U.S.C. § 922(g) and § 924(a)(2), the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm." The Government disputes this interpretation, arguing that existing case law is dispositive and *Rehaif* pertains to an entirely different statute. The Government asks the Court to instruct the jury that knowledge of a victim's age is not an element it must prove under § 2423(a).

Transporting a minor in interstate commerce with intent to engage in criminal activity is defined as:

> 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.

18 U.S.C. § 2423(a) (emphasis added).

Defendant argues that, post-*Rehaif*, the Court should instruct the jury that the "knowingly" language in § 2423(a) must be applied to both "transport an individual" and "who has not attained the age of 18 years."[1] Defendant claims his interpretation is correct because *Rehaif* held that knowledge of a specific status—possession of a firearm by a prohibited person—was an element that the Government had to prove under the statute at issue in that case. *Rehaif*, 139 S. Ct. at 2195 (analyzing 18 U.S.C. § 922(g) which prohibits possession of firearms by individuals with certain specified statuses). Defendant claims that the same logic should apply to his case. He contends the Government must prove his knowledge of the minority of the victim because, under § 2443(a), it is that specific status that made his conduct a criminal act.

[1] Defendant's argument that the statute requires knowledge of the victim's age also implicates the second clause of § 2423(a), which requires that the transportation of a minor in interstate commerce be done with the "intent that the individual engage . . . in any sexual activity for which any person can be charged with a criminal offense." The alleged criminal sexual activity at issue here is third degree criminal sexual conduct under Minnesota law, which provides:

> A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists:
>
> . . .
>
> (b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant . . . .

Minn. Stat. § 609.344.

The Government disputes Defendant's interpretation arguing that *Rehaif* and an earlier case, *Flores-Figueroa v. United States*, 556 U.S. 646 (2009), applied the knowledge requirement of criminal statutes in different contexts. Enforcement of § 2423(a) involves different considerations than the laws at issue in *Rehaif* and *Flores-Figueroa*, according to the Government. Although this issue has not been addressed by the United States Court of Appeals for the Eighth Circuit, the Government points out that when § 2423(a) has been addressed in other circuits, all have concluded that the scienter does not apply to a victim's age. *See, e.g., United States v. Tavares*, 705 F.3d 4, 19–20 (1st Cir. 2013); *United States v. Daniels*, 653 F.3d 399, 410 (6th Cir. 2011); *United States v. Cox*, 577 F.3d 833, 837–38 (7th Cir. 2009); *United States v. Jones*, 471 F.3d 535, 539 (4th Cir. 2006) (noting that Congress amended § 2423 nine times between 1978 and 2006 without adding requirement for government to prove defendant's knowledge of the victim's age). Following the *Rehaif* decision, the Third Circuit similarly declined to apply the knowledge requirement to the victim's age. *United States v. Tyson*, 947 F.3d 139, 144 (3d Cir. 2020) (concluding that "Congress did not intend to require knowledge of a victim's age for a conviction under § 2423(a).").

Defendant acknowledges this persuasive authority but contends that most of those cases were decided before *Rehaif*. He instead directs the Court to *United States v. Shim*, 584 F.3d 394, 395–96 (2d Cir. 2009) in support of his interpretation. The court in *Shim* found that "knowingly" contained in 18 U.S.C. § 2421 modified the subsequent language in that statute.[2]

[2] *Shim* involved a defendant accused of transporting women for the purposes of prostitution. The statute in that case provides:

> Whoever *knowingly* transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal

Defendant points out the language in § 2421 mirrors the language in § 2423(a) with the omission of the "who has not attained the age of 18 years" clause. Therefore, he urges the Court to adopt the construction in *Shim* and apply the knowledge requirement to all the subsequent language in § 2423, including the victim's age.

The Court finds that although *Rehaif* has unsettled the law regarding scienter in many criminal statutes, it is not persuaded that *Rehaif*'s reasoning should be applied to § 2423(a). Persuasive authority and the specific nature of the conduct in the statute favor the position taken by the Government.

Two points inform the Court's conclusion. First, there are relevant distinctions between § 2423(a) and the analogous statutes advanced by Defendant. The statute at issue in *Rehaif* and § 2423(a) differ in an important way—the possessor of the prohibited status. The prohibited status in *Rehaif* was the status of the *defendant*. *See Rehaif*, 139 S. Ct. at 2200 ("[T]he Government must prove . . . that he knew he belonged to the relevant category of persons barred from possessing a firearm."). Under § 2423(a), the prohibited status is the status of the *victim*. Requiring the Government to prove a defendant had knowledge about another person's status, absent congressional intent to the contrary, would be inconsistent with "the purpose of § 2423(a) . . . mak[ing] a victim's underage status an aggravating factor in order to provide minors with special protection-not to make the provision protecting minors more difficult to prove than its more general counterpart in § 2421." *United States v. Washington*, 743 F.3d 938, 943 (4th Cir. 2014). To that end, Defendant's comparison to *Shim* is not apropos because there was no prohibited status

> offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.

18 U.S.C. 2421(a) (emphasis added).

at issue in that case. Indeed, a person can be convicted for "knowingly transport[ing] *any* individual . . . ." 18 U.S.C. § 2421(a). The scienter element only applies to the act of transport, not the specific status of an individual.

Finally, laws intended to protect "children from sexual offenses have long been considered exempt from the general scienter presumption." *Tyson*, 947 F.3d at 147 (citing *Morissette v. United States*, 342 U.S. 246, 251 n. 8 (1952)). The presumption against scienter "is consistent with congressional intent that minors need special protection against sexual exploitation." *Cox*, 577 F.3d at 837. As the Sixth Circuit held when considering the same challenge to § 2423(a), "this context justifies requiring a defendant—who would presumably know he is treading close to the line in transporting a young person to engage in illicit sexual activity—to bear the risk that the person transported is underage." *Daniels*, 653 F.3d at 410.

Accordingly, the Court will instruct the jury that Defendant was not required to know the victim was under the age of 18, nor that he intended to engage in sexual activity he knew to be unlawful, to convict under 18 U.S.C. § 2423(a).

IT IS SO ORDERED.

Dated this 20th day of April, 2021.

Stephanie M. Rose

STEPHANIE M. ROSE, JUDGE
UNITED STATES DISTRICT COURT

AO 245B (Rev. 09/19) Judgment in a Criminal Case
v1 Sheet 1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA
v.
Luis Alfredo Moreira Bravo

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:20-CR-00087-001

USM Number: 08435-509

Diane Z. Helphrey
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) One of the Indictment filed on September 9, 2020.

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 2423(a)	Transportation of Minor	05/06/2020	One

☐ See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 8 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)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must 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 must notify the court and United States attorney of material changes in economic circumstances.

October 4, 2021
Date of Imposition of Judgment

Signature of Judge

Stephanie M. Rose, U.S. District Judge
Name of Judge Title of Judge

October 4, 2021
Date

sent to client 10/6/21

DEFENDANT: Luis Alfredo Moreira Bravo
CASE NUMBER: 3:20-CR-00087-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

120 months as to Count One of the Indictment filed on September 9, 2020.

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

That the defendant be placed at FCI Sandstone if commensurate with his security and classification needs. If the defendant does not qualify for FCI Sandstone, the Court recommends that he be placed as close to Minnesota as possible.

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

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

☐ at _____ ☐ a m. ☐ p m. 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.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Luis Alfredo Moreira Bravo
CASE NUMBER: 3:20-CR-00087-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Five years as to Count One of the Indictment filed on September 9, 2020.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☑ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☑ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Luis Alfredo Moreira Bravo
CASE NUMBER: 3:20-CR-00087-001

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Luis Alfredo Moreira Bravo
CASE NUMBER: 3:20-CR-00087-001

SPECIAL CONDITIONS OF SUPERVISION

You must participate and follow the rules of a sex offense-specific treatment program, as directed by the U.S. Probation Officer. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You must contribute to the costs of services rendered (co- payment) based on ability to pay or availability of third-party payment. Sex offense-specific treatment shall be conducted by therapists approved by the U.S. Probation Office, who shall release all reports to the U.S. Probation Office.

You must submit to periodic polygraph testing, as directed by the U.S. Probation Office, to ensure that you are in compliance with the requirements of your supervision or treatment program. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment. Polygraph testing will be conducted by polygraph examiners approved by the U.S. Probation Office, who will release all reports to the U.S. Probation Office. The results of polygraph examinations will not be used for the purpose of revocation of supervised release or probation. As used in this paragraph, "the results" that will not be used in a revocation hearing are the polygraph examiner's ultimate opinions or findings regarding whether deception or a significant response has been detected during the examination. Any statements made by you during the polygraph examination during pre-examination or post-examination interview(s) may be used in any manner, including to generate separate leads or investigations, at a revocation hearing. Failure to answer questions during the polygraph examination may be grounds for revocation, unless you choose not to answer any questions perceived or deemed incriminating, which may then be referred to the Court for resolution.

You must not have any direct contact (personal, electronic, mail, or otherwise) with any child you know or reasonably should know to be under the age of 18, including in employment, without the prior approval of the U.S. Probation Officer. If contact is approved, you must comply with any conditions or limitations on this contact, as set forth by the U.S. Probation Office. Any unapproved direct contact must be reported to the U.S. Probation Office within 24 hours. Direct contact does not include incidental contact during ordinary daily activities in public places.

You must not contact the victim, nor the victim's family without prior permission from the U.S. Probation Office.

You must not view or possess any "visual depiction" (as defined in 18 U.S.C. § 2256), including any photograph, artwork, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of "sexually explicit conduct" (as defined in 18 U.S.C. § 2256). You must not correspond with anyone in the business of providing such material or enter adult entertainment venues where sexually explicit conduct is the primary product(s) for purchase or viewing.

You must not access the internet or possess and/or use computers (as defined in 18 U.S.C. § 1030(e)(1)), internet capable devices, cellular telephones, and other electronic communications or data storage devices or media without the prior approval of the U.S. Probation Office. If computer or internet use for employment is approved by the U.S. Probation Office, you must permit third party disclosure to any employer or potential employer concerning any computer/internet related restrictions that are imposed upon you.

If approved by the U.S. Probation Office to use or possess computers (as defined in 18 U.S.C. § 1030(e)(1)), internet capable devices, cellular telephones, and other electronic communications or data storage devices or media, you must submit your devices to unannounced examinations/searches, and possible removal for a more thorough inspection. You must allow the installation of monitoring hardware and software on such equipment, abide by and cooperate in supplemental conditions of monitoring, and pay the costs associated with this service, as directed by the U.S. Probation Office. You must notify third parties who use these devices that the devices are subject to monitoring and/or unannounced examinations.

You must comply with all sex offender laws for the state in which you reside and must register with the local sheriff's office within the applicable time frame.

DEFENDANT: Luis Alfredo Moreira Bravo
CASE NUMBER: 3:20-CR-00087-001

SPECIAL CONDITIONS OF SUPERVISION

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by the U.S. Probation Office. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Luis Alfredo Moreira Bravo
CASE NUMBER: 3:20-CR-00087-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

☐ Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 100.00	$0.00	$ 0.00	$ 0.00	$ 0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must 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 nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
TOTALS		$0.00	$0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine 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 Sheet 6 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 requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Luis Alfredo Moreira Bravo
CASE NUMBER: 3:20-CR-00087-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____, or
☑ in accordance ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.
While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All crimnal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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 cost(s):

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:

an Apple iPhone 7, model A1660, as outlined in the Preliminary Order of Forfeiture filed on July 30, 2021.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

United States Court of Appeals
For the Eighth Circuit

No. 21-3355

United States of America

Plaintiff - Appellee

v.

Luis Alfredo Moreira-Bravo

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Eastern

Submitted: June 15, 2022
Filed: December 27, 2022

Before GRUENDER, BENTON, and GRASZ, Circuit Judges.

GRUENDER, Circuit Judge.

Luis Alfredo Moreira-Bravo pleaded guilty to transporting a minor with intent to engage in criminal sexual activity in violation of 18 U.S.C. § 2423(a) after the district court[1] denied his motion *in limine*. He appeals that denial, and we affirm.

[1]The Honorable Stephanie M. Rose, Chief Judge, United States District Court for the Southern District of Iowa.

I.

In May 2020, twenty-six-year-old Moreira-Bravo drove from Minnesota to Iowa to meet with fourteen-year-old R.M. Moreira-Bravo and R.M. had sex in Moreira-Bravo's car, drove to Minnesota, and had sex again. R.M. never told Moreira-Bravo that she was under eighteen. She instead told him that she was at least nineteen years old. On May 7, officers observed Moreira-Bravo and R.M. together and arrested Moreira-Bravo. When questioned, he claimed that he believed R.M. was nineteen years old.

Moreira-Bravo was indicted for transporting a minor with intent to engage in criminal sexual activity under 18 U.S.C. § 2423(a). He filed a motion *in limine* asking the district court to instruct the jury that § 2423(a) required the Government to prove that (1) he knew R.M. was underage and (2) he intended the unlawful nature of the sexual activity. The district court denied the motion. Moreira-Bravo conditionally pleaded guilty while reserving his right to appeal the denial of his motion *in limine*. *See* Fed. R. Crim. P. 11(a)(2). In his plea agreement, Moreira-Bravo stipulated that he transported R.M. from Iowa to Minnesota intending to engage in sexual activity with her, that they engaged in sexual activity upon arrival in Minnesota, and that he was more than 120 months older than fourteen-year-old R.M. at the time. To satisfy the § 2423(a) element of "intent that the [transported] individual engage in . . . sexual activity for which any person can be charged with a criminal offense," the agreement named the Minnesota state offense of criminal sexual conduct in the third degree, which at the time criminalized intercourse with a victim between thirteen and sixteen years old by a person more than twenty-four months older. *See* Minn. Stat. § 609.344, subd. 1(b) (2019), *amended by* Minn. Stat. § 609.344, subd. 1a(b) (2021). Mistake of age was no defense to a violation of section 609.344 if the defendant was more than 120 months older than the victim. *Id.*

II.

"We review questions of statutory interpretation *de novo*." *United States v. Schostag*, 895 F.3d 1025, 1027 (8th Cir. 2018). Section 2423(a) states:

> 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.

This case concerns the two *mens rea* requirements: "knowingly" and "with intent that." Moreira-Bravo argues that § 2423(a) requires proof that he both (1) knew R.M. had not attained the age of eighteen and (2) intended the unlawfulness of the sexual activity. The district court construed § 2423(a) to require neither. We agree with the district court.

A.

Moreira-Bravo first argues that § 2423(a) requires knowledge of the victim's underage status. We follow the nine other circuits to address this question and hold that it does not. *See United States v. Tavares*, 705 F.3d 4, 19-20 (1st Cir. 2013); *United States v. Griffith*, 284 F.3d 338, 350-51 (2d Cir. 2002); *United States v. Tyson*, 947 F.3d 139, 144 (3d Cir. 2020); *United States v. Washington*, 743 F.3d 938, 943 (4th Cir. 2014); *United States v. Daniels*, 653 F.3d 399, 410 (6th Cir. 2011); *United States v. Cox*, 577 F.3d 833, 838 (7th Cir. 2009); *United States v. Taylor*, 239 F.3d 994, 997 (9th Cir. 2001); *United States v. Lacy*, 904 F.3d 889, 898 (10th Cir. 2018); *United States v. Morgan*, 45 F.4th 192, 209 (D.C. Cir. 2022), *cert. denied*, --- U.S. ---, 2022 WL 17408288 (Dec. 5, 2022); *cf. United States v. Daniels*, 685 F.3d 1237 (11th Cir. 2012) (per curiam) (adopting the reasoning of other circuits regarding § 2423(a) to find that the *mens rea* did not apply to the age requirement in 18 U.S.C. § 2422(b)).

Moreira-Bravo invokes two presumptions of statutory construction found in *Flores-Figueroa v. United States*, 556 U.S. 646 (2009), and *Rehaif v. United States*, 588 U.S. ---, 139 S. Ct. 2191 (2019). *Flores-Figueroa* established the text-based presumption that the adverbial *mens rea* "knowingly" applies to all subsequently listed elements (the "all-subsequent-elements presumption"). *See* 556 U.S. at 650. *Rehaif* appealed to the longstanding presumption that a *mens rea* applies to every element that separates criminal from innocent conduct (the "otherwise-innocent-conduct presumption"). *See* 139 S. Ct. at 2196-97. Under these presumptions, Moreira-Bravo argues, the *mens rea* "knowingly" applies to the age requirement because it is a subsequently listed element that separates innocent from criminal conduct. We disagree.

1.

"[W]e begin with the statute's plain language," *United States v. Raiburn*, 20 F.4th 416, 422 (8th Cir. 2021), giving "words . . . the meaning that proper grammar and usage would assign them," *Nielsen v. Preap*, 536 U.S. ---, 139 S. Ct. 954, 965 (2019) (internal quotation marks and citations omitted). Prior to *Flores-Figueroa*, we noted that "qualifying words and phrases . . . apply only to the words or phrases immediately preceding or following them." *See United States v. Mendoza-Gonzales*, 520 F.3d 912, 915 (8th Cir. 2008) (citing 2A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutory Construction* § 47:33 (7th ed. 2007)), *cert. granted, judgment vacated,* 556 U.S. 1232 (2009), *and abrogated by Flores-Figueroa*, 556 U.S. 646. Under this approach, "knowingly" would modify only the verb "transports," and not the subsequent elements. But in ordinary usage, "a mental state adverb can modify some or all of the remaining words in a sentence." *United States v. Figueroa*, 165 F.3d 111, 115 (2d Cir. 1998). For example, "if a bank official says, 'Smith knowingly transferred funds to his brother's account,' we would normally understand the bank official's statement as telling us that Smith knew the account was his brother's." *Flores-Figueroa*, 556 U.S. at 650. Or the adverb might attach to only part of the ensuing phrase, as in the sentence, "'[t]he mugger knowingly assaulted two people in the park—an employee of company X and a

jogger from town Y.' A person hearing this sentence would not likely assume that the mugger knew about the first victim's employer or the second victim's hometown." *Id.* at 659 (Alito, J., concurring). And the sentence, "Ted knowingly stole expensive toys from a toy store that was on the verge of bankruptcy," indicates that Ted knew he stole toys, knew they were expensive, and knew they came from the toy store. But whether Ted knew about the bankruptcy is ambiguous. Thus, in some statutory phrases that use the word "knowingly," "neither grammar nor punctuation resolves the question of how much knowledge Congress intended to be sufficient for a conviction." *Figueroa*, 165 F.3d 111, 115; *see also Liparota v. United States*, 471 U.S. 419, 425 (1985) (quoting W. LaFave & A. Scott, Criminal Law § 27 (1972)) ("[I]t is not at all clear how far down the sentence the word 'knowingly' is intended to travel.").

The all-subsequent-elements presumption helps resolve this ambiguity. In *Flores-Figueroa*, the Supreme Court interpreted 18 U.S.C. § 1028A(a)(1), which penalizes the offender who "knowingly . . . uses . . . a means of identification . . . of another person." The statute's similar syntax to § 2423(a) is apparent. *Compare* § 1028A(a)(1) (punishing an offender who "knowingly [(adverb)] . . . uses [(verb)] . . . a means of identification [(direct object)] . . . of another person" (modifier of direct object)), *with* § 2423(a) (punishing the offender who "knowingly [(adverb)] transports [(verb)] an individual [(direct object)] who has not attained the age of 18 years" (modifier of direct object)). Faced with § 1028A(a)(1), the government claimed it did not need to prove that the defendant knew the identification he used belonged to "another person." *Flores-Figueroa*, 556 U.S. at 648. The Court rejected this argument because "[a]s a matter of ordinary English grammar, it seems natural to read the statute's word 'knowingly' as applying to all the subsequently listed elements of the crime." *Id.* at 650. *Flores-Figueroa* now stands for a presumption that the *mens rea* "knowingly" applies to all subsequently listed elements in a statute. *See, e.g., United States v. Bruguier*, 735 F.3d 754, 758 (8th Cir. 2013) (en banc).

But the all-subsequent-elements presumption is not a bright-line rule; it "can be rebutted where the 'context' or 'background circumstances' of a statute lead to a

different reading." *See Bruguier*, 735 F.3d at 761 (quoting *Flores-Figueroa*, 556 U.S. at 652). Justice Alito, concurring in *Flores-Figueroa*, identified § 2423(a) as an "example" of a statute where "context may well rebut th[e all-subsequent-elements] presumption." 556 U.S. at 660. We conclude that in § 2423(a), context does rebut the presumption.

a.

Congress codified § 2423(a) in the context of a longstanding, near-universal tradition of strict liability as to the victim's age in child sex crimes. As the Court in *Flores-Figueroa* recognized, "sex crimes involving minors do not ordinarily require that a perpetrator know that his victim is a minor." 556 U.S. at 653.

At common law, the crime of child abduction was a strict-liability offense as to the victim's age. *See* Oliver Wendell Holmes, Jr., *The Common Law* 58-59 (1881). The classic statement of this rule came in *Regina v. Prince*: "The legislature has enacted that if anyone does this wrong act he does it at the risk of the girl turning out to be under sixteen. This opinion gives full scope to the doctrine of mens rea." (1875) 13 Cox C.C. 138 (Eng.).

Early American courts applied *Prince* to hold statutory rape a strict-liability crime as to the child's age. *See, e.g.*, Matthew T. Fricker & Kelly Gilchrist, United States v. Nofziger *and the Revision of 18 U.S.C. § 207: The Need for a New Approach to the Mens Rea Requirements of Federal Criminal Law*, 65 Notre Dame L. Rev. 803, 815 & n.58 (1990) (collecting cases); *cf.* Francis Bowes Sayre, *Public Welfare Offenses*, 33 Colum. L. Rev. 55, 73 n.66 (1933) (collecting cases in which reasonable mistake as to the victim's age was no defense to child sex crimes). The Supreme Court acknowledged this approach to *mens rea* for child sex crimes in *Morissette v. United States*, 342 U.S. 246 (1952), noting that the common law contained exceptions to Blackstone's requirement that criminals have a "vicious will," *id.* at 251, including "sex offenses, such as rape, in which the victim's actual

age was determinative despite defendant's reasonable belief that the girl had reached [the] age of consent," *id.* at 251 n.8.

This passage from *Morissette* played a key role in *Bruguier*, where we found that a statute making it a crime "knowingly" to have sex with an incapacitated person required knowledge of the victim's incapacitated status. *Bruguier*, 735 F.3d at 757, 763; *see* 18 U.S.C. § 2242(2)(A). The dissent cited *Morissette* to argue that "the victim's status rather than the defendant's knowledge is determinative." *Bruguier*, 735 F.3d at 777 (Murphy, J., concurring in part and dissenting in part). But the concurrence identified the difference between age and other statuses under the common-law tradition: "*Morissette* actually explains that 'sex offenses, such as rape, in which the victim's *actual age*'—not status—'was determinative' are one of the '*few* exceptions' to the mens rea requirement . . . ." *Id.* at 772 (Riley, C.J., concurring) (quoting *Morissette*, 342 U.S. at 251-52 & n.8). Though *Bruguier* may support applying a *mens rea* to some status elements in sex crimes, it does not disturb the common-law treatment of the victim's age in child sex crimes.

Statutory rape was still almost universally a strict-liability crime as to the victim's age when § 2423(a)'s current language was adopted in 1998, *see* Pub. L. No. 105-314, § 103, 112 Stat. 2974, 2976 (1998). In 2003, twenty-nine states and the District of Columbia treated statutory rape as a strict-liability crime as to the child's age in all circumstances, and eighteen states did so in at least some circumstances. Catherine L. Carpenter, *On Statutory Rape, Strict Liability, and the Public Welfare Offense Model*, 53 Am. U. L. Rev. 313, 385-91 (2003) (surveying state criminal statutes). Only three states had abandoned strict-liability statutory rape. *Id.*

If any crime "involve[s] [a] special context[]," it is § 2423(a). *See Flores-Figueroa*, 556 U.S. at 652. Congress enacted the current version of § 2423(a) against the longstanding, near-universal tradition of making defendants bear the risk that sexual participants might be underage. When Congress employs "terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it

presumably knows and adopts the cluster of ideas that were attached to each borrowed word . . . and the meaning its use will convey to the judicial mind." *Morissette*, 342 U.S. at 263. Given the centuries of strict-liability age elements in child sex crimes, we are convinced that Congress meant § 2423(a) to have a strict-liability age element as well.

b.

Another aspect of § 2423(a)'s context provides both further support for our conclusion and a potential limiting principle. Section 2423(a) is not just a child sex crime, but one in which the defendant has an opportunity to observe the victim. In *United States v. X-Citement Video, Inc.*, the Court held that a statute prohibiting "knowingly" transporting child pornography under 18 U.S.C. § 2252 required proof that the actor knew the victims were underage. 513 U.S. 64, 65-66 (1994). The Court explained that it was comfortable departing from the common law's usual treatment of child sex offenses because "[t]he opportunity for reasonable mistake as to age increases significantly once the victim is reduced to a visual depiction . . . ." *Id.* at 72 n.2. Conversely, in the *production* of child pornography, criminalized at 18 U.S.C. § 2251, like in statutory rape, "the perpetrator confronts the underage victim personally and may reasonably be required to ascertain that victim's age." *See id.* Thus, the Court implied that knowledge of the victim's age was not required under § 2251, *see id.* at 76 n.5, and we subsequently adopted that interpretation, *see United States v. Wilson*, 565 F.3d 1059, 1067-69 (8th Cir. 2009) ("Producers of child pornography, unlike distributors and downstream consumers, are more akin to statutory rapists who are not entitled to any *mens rea* safeguards.").

In another child-sex-crime statute, Congress provided a *mens rea* that varies based on whether the defendant could observe the victim. *See* 18 U.S.C. § 1591(a)-(c); *United States v. Koech*, 992 F.3d 686, 688 (8th Cir. 2021). Section 1591(a) criminalizes sex trafficking where the defendant "know[s]" or acts "in reckless disregard of the fact . . . that the [victim] has not attained the age of 18 years and will be caused to engage in a commercial sex act." But § 1591(c) provides that when

"the defendant had a reasonable opportunity to observe the [victim] . . . the Government need not prove that the defendant knew, or recklessly disregarded the fact, . . . that the [victim] had not attained the age of 18 years." In § 1591, Congress relied on the defendant's opportunity to observe his victim to justify strict liability as to the victim's age.

Like production of child pornography under § 2251 and certain forms of sex trafficking under § 1591(a) but unlike transportation of child pornography under § 2252, transportation of a minor under § 2423(a) gives the defendant a reasonable opportunity to observe his victim. Someone who "knowingly transports" an individual is typically in that person's presence during at least part of the transportation, as Moreira-Bravo was here. *See, e.g.*, *Tavares*, 705 F.3d at 11-12 (indicating that the defendant charged with violating § 2423(a) was in the transported victim's presence); *Griffith*, 284 F.3d at 342 (same); *Tyson*, 947 F.3d at 141 (same); *Washington*, 743 F.3d at 940 (same); *Daniels*, 653 F.3d at 405 (same); *Cox*, 577 F.3d at 834 (same); *Taylor*, 239 F.3d at 996 (same). It makes sense, then, that Congress let § 2423(a) defendants bear the risk of their victim being underage.

c.

Finally, § 2423(a)'s statutory context suggests the same result. Section 2423(b)-(d) criminalizes acts predicated on "illicit sexual conduct," which is defined in § 2423(f)(2) to include, among other things, "any commercial sex act . . . with a person under 18 years of age." Section 2423(g) provides an affirmative defense for prosecutions based on that form of illicit sexual conduct if the defendant "establish[es] 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." "[W]hen Congress includes particular language in one section of a statute but omits it in another—let alone in the very next provision—this Court presumes that Congress intended a difference in meaning." *Loughrin v. United States*, 573 U.S. 351, 358 (2014) (internal quotation marks and brackets omitted). Congress explicitly provided a mistake-of-age defense for

prosecutions arising under a different subsection of § 2423. Its choice not to do the same for § 2423(a) suggests congressional intent that mistake of age should not provide a defense to prosecutions for transporting a minor. This statutory context further supports what § 2423(a)'s text, read properly in light of its historical context, already demands: "knowingly" does not apply to the age requirement.

2.

Nor are we persuaded to depart from this reading by the otherwise-innocent-conduct presumption. *See Rehaif*, 139 S. Ct. at 2196-97. A *mens rea* requirement generally applies to each element that criminalizes otherwise innocent conduct. *Id.* According to Blackstone, an act committed "without a vicious will is no crime at all." 4 William Blackstone, Commentaries *21. The Supreme Court has applied Blackstone's principle to construe an explicit mental-state requirement as attaching to other elements to avoid a construction that "would require the defendant to have knowledge only of traditionally lawful conduct." *See, e.g.*, *Staples v. United States*, 511 U.S. 600, 605, 614-15, 617-18 (1994) (applying a "knowing" *mens rea* to an element because the defendant's actions were "entirely innocent" without that element). In other words, the otherwise-innocent-conduct presumption disfavors interpretations of criminal statutes that merely require proof of a "will," not a will that is "vicious." *See id.* at 617. Three cases are particularly relevant here.

In *X-Citement Video*, the Court interpreted 18 U.S.C. § 2252, which bans "knowingly transport[ing]" or "ship[ping]" and "knowingly receiv[ing] or distribut[ing]" visual depictions "if . . . the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct." *See* 513 U.S. at 68; § 2252(a)(1)(A), (2)(1)(A). The Court held that the defendant could not be guilty of violating § 2252 unless he knew that the victims were underage because underage status was "the crucial element separating legal innocence from wrongful conduct," *id.* at 72-73, 78.

In *Rehaif*, the Court addressed the interaction of two statutory provisions. 139 S. Ct. at 2194. 18 U.S.C. § 922(g) bars certain persons, including those illegally present in the United States, from possessing firearms. 18 U.S.C. § 924(a)(2) (2019) (amended 2022), penalizes anyone who "knowingly violates" § 922(g). The Court held that an unlawful alien does not knowingly violate § 922(g) if he knows he possesses a gun but does not know he is in the United States illegally. 139 S. Ct. at 2194. The defendant had to know his prohibited status because "the possession of a gun can be entirely innocent." *Id.* at 2194, 2197. The defendant's illegal presence was the element separating wrongful from innocent conduct, so the *mens rea* applied to it.

Finally, *Ruan v. United States* interpreted 21 U.S.C. § 841(a), which prohibits "[e]xcept as authorized . . . knowingly or intentionally . . . dispens[ing] a controlled substance." 597 U.S. ---, 142 S. Ct. 2370, 2374 (2022). The question was whether "knowingly" applied to the prefatory clause, "except as authorized." *Id.* at 2375. The Court relied on the otherwise-innocent-conduct presumption to hold that it did, because "a lack of authorization is often what separates wrongfulness from innocence." *Id.* at 2377.

In each of these cases, the disputed element (the performer's age in *X-Citement Video*, the prohibited status in *Rehaif*, and the lack of authorization in *Ruan*) separated criminal from innocent conduct, and the Court relied on this fact to hold that the *mens rea* requirement applied to that element.

Section 2423(a)'s age requirement, in contrast, does not separate wrongful from innocent conduct. Section 2421(a) criminalizes the exact same conduct as § 2423(a)—transporting an individual with intent that the individual engage in prostitution or unlawful sexual activity—without the age requirement. A person who does not know the victim's age and thus might not think himself criminally liable under § 2423(a) is not "innocent" because his conduct still violates § 2421(a). *See Rehaif*, 139 S. Ct. at 2197. Furthermore, the age requirement would not separate wrongful from innocent conduct even if § 2423(a) existed in a vacuum. Stripped of

its age requirement, § 2423(a) would criminalize transporting an individual across state lines "with the intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense." Under neither of these circumstances is the defendant innocent. Even under the sexual-activity prong of § 2423(a) (as opposed to the prostitution prong), the defendant still must intend that the victim engage in sexual activity that satisfies the elements of an underlying criminal offense, totally apart from the age of his transported victim. In other words, the victim's age does not separate criminal from innocent conduct because the defendant must always intend conduct constituting a separate crime. In this case, for example, Moreira-Bravo stipulated to intending sexual activity for which he would be liable under Minnesota's statutory rape law, *see* Minn. Stat. § 609.344, subd. 1a(b), totally apart from his guilt or innocence under § 2423(a) and its age requirement.

This case involves the added complication that the underlying criminal offense also happens to be a strict-liability crime as to the victim's age. *See* Minn. Stat. § 609.344, subd. 1a(b). But this coincidence is no reason to change our construction of § 2423(a). The victim's age does double duty in *this* case, allowing a plausible argument that the victim's age is the only thing separating criminal from innocent conduct. But that will not always be the case. There are many other types of "sexual activity for which any person can be charged with a criminal offense," § 2423(a), that do not involve a strict-liability age element and consequently require a "vicious will," *Morissette*, 342 U.S. at 251. If, for example, a defendant transports an underage victim across state lines with the intent of forcibly raping the victim, the defendant's conduct is, to say the least, not "innocent" regardless of the victim's age. *See Rehaif*, 139 S. Ct. at 2197. And other sexual crimes that do not rely on the participants' ages are legion.[2] We must interpret the age requirement in § 2423(a)

[2]A person can also be charged with a crime for, *inter alia*, incest, *see, e.g.*, Ind. Code. § 35-46-1-3 (2022), bestiality, *see, e.g.*, Cal. Penal Code § 286.5 (2022), adultery, *see, e.g.*, Fla. Stat. § 798.01 (2022), cohabitation, *see, e.g.*, Mich. Comp. Laws § 750.335 (2022), and fornication, *see, e.g.*, Miss. Code Ann. § 97-29-1 (2022), and could have been charged for sodomy when Congress enacted the current

without peeking at the elements of the underlying sexual offense that happened to form the predicate for Moreira-Bravo's conviction. Lacking such a peek, we cannot say that the age requirement itself separates criminal from innocent conduct—the "intent" requirement and the attendant underlying crime do that.

At oral argument, Moreira-Bravo distinguished our unanimous sister circuits using a flawed application of the otherwise-innocent-conduct presumption. Those cases, he correctly argued, arose under the prostitution prong of § 2423(a) instead of the sexual-activity prong. *But see Morgan*, 45 F.4th at 196, 208 (deciding in August 2022 that knowledge of the underage status of the victim was not required in a case arising under the sexual-activity prong of § 2423(a)). Because prostitution is always non-innocent, the victim's age did not separate criminal from innocent conduct in those cases. In contrast, Moreira-Bravo argues, his conduct would have been innocent had R.M. been over eighteen. Thus, her underage status *does* separate criminal from innocent conduct here, so we should require knowledge of it.

But Moreira-Bravo incorrectly assumes that all conduct falling under the sexual-activity prong relies on the victim's age for its criminality. As discussed above, that is far from true. Many sexual crimes have nothing to do with the participants' ages. Moreira-Bravo's logic encourages the oddly divergent result of requiring knowledge of the transported victim's age when a minor is transported to engage in statutory rape but not when the minor is transported to engage in any other criminal sexual activity. Like the D.C. Circuit, we decline to interpret a single piece of statutory language differently depending on the underlying facts of the case. *See id.* at 208 (concluding that it would be implausible to require knowledge of underage status when the underlying offense is criminal sexual activity but not when the underlying offense is prostitution).

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version of § 2423(a) in 1998, *see*, *e.g.*, Tex. Penal Code Ann. § 21.06 (1998). None of these crimes rely on the participants' age for their criminality.

In sum, the age of the victim does not separate criminal from innocent conduct in § 2423(a) because the other conduct in the statute—prostitution and unlawful sexual activity—is not innocent.

* * *

Neither the all-subsequent-elements presumption nor the otherwise-innocent-conduct presumption applies to § 2423(a), and the statute's context shows that Congress did not intend to require knowledge of the victim's age. The district court correctly held that the Government did not have to prove that Moreira-Bravo knew R.M. had "not attained the age of 18 years." *See* § 2423(a).

B.

Moreira-Bravo's next argument focuses on the latter portion of § 2423(a)—the requirement that the defendant act "with intent that the [transported] individual engage . . . in any sexual activity for which any person can be charged with a criminal offense." He argues that this language requires the Government to prove that he intended both that R.M. engage in sexual activity *and* that she engage in conduct that is *unlawful* as such. Moreira-Bravo again invokes the all-subsequent-elements presumption and the otherwise-innocent-conduct presumption, claiming that the phrase "with intent that" applies to the criminality element.

Unlike the word "knowingly," the phrase "with intent that" is not most naturally read as "applying to all the subsequently listed elements of the crime," at least as it appears in § 2423(a). *See Flores-Figueroa*, 556 U.S. at 650. By arguing that the defendant must not only intend the actions constituting the crime (i.e., sexual activity) but also some further result (i.e., that the sexual activity be unlawful), Moreira-Bravo essentially claims that § 2423(a) is a specific-intent crime. *Cf. United States v. Robertson*, 606 F.3d 943, 954 (8th Cir. 2010) (explaining that "specific intent is the intent to accomplish the precise criminal act that one is later charged with" (internal quotation marks and brackets omitted)). Specific-intent

crimes are crimes of "purpose," where the defendant "consciously desires th[e] result," in contrast to crimes of "knowledge," where the defendant does not necessarily desire the result even "if he is aware that that result is practically certain to follow." *Id.* Here, it would be strange for Congress to target actors who (1) intend that their victims engage in sexual activity and (2) intend that it results in lawbreaking yet fail to target actors who (1) intend that their victims engage in sexual activity but (2) merely know—or are even "practically certain"—that it involves lawbreaking. *See id.* Such a reading would create a marked imbalance between the proof required for convictions based on the prostitution prong (where intending the activity itself suffices) and the proof required for convictions based on other unlawful sexual activity. The two means of violating the statute are parallel; we do not think Congress singled out the second means—unlawful sexual activity—by restricting its scope to cover only those who fetishize lawbreaking. *Cf. United States v. Cacioppo*, 460 F.3d 1012, 1019 (8th Cir. 2006) ("Nothing in the statute's language, structure or history indicates to us that Congress meant to apply different mens rea standards to two different means of violating [18 U.S.C.] § 1027.").

Furthermore, Moreira-Bravo's interpretation "is in direct conflict with the 'common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally.'" *United States v. Hutzell*, 217 F.3d 966, 968 (8th Cir. 2000) (quoting *Barlow v. United States*, 32 U.S. (7 Pet.) 404, 411 (1833)) (reaffirming that a statute imposing penalties on those who "knowingly violate" 18 U.S.C. § 922(g) "does not require knowledge of the law nor an intent to violate it"). Although there is a "very limited exception to the general rule that ignorance of the law is no excuse," that exception applies only if the statute prohibits "activities that are not *per se* blameworthy" and the defendant's "lack of awareness of the prohibition was [not] objectively unreasonable." *Id.* Neither requirement is met here.

First, transportation of an underage person with intent that the victim engage in sexual activity is "*per se* blameworthy"—so much so that such conduct is traditionally punished as a strict-liability offense, as discussed above. *See id.* In

other words, not requiring proof of intent to violate the law does not risk the criminalization of "innocent" conduct. *See Rehaif*, 139 S. Ct. at 2197.

Second, a defendant who transports a young person with the intent that the victim engage in sexual activity cannot reasonably claim a lack of awareness of criminal laws restricting sexual activity, such as the Minnesota offense underlying Moreira-Bravo's conviction. *See, e.g.*, *Owens v. State*, 724 A.2d 43, 51 (Md. 1999) (explaining that sex "involves conscious activity which gives rise to circumstances that place a reasonable person on notice of potential illegality"); *Commonwealth v. Robinson*, 438 A.2d 964, 966 (Pa. 1981) ("[O]ne eighteen years of age or older who engages in sexual intercourse with a child below fourteen years of age does so at his own peril."); *State v. Haywood*, No. 78276, 2001 WL 664121 at *5 (Ohio Ct. App. 2001) (unpublished) ("American culture . . . is . . . rife with warnings against sexual conduct with children. . . . Any person contemplating sexual conduct with a child in this age range should be cautious—the existence of 'statutory rape' laws is hardly a secret."); *State v. Carlson*, 767 A.2d 421, 426-27 (N.H. 2001) ("[T]he defendant placed himself in risky circumstances, relying only on the victim's 'mature' behavior to substantiate her representation of her age."). Thus, sexual activity, especially when it involves a young person, is comparable to other conduct that gives defendants notice of strict regulation. *See, e.g.*, *Hutzell*, 217 F.3d at 969 (declining to require knowledge of unlawfulness where "[n]o one can reasonably claim . . . to be unaware of the current level of concern about domestic violence"); *United States v. Freed*, 401 U.S. 601, 609 (1971) (noting that "one would hardly be surprised to learn that possession of hand grenades is not an innocent act" where the law at issue was "a regulatory measure in the interest of the public safety"); *United States v. Int'l Mins. & Chem. Corp.*, 402 U.S. 558, 559, 561-62 (1971) (holding that a statute did not require knowledge of the regulated status of sulfuric acid); *United States v. Balint*, 258 U.S. 250, 254 (1922) (holding that the "person dealing in drugs" must "ascertain at his peril whether that which he sells comes within the inhibition of [a] statute" and is permissibly subject to criminal penalties despite his "ignorance" of a drug's illegality).

Section 2423(a) "does not signal an exception to the rule that ignorance of the law is no excuse." *See Int'l Mins.*, 402 U.S. at 562. Therefore, a § 2423(a) conviction predicated on intent to engage in unlawful sexual activity does not require proof of the defendant's intent or knowledge that such activity is unlawful. *See United States v. Goodwin*, 719 F.3d 857, 863 (8th Cir. 2013) (holding that evidence sufficiently supported a § 2423(a) conviction where the defendant intended that a seventeen-year-old engage in sexual activity in Texas—where the age of consent was seventeen—but where the victim was a minor under North Dakota law and a North Dakota jurisdictional statute enabled prosecution). The district court correctly held that the Government did not need to prove that Moreira-Bravo specifically intended R.M. to engage in sexual activity that was unlawful as such. It was required to prove only (1) that he intended R.M. to engage in sexual activity and (2) that the sexual activity was unlawful.

III.

For the foregoing reasons, we affirm the judgment of the district court.

GRASZ, Circuit Judge, dissenting.

It is fundamental that a statute is to be interpreted according to its plain language and, if necessary, by using rules of statutory construction. We do not typically depart from this course to find statutory meaning from tradition or by looking to common law to support counter-textual "special context." Yet the court today holds that when trying to convict a person of violating 18 U.S.C. § 2423(a) the government need not prove the defendant knew the person transported was under eighteen years old. Because I believe both the plain language of the statute and well-established rules of statutory construction demand otherwise, I respectfully dissent.

Subsection (a) relevantly states:

> A person who *knowingly* transports an individual who has not attained the age of 18 years in interstate . . . commerce, . . . 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.

18 U.S.C. § 2423(a) (emphasis added).

This language is not ambiguous. "In ordinary English, where a transitive verb has an object, listeners in most contexts assume that an adverb (such as knowingly) that modifies the transitive verb tells the listener how the subject performed the entire action, including the object as set forth in the sentence." *Flores-Figueroa v. United States*, 556 U.S. 646, 650 (2009). Or as Justice Scalia explained, "'[k]nowingly' is not limited to the statute's verb[]," and "once it is understood to modify the object of [the] verb[], there is no reason to believe it does not extend to the phrase which limits that object[.]" *Id.* at 657 (Scalia, J., concurring in part and concurring in the judgment). Applying the grammatical rule here, "knowingly" modifies both "transports" and "an individual who has not attained the age of 18 years[.]" 18 U.S.C. § 2423(a). Thus, in order to convict Moreira-Bravo, the government should have to prove he knew the person being transported was under eighteen. "Ordinary English usage supports this reading[.]" *Flores-Figueroa*, 556 U.S. at 657 (Scalia, J., concurring in part and concurring in the judgment). When the plain text is clear, our inquiry generally ends. *See id.*; *United States v. Boyster*, 436 F.3d 986, 990 (8th Cir. 2006).

The court, however, decides "context" requires an alternative interpretation of § 2423. *Ante*, at 6. I respectfully disagree. The Supreme Court in *Flores-Figueroa* did recognize "the inquiry into a sentence's meaning is a contextual one" and that a "special context" may in some circumstances overcome the plain meaning of the statute. 556 U.S. at 652. But the Court concluded "no special context" was present and, to the contrary, explained "[t]he manner in which the courts ordinarily interpret

criminal statutes is fully consistent with this ordinary English usage." *Id.*[3] "That is to say courts ordinarily read a phrase in a criminal statute that introduces the elements of a crime with the word 'knowingly' as applying that word to each element." *Id.* This should be true of the age element in § 2423(a).

In this vein, the Supreme Court has "read into criminal statutes . . . that contain no *mens rea* provision whatsoever" the *mens rea* deemed necessary to divide wrongful conduct from what is otherwise innocent conduct. *Ruan v. United States*, 142 S. Ct. 2370, 2377 (2022). This "is consistent with a basic principle that underlies the criminal law, namely, the importance of showing what Blackstone called 'a vicious will.'" *Rehaif v. United States*, 139 S. Ct. 2191, 2196 (quoting 4 W. Blackstone, Commentaries on the Laws of England 21 (1769)). "And when a statute is not silent as to *mens rea* but instead '*includes* a general scienter provision,' 'the presumption applies with equal or greater force' to the scope of that provision." *Ruan*, 142 S. Ct. at 2377 (quoting *Rehaif*, 139 S. Ct. at 2197).

The Supreme Court has applied the presumption of scienter even in situations when applying "knowingly" to an element was not "the most grammatical reading

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[3]The court accurately notes that in *Flores-Figueroa*, Justice Alito pointed to § 2423(a) as an example where "context *may* well rebut [the] presumption," 556 U.S. at 660 (Alito, J., concurring in part and concurring in the judgment) (emphasis added), "that the specified *mens rea* applies to all the elements of an offense[.]" *Id.* Justice Alito noted, "[t]he Courts of Appeals have uniformly held that a defendant need not know the victim's age to be guilty under this statute." *Id.* But this passing observational dicta from a concurrence, to which no other Justice joined, certainly does not bind us. This is particularly true because since *Flores-Figueroa* the Supreme Court has, over Justice Alito's objection, twice applied the presumption of scienter to criminal statutes even when the text is not clear Congress intended such a result. *See Ruan v. United States*, 142 S. Ct. 2370, 2382–83 (2022) (Alito, J., concurring in the judgment) (expressing disagreement with the Court's application of the *mens rea* canon when interpreting 21 U.S.C. § 841(a)); *Rehaif v. United States*, 139 S. Ct. 2191, 2201, 2213 (2019) (Alito, J., dissenting) ("The majority's interpretation of [18 U.S.C.] § 922(g) is not required by the statutory text, and there is no reason to suppose that it represents what Congress intended.").

of the statute[.]" *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 70 (1994). The Court has recently held the presumption applied so as to interpret the *mens rea* listed in one statute to apply to a cross-referenced statute that did not have a *mens rea* in its text. *See Rehaif*, 139 S. Ct. at 2195–96. And just this year, the Supreme Court applied the presumption to an element that *preceded* the *mens rea* provided in the statute. *See Ruan*, 142 S. Ct. at 2381–82 (rejecting a grammar-based argument that since the clause in question preceded the *mens rea*, the *mens rea* could not modify the clause). These recent applications of the presumption of scienter to such less-than-obvious situations should make clear the propriety of its application here *in support* of the plain meaning of the text.

And in my view, § 2423(a) is not the kind of statute the Supreme Court has "held fall[s] outside the scope of ordinary scienter requirements." *Id.* at 2378. While it is true the presumption need not be applied "in cases involving statutory provisions that form part of a 'regulatory' or 'public welfare' program and carry only minor penalties," *Rehaif*, 139 S. Ct. at 2197, this statute does not fit that bill if for no other reason than the "harsh" penalties associated with it, *id.* (quoting *X-Citement Video*, 513 U.S. at 72). Even if § 2423(a) could be characterized as a "public welfare offense," the harsh penalty of imprisonment for "not less than 10 years or for *life*[,]" 18 U.S.C. § 2423(a) (emphasis added), disqualifies this crime from the "exception to the presumption in favor of scienter[.]" *Rehaif*, 139 S. Ct. at 2197; *accord United States v. Bruguier*, 735 F.3d 754, 761 (8th Cir. 2013) (en banc).

Another canon of construction supports interpreting § 2423 to mean the government must prove knowledge of the individual's age. "It is a 'familiar principle that ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.'" *Bruguier*, 735 F.3d at 761 (quoting *Skilling v. United States*, 561 U.S. 358, 410 (2010)). This means that even if § 2423(a) was ambiguous as to whether "knowingly" applies to the age of the individual being transported, we should resolve the question in Moreira-Bravo's favor. And such an interpretation is also consistent with another fundamental principle of law—notice. *See FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

The court is not swayed by these interpretative canons and instead focuses on other contextual clues which it believes reveal Congress did not intend "knowingly" to apply to the age requirement. First, the court focuses on its belief that "Congress codified § 2423(a) in the context of longstanding, near-universal tradition of strict liability as to the victim's age in child sex crimes." *Ante*, at 6. Given this backdrop, the court is "convinced that Congress meant § 2423(a) to have a strict-liability age element as well." *Id.* at 8.

I find this unpersuasive for several reasons. Most fundamentally, I do not believe this is a reason to ignore the plain text of the statute. Context may be reason to decline to apply the presumption of scienter when that presumption contradicts the plain meaning of the statutory text, but it should not be license to disregard the statute's plain meaning. *See Flores-Figueroa*, 556 U.S. at 657 (Scalia, J., concurring in part and concurring in the judgment) (refusing to join the Court's reliance on other considerations when the plain meaning of the statute answered the question).

Even putting this objection aside, I find the historical context less clear than the court does as it relates to § 2423(a)'s age requirement. While a majority of states have apparently treated statutory rape as a strict liability crime, many states have either treated it as a "true crime"—requiring the government prove the defendant had the *mens rea*—or at least allowed a mistake-of-age defense when the victim is close to the age of consent. *See* Catherine L. Carpenter, *On Statutory Rape, Strict Liability, and the Public Welfare Offense Model*, 53 Am. Univ. L. Rev. 313, 317–18, 385–91 (2003). "Indeed, in an attempt to distinguish the egregious felonious sexual activity from the non-egregious, many statutory schemes comprise complex, multi-layered age differential scenarios of victim and perpetrator." *Id.* at 340. "Many states also recognize that sexual activity between high school age peers may be common and not necessarily meant for the chilling and punitive reach of the criminal law." *Id.* at 340–41. My point in all this is simply that the picture is more complicated than the majority suggests. And thus, I believe there is insufficient evidence of the historical context to override the plain text of the statute.

The court also claims a contextual clue from its belief that "[s]ection 2423(a) is not just a child sex crime, but one in which the defendant has an opportunity to observe the victim." *Ante*, at 8. Relying on cases reviewing child pornography statutes, the court posits Moreira-Bravo's opportunity to observe the victim justifies departure from the typical *mens rea* requirement because someone who personally observes the victim is less likely to mistakenly believe the victim is of age. *Id.* at 8–9. This broad reading of caselaw is unavailing in part because § 2423(a) does not include such observation of the victim as an element of the crime. While most defendants charged with "knowingly transport[ing]" an individual in violation of § 2423(a) may very well have personally observed the victim, nothing in the statute requires this to be true.

The court also reasons § 2423's statutory context suggests Congress meant to let a defendant bear the risk of the victim being underage. *Ante*, at 9–10. The court explains that because Congress provided a defendant charged with engaging in "illicit sexual conduct" under subsections (b)–(d) with an explicit mistake-of-age defense, but did not include such a defense to subsection (a), it suggests Congress found mistake of age irrelevant to the offense. *Id.* I disagree. The more likely explanation for the absence of a mistake-of-age defense in subsection (a) is that Congress did not believe the defense was necessary because, unlike the crimes specified in subsections (b)–(d), subsection (a) plainly requires the government prove a defendant's knowledge as part of its case in chief. *See* 18 U.S.C. § 2423.

In the end, none of the contextual clues utilized by the court convinces me that Congress meant something different than what the plain reading of the text dictates and interpretative canons reinforce—the government must prove Moreira-Bravo knew the individual transported was not yet eighteen years old. I therefore respectfully dissent.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SENT TO CLIENT
Dec 27 2022
by: kelly jensen

(sent to client's father)

No: 21-3355

United States of America

Plaintiff - Appellee

v.

Luis Alfredo Moreira Bravo

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Eastern
(3:20-cr-00087-SMR-1)

JUDGMENT

Before GRUENDER, BENTON and GRASZ, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

December 27, 2022

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Adopted April 15, 2015
Effective August 1, 2015

Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.

V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States,* 513 U.S. 5 (1994) (per curiam); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file pro se a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California,* 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing pro se a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petion for writ of certiorari.

UNITED STATES COURT OF APPEALS
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(3:20-cr-00087-SMR-1)

ORDER

The petition for rehearing *en banc* is denied. The petition for rehearing by the panel is also denied.

Judges Kelly, Erickson and Grasz would grant the petition for rehearing *en banc*.

March 22, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans