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Article

**PROSECUTING DEMAND AS A CRIME OF HUMAN TRAFFICKING: THE EIGHTH CIRCUIT DECISION IN
UNITED STATES V. JUNGERS**

Samantha Healy Vardaman^{al} Christine Raino^{aa1}

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I.	Introduction	918
II.	The Role of Demand in Fostering the Prevalence of Sex Trafficking	921
III.	Prosecution of Sex Trafficking	928
IV.	Prosecuting Child Sex Trafficking: The Trafficking Victims Protection Act	936
V.	The Bonestroo and Jungers Appeals	938
	A. Motions for Judgment of Acquittal	939
	1. The Jungers District Court Decision	941
	2. The Bonestroo District Court Decision	941
	B. The Government's Appeal	942
VI.	The Eighth Circuit Decision in Jungers	944
	A. The Opinion	944
	B. Other Arguments Supporting the Eighth Circuit Decision	949
VII.	The Impact of the Eighth Circuit Opinion	952
	A. The Decisions Will Increase Prosecution of Buyers of Commercial Sex Acts with Children at the Federal and State Levels	952
	B. Prosecution of Demand Will Deter Buyers	955
	C. Prosecution of Child Pornography Will Deter Buyers	958
VIII.	Conclusion	961

***918 I. Introduction**

On February 14, 2011 and February 11, 2011, respectively, the U.S. Attorney's Office for the District of South Dakota filed separate charges against Ronald Bonestroo and Daron Lee Jungers for attempted commercial sex trafficking in violation of 18 U.S.C. §§ 1591 and 1594(a), the operable criminal laws for prosecuting federal sex trafficking violations under the Trafficking Victims Protection Act of 2000 (TVPA).¹ The complaints alleged the men had knowingly, in and affecting interstate commerce, attempted to recruit, entice and obtain a person who had not attained the age of 18 years, and knew that the person would be caused to engage in a commercial *919 sex act; all in violation of Title 18 United States Code, Sections 1591 and 1594(a).²

The facts of these cases are nearly identical to prior successfully charged cases in the Western District of Missouri, in which seven men pleaded guilty to attempting to buy sex with a minor through an Internet site—"attempting" because the child was actually a law enforcement officer.³ Operation Guardian Angel was the first law enforcement operation orchestrated to identify and arrest the buyers of sex with minors as a violation of the federal TVPA of 2000.⁴ The responses of six of the seven defendants, who submitted guilty pleas and received sentences of mandatory minimums of ten and fifteen years, validated anti-demand advocates' assertions that buyers of sex with minors commit the crime of sex trafficking and should be subjected to the same serious penalties of the federal TVPA that have been imposed on convicted human traffickers since the law's inception in 2000.⁵

*920 However, the South Dakota defendants, Bonestroo and Jungers, despite not contesting the facts presented in the indictment, did not plead guilty.⁶ Their cases proceeded to jury trials where they were convicted of attempted commercial sex trafficking a minor.⁷ Defense counsel in each case filed motions for acquittal based upon the inapplicability of the federal trafficking law to the actions of attempted buyers, and the district court granted the extraordinary motions.⁸ In its response, the government cited to several cases in which 18 U.S.C. § 1591 was used to prosecute a buyer, including *United States v. Mikoloyck*⁹ from the Western District of Missouri.¹⁰ But in *United States v. Jungers*, the court stated, "[t]he fact that the government has used § 1591 to charge customers, without being challenged for doing so, does not create convincing legal precedent."¹¹ The government filed a consolidated appeal from the two post-verdict orders granting motions for judgment of acquittal in the separate prosecutions in the Eighth Circuit Court of Appeals.¹² On January 7, 2013, the Eighth Circuit issued a decision reversing the district court and reinstating the convictions of Bonestroo and Jungers for violations of 18 U.S.C. §§ 1591 and 1594.¹³

*921 This Article will present the case that buyers and attempted buyers of commercial sex acts with minors—including prostitution, pornography, and sexual performance—engage in trafficking activities essential to the crime of trafficking. The Eighth Circuit decision in the Bonestroo and Jungers cases will greatly bolster the ability of prosecutors and law enforcement to combat and deter sex trafficking of minors in America. These decisions will, in turn, bring support to the enforcement of state human trafficking laws in twenty-four states¹⁴ that track the "obtains" language of 18 U.S.C. § 1591(a). Thus, the Eighth Circuit's ruling that interprets "whoever obtains a person knowing that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act"¹⁵ as including buyers of sex acts with a minor has dramatically strengthened the ability to combat demand under both federal and state law.

Part II of this Article discusses generally the role that demand plays in fostering the prevalence of sex trafficking today. Part III explains the legal efforts to combat sex trafficking and how those efforts have failed. Part IV examines the recent decision by the Eighth Circuit. Finally, Part V explains how this decision will strengthen the legal efforts to combat sex trafficking under both federal and state law.

II. The Role of Demand in Fostering the Prevalence of Sex Trafficking

In the market of sex trafficking, there are sellers, buyers, and products (victims).¹⁶ Buyers create demand and thereby drive the criminal business of sex trafficking.¹⁷ Demand is predominantly generated by men who seek to purchase sex or sexual entertainment. *922¹⁸ This buyer-driven demand causes sex trafficking to occur and dictates the type of "product" made

available in the market.¹⁹ Buyers' perceptions that younger victims are healthier drive a market for younger victims, leading to large numbers of minors exploited through prostitution.²⁰ According to the U.N. Protocol and the U.S. Trafficking Victims Protection Act of 2000, minors exploited through prostitution, pornography, or sexual performances are de facto sex trafficking victims, even without proof of force, fraud, or coercion.²¹

Research in several countries reveals that the people who buy sex acts with minors defy a single classification. In the Netherlands for instance, a sex addiction counselor described most buyers as "situational buyers."²² These buyers "are usually married (9 out of 10), in their late 30's to early 40's, have children, hold a good job, and have an average to high I.Q. They have difficulty in maintaining relationships and focus heavily on their work."²³ Further ***923** studies of male buyers of adult prostitution reinforce the lack of unique characteristics from the general population.²⁴ From childhood, buyers are encouraged by the increased normalization of commercial sex in society to glamorize such activities and to dehumanize the women and children exploited, even to the point of expressing aggression toward the victims, as depicted in violent video games and pornography.²⁵

Domestically, data on the number of men engaging or seeking to engage in commercial sex with trafficking victims (adults subject to force, fraud, or coercion, as well as minors) is lacking.²⁶ There are, however, statistics representing the amount of times victims are forced to engage in prostitution daily:

Children exploited through prostitution report they typically are given a quota by their trafficker/pimp of 10 to 15 buyers per night, though some service providers report girls having been sold to a many as ***924** 45 buyers in a night at peak demand times, such as during a sports event or convention.²⁷

These numbers are corroborated by trafficked women who report requirements of servicing up to ten men per day.²⁸ Law enforcement estimates were higher, with a majority reporting that women were required to engage in commercial sex with six to twenty or more men per day.²⁹ Another law enforcement agent reported that if you include other sexual activities in this tally, such as stripping, women essentially provide sex to fifty or more men a night.³⁰

The results of a study done in the state of Georgia provide an indication of the demand nationwide.³¹ The study included a covert scientific survey of 218 men responding to advertisements for paid sex with young females.³² Three escalated warnings were given to the callers seeking to buy sex with a "young" female, each warning providing further information that the female was in fact under eighteen years of age.³³ Forty-seven percent of the men were undeterred by this information and were prepared to follow through with engaging in commercial sex with a minor.³⁴ The research ***925** revealed that 7,200 men commit 8,700 commercial sex acts with juvenile girls each month in Georgia.³⁵ The numbers from the Georgia study indicate that 28,000 men pay for sex with minor girls each year in Georgia, and nearly 10,000 of them are repeat buyers.³⁶ Thirty-four percent of the men seeking to purchase sex with a minor were under the age of 30, 44% were 30 to 39, and 22% were 40 or over.³⁷ Forty-two percent of the buyers were located in the northern suburbs, an area populated heavily by white, middle class, married men.³⁸

The Georgia study further explains that 6% of these men actively and explicitly seek a girl under the age of eighteen.³⁹ In fact, a companion study designed to count adolescent girls that were encountered through several sources—street activity prostitution (in four prostitution zones), Internet service postings on Craigslist, and escort services—showed that Internet posts on Craigslist advertising the sale of sex with "young girls," "just turned 18," and "barely legal" received inquiries at 132% to 175% the rate of those that do not use language indicating age.⁴⁰

Researchers in London interviewed 103 men who bought sex to determine what they knew about the women they were using in prostitution.⁴¹ Twelve percent of the men had used more than 130 women in prostitution.⁴² At least a plurality reported purchasing sex fifteen times, although the numbers ranged from one to 2,000.⁴³ A similar study of 113 men in Chicago revealed that the ***926** men interviewed had bought sex between one (4%) and 1,000 times (3%).⁴⁴ While it is not known from this study how many of the prostituted persons were juveniles, testimonies by survivors of domestic minor sex trafficking consistently relate quotas imposed by their traffickers of ten to fifteen buyers daily.⁴⁵ These numbers add up to a staggering number of buyers of commercial sex acts with prostituted children.

The United States, as well as international bodies, has recognized that demand for commercial sex acts with children presents a serious danger to these child victims. The U.S. Department of State Office to Monitor and Combat Trafficking in Persons has included demand as a factor in evaluating the efforts of countries to combat trafficking in persons.⁴⁶ Highlighting the demand present in foreign countries, the department analyzes the issue for the United States as both the evaluating government and an included country, stating:

From Brazil to Cambodia, anti-trafficking experts and advocates have attempted for years to gain a better understanding of demand sources for the commercial sexual exploitation of children. Law enforcement responses to the commercial sexual exploitation of children often reflect popular perception, leading to a lack of efforts to focus on local demand for child prostitution. Governments must ensure that in targeting sex tourists, they are not also ignoring sources of local demand.⁴⁷

The United States' recognition of the role of demand in sex trafficking has also translated into policy. In 2002, President George W. Bush signed the National Security Presidential Directive *927 (NSPD-22), "Combating Trafficking in Persons."⁴⁸ In passing the Directive, the President stated, "[p]rostitution and related activities, which are inherently harmful and dehumanizing, contribute to the phenomenon of trafficking in persons."⁴⁹ And in October 2003, President Bush spoke at the United Nations of the role of demand in the global sex trade, stating, "[t]hose who patronize this industry debase themselves and deepen the misery of others."⁵⁰ Again, in remarks delivered before the first national training conference on human trafficking in the United States, hosted by the Justice Department, the President stated, "we cannot put [human traffickers] out of business until and unless we deal with the problem of demand."⁵¹ Thus, early in the federal efforts to respond to human trafficking, demand was recognized as a critical component to counter sex trafficking and tourism of children.

On the international front, demand has likewise been the subject of discussion. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of the United Nations Convention Against Transnational Organized Crime is the first international treaty to address the demand side of prostitution and sex trafficking.⁵² Article 9, Clause 5 calls for parties to "adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking."⁵³

The World Congress Against the Commercial Sexual Exploitation of Children and Adolescents has also paid special notice *928 to the growing numbers of youth being sexually exploited through prostitution and pornography around the world. It notes that the most vulnerable population of youth are "children on the move," posing a need to coordinate efforts to recapture these children.⁵⁴ The Preamble of the Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents found that "[t]here is an insufficient focus on measures to reduce and eliminate the demand for sex with children and adolescents, and in some States inadequate sanctions against sexual abusers of children."⁵⁵ The document calls on all members to "[a]ddress the demand that leads to children being prostituted by making the purchase of sex or any form of transaction to obtain sexual services from a child a criminal transaction under criminal law, even when the adult is unaware of the child's age."⁵⁶ Statements like these—both on the foreign and domestic stages—show that demand and the market for sex trafficking are inextricably linked.

III. Prosecution of Sex Trafficking

Sex slaves experience devastating violence, including beatings, branding, and deprivation of food, water even light. But perhaps the biggest violence done to them is to be forced to live a life of intimidation, constantly anticipating more violence, and doing it with a seductive smile firmly in place. In eleven years of rescuing and restoring sex trafficked victims, rarely have I interviewed a victim who has not experienced violence from a customer.

*929 - Linda Smith, Founder and President, Shared Hope International⁵⁷

Efforts to combat sex trafficking through law enforcement action have traditionally focused on the trafficker, but more recent efforts and resources have been allocated to understanding the dynamic of demand as part of the trafficking crime in order to

better counter it.⁵⁸ The violence of traffickers is well documented and studied, but the majority of prostituted persons have been victims of violence by buyers as well. In her research with adult women in prostitution, Melissa Farley describes the violence that is so often a part of the buyer's fantasy fulfillment.⁵⁹ Of 854 women interviewed in nine countries, 71% were physically assaulted, and 63% were raped during prostitution.⁶⁰ Another study of prostitution based in Oregon found that 84% of prostituted women were victims of aggravated assault, 78% were victims of rape, 53% were victims of sexual torture, and 49% were kidnapped and transported across state lines.⁶¹ A study of women and girls in street prostitution in San Francisco found that 82% had been physically assaulted, 83% had been threatened with a weapon, and 68% had been raped by buyers.⁶² Another earlier study in the San Francisco area *930 involving 200 women and girls in street prostitution (70% were under twenty-one, and almost 60% were sixteen or under) reported that 70% had been raped or sexually assaulted by a man an average of thirty-one times, and 65% had been physically abused or beaten by men an average of four times.⁶³ Thus, the data demonstrates that women in prostitution are subjected to violence by both the buyer and the seller on a regular basis.⁶⁴

In 2005, Congress stated in findings supporting the End Demand for Sex Trafficking Act of 2005 that eleven females engaged in commercial sex acts were arrested in Boston for every one arrest of a male purchaser, nine to one in Chicago, and six to one in New York City.⁶⁵ The purchase of sex is largely considered a "vice crime," which may be punishable as just a misdemeanor under prostitution statutes and is generally handled at the local level of law enforcement—even, in many cases, when the victim is a minor.⁶⁶

The history of the End Demand for Sex Trafficking Act of 2005 and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA 2008")⁶⁷ debates reveal the complexity of the issue. The debates hinged on the distinction between "prostitution" and "trafficking," as well as the extreme difficulty of proving the buyer's knowledge that the prostituted person, if over eighteen years of age, was subject to force, fraud, or coercion, as required by 18 U.S.C. § 1591(a).⁶⁸

*932 In 2005, Representative Deborah Pryce emphasized the need for special provisions to address the demand components of human trafficking by introducing the End Demand for Sex Trafficking Act of 2005.⁶⁹ The Act was cross-filed in the Senate by Senator John Cornyn.⁷⁰ The bill contained elements affecting the reach of the Mann Act provisions, including an amendment to the Mann Act prohibiting the transportation of "any individual" across state or national lines with the intent that such individual engage in prostitution or other criminal sexual acts.⁷¹ This provision was meant to clarify that "any individual" included consumers, as well as the prostituted persons.⁷² Essentially, the amendment would have made the Mann Act applicable to adult sex tourism cases, whereas the 2003 PROTECT Act would continue to apply to sex tourism involving minors.⁷³ Many of the End Demand for Sex Trafficking Act provisions became Title II of the Trafficking Victims Protection Reauthorization Act of 2005 ("TVPRA 2005"),⁷⁴ *933 but the Mann Act expansion was rejected in the final result, due largely to the ongoing prostitution versus sex trafficking debate.⁷⁵

Despite its partial failure, important pieces of the amendment survived, including mandates intended to raise awareness of the demand presented by purchasers of commercial sex acts. One such mandate required the U.S. Attorney General to conduct a biennial study to address sex trafficking and unlawful commercial sex acts in the United States, including:

(I) the estimated number and demographic characteristics of persons engaged in sex trafficking and commercial sex acts, including purchasers of commercial sex acts; (II) the number of investigations, arrests, prosecutions, and incarcerations of persons engaged in sex trafficking and unlawful commercial sex acts, including purchasers of commercial sex acts, by States and their political subdivisions; and (IV) a description of the differences in the enforcement of laws relating to unlawful commercial sex acts across the United States.⁷⁶

On the international front, the TVPRA 2005 introduced a new element in the State Department's minimum standards for the elimination of trafficking that assesses and ranks countries based on their efforts to combat trafficking in persons.⁷⁷ This new element considers "measures to reduce the demand for commercial sex acts and for participation in international sex tourism by nationals of the country."⁷⁸

In 2008, pressure to bring demand within the reach of the federal criminal trafficking laws was renewed and again generated debate on the distinction between prostitution and trafficking, as well as issues related to federalism.⁷⁹ The U.S. Department

of Justice *934 opposed proposed amendments to the Mann Act, citing a proper division of jurisdiction in cases involving adults prostituted without the trafficking elements of force, fraud, or coercion and the lack of federal resources to police prostitution cases⁸⁰ (which were *935 estimated at 100,000 per year).⁸¹ The proposed demand provisions were not enacted, and the U.S. Department of Justice has continued to focus efforts on prosecuting traffickers in adult sex trafficking cases prosecuted under 18 U.S.C. § 1591 cases.⁸² This leaves state law enforcement as the primary enforcers, relying on prostitution laws related to the purchase of sex acts. Importantly however, this foundation for the rejection of prosecuting demand as a trafficking crime is not relevant to the crime of sex trafficking a minor, which does not require the element of force, fraud, or coercion.⁸³

***936 IV. Prosecuting Child Sex Trafficking: The Trafficking Victims Protection Act**

Among the range of child sex trafficking related prosecutions by the U.S. Department of Justice Child Exploitation and Obscenity Section (“CEOS”) and the U.S. Attorney’s Offices, offenses by buyers and attempted buyers are generally prosecuted under the Mann Act⁸⁴ and related statutes.⁸⁵ But prosecutions of demand under 18 U.S.C. § 1591 are few. The U.S. Attorney’s Office in the Western District of Missouri has pursued buyers of commercial sex with children by working with the local human-trafficking task forces to plan and implement an operation designed to satisfy the evidentiary requirements of the criminal provisions of the Trafficking and Violence Protection Act (“TVPA”)—specifically by using the words “obtain” and “entice” *937 in § § 1591(a) and 2422(b).⁸⁶ These cases led to a number of convictions with mandatory minimum sentences of ten years’ imprisonment for attempted domestic minor sex trafficking.⁸⁷ They have also generated considerable interest by other U.S. Attorney’s Offices in initiating similar task force operations in their districts.⁸⁸

In *United States v. Mikoloyck*—one example of a successful Missouri prosecution—the defendant challenged the application of the federal trafficking law to his conduct.⁸⁹ The court agreed with the magistrate’s recommendation that “18 U.S.C. § 1591 clearly applies to those who attempt to purchase underage sex, not merely the pimps of actual exploited children.”⁹⁰ While the magistrate’s recommendation did not engage in an analysis of the language of § 1591, the judge cited two cases where purchasers of sex acts were prosecuted under § 1591.⁹¹ The issue of whether the federal sex trafficking law can be applied to buyers of commercial sex with a minor sex trafficking victim was not raised or challenged in either of these cases, and Mikoloyck entered a guilty plea following the district court’s order accepting the recommendations of the magistrate.⁹² Therefore, this issue was presented at the appellate level for the first time in the Eighth Circuit cases of *938 *United States v. Jungers*⁹³ and *United States v. Bonestroo*,⁹⁴ discussed in the following section.

V. The Bonestroo and Jungers Appeals

The arrests of Ronald Bonestroo and Daron Lee Jungers came as a result of collaboration between the Immigration and Customs Enforcement (“ICE”) and local law enforcement. In February of 2011, ICE and local police officers staged an undercover sting operation, called Operation Crossing Guard, in Sioux Falls, South Dakota, with the intent of identifying and arresting attempted buyers of commercial sex acts with minors.⁹⁵ An undercover officer placed advertisements on websites such as Craigslist.com and Backpage.com, pretending to be a man offering his girlfriend’s daughters for sex while the girlfriend was purportedly out of town.⁹⁶ Ronald Bonestroo and Daron Lee Jungers replied to these advertisements and exchanged emails with the undercover agent, asking for the price for sex and the age of the child.⁹⁷ After the men learned the daughters were eleven and fourteen years old, each arranged meetings to exchange money.⁹⁸ Both men were arrested upon presenting an undercover agent with the money brought to purchase commercial sex acts with a minor.⁹⁹ Subsequently, they were indicted for attempted commercial sex trafficking *939 of a child in violation of 18 U.S.C. §§ 1591 and 1594(a) and were found guilty by a jury at trial.¹⁰⁰ Following their conviction, each defendant motioned for judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure.¹⁰¹ Neither Bonestroo nor Jungers claimed that he did not commit the actions alleged by the government, but both contended that 18 U.S.C. §§ 1591 and 1594(a) apply only to the seller or the pimps of children and not to purchasers of sex acts.¹⁰²

A. Motions for Judgment of Acquittal

Federal Rule of Criminal Procedure 29(a) states that “[t]he court on the defendant’s motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.”¹⁰³ In reviewing the sufficiency of the evidence under Rule 29(a), the court must determine whether there is sufficient evidence for a reasonable jury to find the defendant guilty beyond a reasonable doubt.¹⁰⁴ Because both Bonestroo and Jungers argued that 18 U.S.C. § 1591 did not apply to purchasers of sex acts, the respective courts looked to the meaning of the statute to determine to whom the statute applied.¹⁰⁵ The federal sex trafficking law specifically states:

(a) Whoever knowingly

(1) In or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person[.]

*940 knowing, or in reckless disregard of the fact that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished....¹⁰⁶

Canons of construction dictate that in interpreting a statute, the court must first look to the plain language of the statute.¹⁰⁷ However, where ambiguity exists in the statute, the court may employ other canons. Though neither court found 18 U.S.C. §§ 1591 *941 or 1594 to be ambiguous,¹⁰⁸ both courts nevertheless employed canons of construction to interpret the statutory language.¹⁰⁹

1. The Jungers District Court Decision

The Jungers decision analyzed the seven verbs in 18 U.S.C. § 1591—“recruits, entices, harbors, transports, provides, obtains, or maintains”—finding all to refer to methods of gaining control over victims so that they “‘will be caused’” to engage in commercial sex acts.¹¹⁰ Analyzing the provision in relation to the broader statutory scheme, the court stated, “in ascertaining the plain meaning of a statute, the court must ‘consider not only the bare meaning of the critical word or phrase’ at issue, ‘but also its placement and purpose in the statutory scheme.’”¹¹¹ The district court found the intent of Congress to be clear in reaching only traffickers.¹¹² Thus, the court held that the evidence at trial was not sufficient to support the jury verdict under § 1591.¹¹³

2. The Bonestroo District Court Decision

The Bonestroo decision cited a different canon of construction, *noscitur a sociis*, which determines the meaning of a word on *942 the basis of accompanying words.¹¹⁴ The court stated, “[f]rom this analysis it is apparent that each statutory verb within § 1591 describes a method of gaining control over the child victim or is a step in preparation for the end goal that the children ‘will be caused’ to engage in commercial sex acts.”¹¹⁵ Ultimately, the court determined that “[t]he trafficking process described in this list stops short of the john; therefore, it does not reach Bonestroo.”¹¹⁶ The court held that “no reasonable jury could have found Bonestroo guilty of that offense beyond a reasonable doubt, and his conviction must be overturned.”¹¹⁷

The district court in Bonestroo also considered the legislative history of the TVPA, which amended Title 18 of the United States Code to include § 1591.¹¹⁸ Through a review of the stated purpose of Congress, comments from legislators, and the titles of the surrounding provisions, Judge Schreier held, “[t]his history supports Bonestroo’s argument that the TVPA intends to reach the supply side of the trafficking universe.”¹¹⁹ The court determined that 18 U.S.C. §§ 2423(b) and 2422(b) already penalized purchasing sex with a minor prior to the enactment of the TVPA; therefore, the gaps that § 1591 intended to fill in the criminal provisions were not those related to the purchase of commercial sex acts with minors.¹²⁰

B. The Government’s Appeal

The government appealed the orders granting the motions for acquittal in the Jungers and Bonestroo cases, contending that the district court erred in holding that 18 U.S.C. § 1591 does not apply to consumers of commercial sex acts with children.¹²¹ The government argued that the plain meaning of 18 U.S.C. § 1591 clearly applies to suppliers and purchasers of commercial sex *943 acts.¹²² It further argued that defendants' attempted conduct is clearly included in the criminal actions outlined in § 1591.¹²³ In its initial appellate brief, the government stated:

[I]n an uncomplicated application of § 1591, a defendant, such as Jungers or Bonestroo, could violate the statute by paying a fee to “obtain[]” a minor, knowing that she would “be caused to engage in a commercial sex act [.]” No strained construction is required to reach individuals who purchase children for commercial sex acts, and the statutory language does not set out an exception for them. The justification for inferring one is unsustainable.¹²⁴

Because it asserted that the statute was unambiguous, the government contended that the district court incorrectly relied on canons of construction and legislative history.¹²⁵ The government argued that the term “obtains” may be applied to suppliers and purchasers of commercial sex acts without changing its meaning.¹²⁶ Even if legislative history were needed to clarify the meaning of the statute, the government contended that this history did not demonstrate intent to exclude purchasers of commercial sex acts.¹²⁷ Further, the government dismissed Jungers's argument that the description of “predicate conduct” in 18 U.S.C. § 1591(a)—namely, “the organized activity of recruiting, enticing, harboring, transporting, providing, obtaining, and maintaining minors knowing that they ‘will be caused’ to engage in commercial sex *944 acts”¹²⁸—limits its application to suppliers and that the mere act of engaging in the sexual act alone without the predicate conduct does not amount to sex trafficking.¹²⁹

In his reply brief, Bonestroo contended that the trial court correctly held that the plain language of 18 U.S.C. § 1591 did not criminalize his actions or support its application to his actions.¹³⁰ Bonestroo also asserted that “[t]o the extent the government's contrary reading of § 1591 creates an ambiguity, canons of construction and legislative history support the district court's decision”; at a minimum, he argued, the rule of lenity controls.¹³¹

VI. The Eighth Circuit Decision in Jungers

A. The Opinion

In reviewing de novo the district court decisions in *United States v. Bonestroo* and *United States v. Jungers*,¹³² the Eighth Circuit held, “Section 1591(a)(1) makes no distinction between suppliers *945 or purchasers of commercial sex acts with children—it prohibits acts of trafficking regardless of the identity or status of the trafficker.”¹³³ As in the district court, the parties agreed that the statute was unambiguous, and accordingly, the Eighth Circuit's analysis began with the plain meaning of § 1591.¹³⁴ However, unlike the district court decisions, the Eighth Circuit found no support for a “latent exemption for purchasers” under the plain language of the statute.¹³⁵

The court's inquiry into the plain language of § 1591 focused on the breadth of the statutory language,¹³⁶ including the “disjunctive string of verbs” that formed the basis of the defendants' argument that the statute was intended to apply only to suppliers of commercial sex with children, not purchasers.¹³⁷ The breadth of the statutory language is initially indicated by the use of “whoever” and “any” in § 1591(a)(1),¹³⁸ which the court found to contain no language limiting the application of § 1591 to suppliers of commercial sex acts with children.¹³⁹ Moreover, despite Bonestroo's and Jungers's arguments that the list of verbs that describe the conduct prohibited under § 1591 is aimed solely at suppliers of commercial sex with minors, the court found no limiting language in this list of proscribed conduct.¹⁴⁰ The defendants and *946 the district court did acknowledge the potential breadth of the term “obtains,” and the district court also acknowledged the potential for “entices” and “recruits” to apply to purchasers of sex with minors.¹⁴¹ But the defendants asserted—and the district court agreed—that the string of verbs considered together indicated Congress's intent to reach only suppliers, and application of this language to buyers “is inconsistent with the purpose, placement, structure, and context of the statute as a whole and renders parts of the TVPA superfluous or meaningless.”¹⁴² The Eighth Circuit rejected this argument by the defendants, stating: The defendants' argument that the disjunctive string of verbs in § 1591(a)(1) limits the ordinarily broad term “obtains” so

sharply that it reveals a latent exemption for purchasers and demonstrates § 1591 could not possibly apply to them is based on their mistaken belief that a purchaser cannot commit any of the other “predicate conduct” § 1591 prohibits. We agree with the government that “[t]he fact the district court read the seven verbs listed in § 1591 to describe predicate acts does not mean that a customer or purchaser cannot engage in at least some of the prohibited conduct.”¹⁴³

***947** To illustrate its point, the Eighth Circuit used a hypothetical to demonstrate how a purchaser of sex with a minor might engage in some of the predicate conduct prohibited under § 1591:

Consider a purchaser who arranges with a fourteen-year-old prostitute’s pimp to take the victim from Sioux Falls to Las Vegas for a few days for \$1,000, during which time it is agreed the child will provide companionship and perform a sex act. The purchaser picks up the child, drives her to the airport, and flies her to Las Vegas. They take a taxi to a hotel where the purchaser rents a room and provides the victim with food, clothing, and drugs for several days. After the victim performs a sex act as agreed, the purchaser entices the child victim to engage in additional sex acts with the purchaser for the rest of the trip for an additional \$100 each time. The purchaser and the victim have sex several times before returning to the airport and traveling back to Sioux Falls, where the purchaser returns the child to her pimp.

A reasonable jury could conclude the purchaser knowingly has enticed, harbored, transported, obtained, and maintained the child knowing she would be caused to engage in commercial sex acts.¹⁴⁴

Considering this hypothetical case, the court rejected the defendants’ arguments that the predicate conduct prohibited in § 1591(a)(1) applies only to “suppliers” because the child “will be caused to engage in commercial sex acts.”¹⁴⁵ Since buyers can engage in “at least some of the prohibited conduct,”¹⁴⁶ Congress’s use of the future tense in prohibiting this conduct while “knowing [a minor] will be caused to engage in a commercial sex act” does not exempt buyers, who would likely engage in this prohibited ***948** conduct prior to engaging in a commercial sex act with a minor.¹⁴⁷

Consistent with its conclusion that a buyer could engage in the predicate conduct prohibited under § 1591, the Eighth Circuit clarified, “we do not conclude § 1591 criminalizes the act of engaging in a commercial sex act with a minor. Rather, we conclude a purchaser may be convicted for committing an act prohibited by § 1591 without ever engaging in a sex act.”¹⁴⁸ Accordingly, the court rejected the defendants’ arguments that the availability of other laws to punish the purchasing and engaging in commercial sex with a minor demonstrates Congress’s intent to exclude purchasers from application of § 1591.¹⁴⁹

Lastly,¹⁵⁰ the Eighth Circuit considered the lack of any express exclusion for purchasers under § 1591:

Had Congress intended to exclude purchasers from § 1591(a)(1)’s blanket prohibition of sex-trafficking acts or limit its application to suppliers, it could have done so expressly. “We do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and our reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest.”¹⁵¹

***949 B. Other Arguments Supporting the Eighth Circuit Decision**

In addition to the Eighth Circuit’s findings, various statements point to the intention and understanding of legislators that the actions of buyers and attempted buyers of commercial sex acts with trafficking victims, including minors under eighteen, are included as crimes of trafficking under 18 U.S.C. § 1591. This contradicts the district courts’ opinions in Bonestroo and Jungers, which found the legislative history to demonstrate an intent to stop short of reaching the actions of a buyer.¹⁵² In the TVPRA 2005, Congress added to the trafficking law a provision relating to ending demand, which specified minimum standards for the elimination of trafficking, including measures to reduce the demand for commercial sex acts and for participation in international sex tourism.¹⁵³ “This new approach to combating sex trafficking will crack down on the users—the johns and pimps who keep the demand for sex slavery high,” said Congresswoman Carolyn Maloney of New York.¹⁵⁴ Senate sponsor Senator Cornyn added, “it is appropriate to target the demand for sex trafficking as an essential element of our strategy to eliminating sex trafficking within our borders.”¹⁵⁵ Representative Chris Smith of New Jersey

referenced the “pimps” and the “exploiters” in a hearing on the TVPRA 2008, stating, “[t]ogether, we can make the pimps and the exploiters pay by doing serious jail time as well as the forfeiture of their assets, their boats, their villas, and their fat bank accounts.”¹⁵⁶

Referring to 18 U.S.C. §§ 2243 and 2241(c), the Bonestroo district court decision found:

Congress clearly has shown that it knows how to reach and punish those who engage in the sex act itself *950 with a child, and it did not explicitly do so in § 1591. In § 1591, Congress outlawed the recruiting, enticing, or obtaining of a person and not the act of engaging in sex with a minor.¹⁵⁷

The Jungers district court found, “[w]hen § 1591 was passed in 2000, Congress was enhancing its statutory protection of minors from sexual slavery by properly singling out for greater punishment those who engage in ‘sex trafficking of children by force, fraud or coercion.’”¹⁵⁸ However, § 1591 does not require proof of force, fraud, or coercion to cause a minor under eighteen to engage in commercial sex acts, and §§ 2243 and 2241(c) refer to sexual abuse of a child, rather than any commercial sexual exploitation.¹⁵⁹ While both decisions indicate that the ruling does not rely on legislative history,¹⁶⁰ the lack of explicit language prohibiting commercial sex with a minor¹⁶¹ and Congress’s presumed intent in remaining silent¹⁶² weigh heavily in both decisions. This presumption, *951 which the Eighth Circuit properly rejected by relying instead on the lack of language that carved out an exception for purchasers of sex with minors,¹⁶³ discounts the fundamental role played by demand in the crime of sex trafficking.

Arguing that Congress could not have intended to exclude buyers from application of the sex trafficking law, the government pointed out in its Eighth Circuit brief that “Bonestroo’s graphic, sexually-oriented emails, in particular, offer a sobering insight into the mind of a person intent upon sexually abusing children. He, Jungers, and others who seek to obtain children for sex are unlikely recipients of the Congressional largesse ostensibly provided by an implied exemption from § 1591’s application.”¹⁶⁴ The district court in Bonestroo found such an exemption by drawing a distinction between the levels of involvement that a buyer versus a trafficker plays in the trafficking offense: “[T]rafficking is a form of servitude, which means the reach of the statute extends to the traffickers who habitually enslave children, not the one-time purchaser of the trafficked person’s services.”¹⁶⁵ However, as the Eighth Circuit decision rightly acknowledged, a buyer’s role in the trafficking offense may not be so discreetly defined.¹⁶⁶

***952 VII. The Impact of the Eighth Circuit Opinion**

The Bonestroo and Jungers decisions will give prosecutors and law enforcement greater ability to combat the demand side of child sex trafficking. The decisions will not only encourage more prosecutions of buyers of commercial sex acts in federal and state courts, but it will also deter the force that drives the sex trafficking market in the first place—demand.

A. The Decisions Will Increase Prosecution of Buyers of Commercial Sex Acts with Children at the Federal and State Levels

Given the body of case law and severe penalties available under federal law, federal laws are generally preferred for prosecuting offenders of child sex trafficking; however, limited resources result in nearly 60% of cases charging commercial sexual exploitation of children being declined for prosecution by U.S. Attorney’s Offices across the country.¹⁶⁷ Therefore, state laws are needed to serve as a deterrent to the crime by aligning with federal laws and making the penalties a serious threat. Many states do not currently have sufficient laws to prosecute the purchase of sex with minors.¹⁶⁸ Moreover, those that do have applicable laws often lack the stiff sentences of the federal system and thereby lose their deterrent value.¹⁶⁹ The federal government, on the other hand, has an *953 array of laws to prosecute those who commercially sexually exploit children through prostitution and pornography.¹⁷⁰ These laws provide strong sentences for maximum deterrence.¹⁷¹ For example, 18 U.S.C. § 1591 provides a sentencing range of a mandatory minimum of ten years and a maximum of life, which is enhanced to a mandatory minimum of fifteen years and a maximum of life when the victim is a minor under fourteen years of age or when the offender uses force, fraud, or coercion to effect the trafficking.¹⁷²

Human trafficking laws of twenty-five states mirror the federal sex trafficking law, 18 U.S.C. § 1591, in the inclusion of the verb “obtains.”¹⁷³ Nine of these states’ laws limit application to buyers by requiring that the buyer used force, fraud, or coercion to commit the offense, or by requiring that the buyer obtained the minor with knowledge that force, fraud, or coercion had been or would be used to cause the minor to engage in commercial sexual activity.¹⁷⁴ The ability to combat demand in these states will likely greatly expand in light of the Eighth Circuit decision holding that § 1591(a) applies to buyers through the term “obtains.”¹⁷⁵ Thirteen states have sex trafficking laws that apply to the actions of buyers through other clear terms.¹⁷⁶

*954 The Eighth Circuit decision in *Jungers* raises a broader question regarding the prosecution of demand: should buyers face prosecution under 18 U.S.C. § 1591(a)?¹⁷⁷ As the government indicated in its brief, the Mann Act laws that apply to buyers are more limited in scope than the sex trafficking law, potentially allowing some buyers to avoid serious criminal liability under federal law.¹⁷⁸ While strong state laws may help to address this, many *955 states’ legislative frameworks for combating demand through commercial sexual exploitation of children laws lack the serious penalties and scope of the federal framework. A primary concern with relying on the federal Mann Act is the focus on movement, even though the crux of the offense is exploitation. The sex trafficking law, if applied to buyers, helps to close this gap in framework for combating demand, which has been noted as largely local in nature.¹⁷⁹

B. Prosecution of Demand Will Deter Buyers

By providing precedent for the prosecution of demand, the *Jungers* decision will also help to deter future demand in this illicit market. Prosecution of buyers of commercial sex is an under-utilized deterrent. In 2002, a reported 34% of prostitution arrests in the United States were of buyers; the rest were of women and children.¹⁸⁰

Buyers of sex acts are likely to avoid punishment. However, research shows that punishment would be an effective deterrent. Men interviewed for a study on deterring demand in London stated that consequences that would deter them from using women in prostitution include: the threat of imprisonment; being added to a sex offender registry; public exposure such as a billboard announcement, a newspaper notice, or an Internet webpage; or a letter to their family or employer.¹⁸¹ The interviewees also cited increased fines, increased criminal penalties, suspension of a driver’s license, or car impoundment as deterrents.¹⁸² Men interviewed in Chicago identified similar deterrents to buying sex, with 83% responding that jail time would be a deterrent to buying sex.¹⁸³ However, of the 113 interviewees who purchased sex in Chicago, only 7% had ever been arrested for soliciting a woman in prostitution.¹⁸⁴ Although one man claimed to have been arrested twentyfive *956 times, most of those who had been arrested had only been arrested once.¹⁸⁵ In London, only 6% of men surveyed had ever been arrested for soliciting prostitution.¹⁸⁶ The overwhelming majority of men who bought sex stated that more severe penalties for soliciting prostitution would deter them.¹⁸⁷

Some states have enacted laws that more harshly criminalize the purchase of sex with a minor,¹⁸⁸ but many have not. Furthermore, the transient nature of the trafficking markets keeps traffickers below the radar of most law enforcement as they move with their victims from city to city, evading detection and preventing the girls from becoming identified minors to law enforcement or service providers.¹⁸⁹ “Often, sex trafficking cases cross jurisdictional lines[,] making cooperation between local, state, and federal law enforcement necessary.”¹⁹⁰

Moreover, the anonymity of buyers adds to the challenge:

The anonymity of buyers presents one of the greatest challenges to investigation and arrest [V]ictims often do not know or remember the buyers’ real names, addresses, or other identifying information. This can be due to the trauma of the sexual exploitation or to the evasive techniques of traffickers in orchestrating the commercial encounter with the buyer [P]rostitution is done on a cash basis and buyers frequently use fake names[,] leaving law enforcement with limited evidence.¹⁹¹

*957 “Traditional investigation methods to capture prostitution and solicitation involve the use of decoys—undercover police officers—placed in prostitution zones” to attract prospective buyers.¹⁹² However, this technique may not produce sustainable

evidence for a charge of child sex trafficking in states that allow the accused to defend that the decoy was, in fact, an adult.¹⁹³ Thus, law enforcement officers largely consider it necessary to “interrupt a commercial transaction in progress with a minor in order to identify the buyer of a prostituted child”—a rare event.¹⁹⁴

***958 C. Prosecution of Child Pornography Will Deter Buyers**

In addition to the need for more prosecutions of buyers of commercial sex with minors, buyers of child pornography should also be viewed as perpetrators of sex trafficking because a minor was exploited to produce the images of sexual abuse.¹⁹⁵

“Child pornography” is defined in federal law as:

[A]ny visual depiction, including any photograph, 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, where—

(A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

(B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or

(C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.¹⁹⁶

It is critical that the exploitation of children perpetrated through prostitution, pornography, and sexual performance are not artificially distinguished through enforcement of laws.¹⁹⁷

***959** “The most common forum for child pornography,” and increasingly, the prostitution of minors, is the Internet.¹⁹⁸ “[O]nce images [appear] on the Internet, they cannot be removed completely and can continue to circulate[,] re-victimizing the child each time they are viewed.”¹⁹⁹ “As technology advances globally, each country faces the challenge of combating the sex tourism and sex trafficking markets that technology so readily enables. Widespread availability and affordability of digital cameras and video cameras make the production of child pornography and pornography involving sex trafficking victims easy and inexpensive.”²⁰⁰

The Internet is also frequently used to target children directly:

A study released in 2006 by the National Center for Missing and Exploited Children (NCMEC) [on] the online victimization of youth reveals that more and more children are receiving unwanted and unsolicited sexual images via the Internet than ever before. More than one-third (34%) of youth Internet users received unwelcomed sexual material online, despite [the parents’ use of] parental control technologies to filter and block sexual and other violent images. The report states that more boys than girls receive unwanted exposure and most of this exposure involves youth between the ages of 14 and 17.²⁰¹

***960** Sex traffickers use this invasive marketing technique as a tool to increase the demand for pornography among youth. As one researcher stated, “[w]hen men use pornography, in that process they are trained as tricks. Pornography is men’s rehearsal for prostitution.”²⁰²

Moreover, the anonymity that the Internet provides users and website owners makes it an excellent facilitator of the sex trafficking market.²⁰³ In a survey of 120 men, conducted by The Defenders—a men’s anti-trafficking activist group—117 of the men (ages 15 to 80) indicated that websites were the predominant influence leading them to view pornography.²⁰⁴ Other influences included pop-up ads for pornographic websites, movies, and TV commercials.²⁰⁵ The Defenders survey indicates that respondents first viewed pornography at approximately twelve years of age.²⁰⁶ Early viewing of pornography may serve as an incubator of future buyers of commercial sex acts. Child pornography is also frequently encountered in combination with other sexual offenses against children and may serve as a gateway to acting out the images of sexual abuse on children.²⁰⁷ Therefore, possessing child pornography should be viewed as a serious crime meriting meaningful prosecution.²⁰⁸

***961 VIII. Conclusion**

The decision of the Eighth Circuit in *United States v. Jungers*²⁰⁹ will have great impact on the ability of prosecutors and law enforcement to combat sex trafficking of minors in America at the federal and state levels. As more states eye legislation addressing the crime of sex trafficking in their state, knowledge that 18 U.S.C. § 1591 reaches the actions of all actors in a trafficking crime—sellers, facilitators, and buyers—will encourage states to join the twenty-five states²¹⁰ that have human trafficking laws that track the “obtains” language of 18 U.S.C. § 1591(a). These states may now be emboldened by the Eighth Circuit decision to enforce their state laws.

Ending demand for commercial sex markets will reduce the exploitation of vulnerable women and children and is critical in the fight to end sex trafficking. This will not be easy, as the commercial sex industry is a billion-dollar business. It was estimated that in Las Vegas alone in 2006, the sex industry and related activities—both legal and illegal (including lap-dancing, prostitution in strip clubs, commissions to taxi drivers, and tips to valets and bartenders for procuring women, etc.)—“generate[d] between \$1 billion and \$6 billion per year.”²¹¹ Juveniles are often mixed with adults in the commercial sex markets.²¹² Given the inherent vulnerabilities of juveniles, “[t]he stark reality is that the supply is never-ending.”²¹³ This makes the fight against demand for commercial sex acts—the driving force of the market—even more crucial to the fight against sexual exploitation of minors.

***962** But the fact remains: if there were no demand for commercial sex, trafficking in persons for commercial sexual exploitation would not exist in the form it does today. This can only be achieved by rejecting long-held notions that regard commercial sex as a “boys will be boys” phenomenon, and instead sending the clear message that buying sex is wrong.²¹⁴

APPENDIX A

Federal law	Minimum Sentence	Maximum Sentence
18 U.S.C. § 2423(a): Transportation of a minor with intent for minor to engage in criminal sexual activity ²¹⁵	Ten years ²¹⁶	Life ²¹⁷
18 U.S.C. § 2422: Coercion and enticement (using the mail or means of interstate or foreign commerce) ²¹⁸	Ten years ²¹⁹	Life ²²⁰
18 U.S.C. § 1591: Sex trafficking of children or by force, fraud, or coercion ²²¹	Fifteen years (first sexual offense involving minors) ²²²	Life (child is under fourteen or under eighteen with force, fraud, or coercion) ²²³
	Ten years (child between fourteen and seventeen and no force, fraud, or coercion used) ²²⁴	Life (child between fourteen and seventeen and no force, fraud, or coercion used) ²²⁵
18 U.S.C. § 2251: Sexual exploitation of children ²²⁶	Twenty-five years (one prior conviction) ²²⁷	Fifty years (one prior conviction) ²²⁸
	Thirty-five years (two or more prior convictions) ²²⁹	Life (two or more prior convictions) ²³⁰
	Thirty years (if caused the death of the victim in the course of the crime) ²³¹	Life or death penalty (if caused the death of the victim in the course of the crime) ²³²

18 U.S.C. § 2251A: Selling or buying of children ²³³	Thirty years ²³⁴	Life ²³⁵
18 U.S.C. § 2252: Certain activities related to material involving the sexual exploitation of minors ²³⁶	Five years (trafficking in explicit material involving children, if first sexual offense involving minors) ²³⁷	Twenty years (trafficking in explicit material involving children, if first sexual offense involving minors) ²³⁸
	Fifteen years (trafficking in explicit material involving children, if prior conviction) ²³⁹	Forty years (trafficking in explicit material involving children, if prior conviction) ²⁴⁰
	None (possession of explicit material involving children, if first sexual offense involving minors) ²⁴¹	Ten years (possession of explicit material involving children, if first sexual offense involving minors) ²⁴²
	Ten years (possession of explicit material involving children, if prior conviction) ²⁴³	Twenty years (possession of explicit material involving children, if prior conviction) ²⁴⁴
18 U.S.C. § 2252A: Certain activities related to material constituting or containing child pornography ²⁴⁵	Five years (trafficking in child pornography, if first sexual offense involving minors) ²⁴⁶	Twenty years (trafficking in child pornography, if first sexual offense involving minors) ²⁴⁷
	Fifteen years (trafficking in child pornography, if prior conviction) ²⁴⁸	Forty years (trafficking in child pornography, if prior conviction) ²⁴⁹
	None (possession of child pornography, if first sexual offense involving minors) ²⁵⁰	Ten years (possession of child pornography, if first sexual offense involving minors) ²⁵¹
	Ten years (possession of child pornography, if prior conviction) ²⁵²	Twenty years (possession of child pornography, if prior conviction) ²⁵³
18 U.S.C. § 1466A: Obscene visual representations of sexual abuse of children ²⁵⁴	Incorporates penalty structure of 18 U.S.C. § 2252A ²⁵⁵	Incorporates penalty structure of 18 U.S.C. § 2252A ²⁵⁶

***966 APPENDIX B²⁵⁷**

State	Trafficking Law may apply to buyers	Relies on “obtain”
Alabama	Yes*	Yes
Alaska	No	n/a
Arizona	Yes	Yes
Arkansas	Yes*	Yes
California	No	n/a
Colorado	No	n/a
Connecticut	No	n/a

Delaware	Yes	No
DC	Yes	Yes
Florida	Yes	Yes
Georgia	Yes	Yes
Hawaii	No	n/a
Idaho	Yes	No
Illinois	Yes	Yes
Indiana	Yes	No
Iowa	Yes	No
Kansas	Yes	Yes
Kentucky	Yes	Yes
Louisiana	Yes	No
Maine	n/a	n/a
Maryland	No	n/a
Massachusetts	Yes	No
Michigan	Yes*	Yes
Minnesota	No	n/a
Mississippi	Yes	No
Missouri	Yes	Yes ²⁵⁸
Montana	Yes*	Yes
Nebraska	Yes	No
Nevada	No	n/a
New Hampshire	Yes*	Yes
New Jersey	Yes	Yes
New Mexico	Yes	Yes
New York	No	n/a

North Carolina	Yes	Yes
North Dakota	Yes	Yes
Ohio	No	n/a
Oklahoma	Yes	No
Oregon	No	n/a
Pennsylvania	Yes*	Yes
Rhode Island	Yes	No
South Carolina	Yes*	Yes
South Dakota	Yes*	Yes
Tennessee	Yes	Yes
Texas	Yes	No
Utah	Yes*	Yes
Vermont	Yes	No
Virginia	No	n/a
Washington	Yes*	Yes
West Virginia	Yes	Yes
Wisconsin	Yes	Yes
Wyoming	No	n/a
TOTALS:	37	25

* The state sex trafficking law's applicability is limited by a requirement that the buyer used force, fraud, or coercion to commit the offense, or obtained the minor with knowledge that force, fraud, or coercion had been or would be used to cause the minor to engage in commercial sexual activity.

Footnotes

^{a1} Samantha Healy Vardaman, Esq. is senior director at Shared Hope International directing the Protected Innocence Initiative. She directed Shared Hope International's DEMAND project researching sex trafficking markets in Jamaica, Japan, the Netherlands, and the United States, funded by the Office to Monitor and Combat Trafficking in Persons of the U.S. Department of State, and the National Report on Domestic Minor Sex Trafficking in the United States, funded by the U.S. Department of Justice, Office of Justice Programs. Before joining Shared Hope, she was the Director of the Moldova office for the American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI), implementing a rule of law program that included anti-trafficking

legislation development, anti-corruption initiatives, legal and judicial training, and facilitating the provision of pro bono legal services. She is a graduate of Boston College and the University of Miami, School of Law.

^{aa1} Christine Raino, Esq. is policy counsel at Shared Hope International, implementing the Protected Innocence Challenge with responsibility for analysis and advocacy around bringing justice and protection to sex trafficking victims consistent with the Protected Innocence Framework. Before joining Shared Hope, she practiced law in the Washington, D.C. area and prior to becoming an attorney, worked as a resettlement case manager at the International Institute of Boston, where she assisted refugees, asylees, and victims of trafficking in achieving self-sufficiency through federal and state programs. She is a graduate of Boston College and the Washington College of Law at American University.

¹ Victims of Trafficking and Violence Protection Act of 2000, [Pub. L. No. 106-386](#), [114 Stat. 1464](#) (codified as amended in scattered sections 8 U.S.C., 18 U.S.C., 20 U.S.C., 22 U.S.C., 28 U.S.C., and 42 U.S.C.).

² Criminal Complaint at 1, [United States v. Jungers](#), 834 F. Supp. 2d 930 (D.S.D. Feb. 14, 2011), rev'd, 702 F.3d 1066 (8th Cir. 2013) (No. 4:11-mj-00011-LLP); Criminal Complaint at 1, [United States v. Bonestroo](#), No. CR 11-40016-01-KES, 2012 WL 13704 (D.S.D. Feb. 11, 2011), rev'd sub nom. [United States v. Jungers](#), 702 F.3d 1066 (8th Cir. 2013) (No. 4:11-cr-40016).

³ See, e.g., Indictment at 2, [United States v. Albers](#), No. 4:09-cr-00078 (W.D. Mo. Mar. 10, 2009); Indictment at 2, [United States v. Childers](#), No. 4:09-cr-00079 (W.D. Mo. Mar. 10, 2009); Indictment at 2, [United States v. Cockell](#), No. 4:09-cr-00080 (W.D. Mo. Mar. 10, 2009); Indictment at 2, [United States v. Oflyng](#), No. 09-00084-01-CR-W-SOW (W.D. Mo. Mar. 10, 2009); Indictment at 1-2, [United States v. Doerr](#), No. 4:09-cr-00031-FJG (W.D. Mo. Feb. 3, 2009); Indictment at 2, [United States v. Johnson](#), No. 4:09-cr-00034 (W.D. Mo. Feb. 3, 2009); Indictment at 2, [United States v. Mikoloyck](#), No. 4:09-cr-00036-GAF (W.D. Mo. Feb. 3, 2009).

⁴ U.S. Attorney's Office, W. Dist. Mo., Human Trafficking Rescue Project: Operation Guardian Angel, FED. BUREAU INVESTIGATION (Mar. 10, 2009), <http://www.fbi.gov/kansascity/press-releases/2009/kc031009.htm>.

⁵ The 2010 Attorney General's report states, "The average prison term for those defendants sentenced to prison [for convictions under 18 U.S.C. § 1591] was 141 months (11.8 years)...." OFFICE OF LEGAL POLICY, U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 64 (2010) [hereinafter ATTORNEY GENERAL'S REPORT], available at <http://www.justice.gov/archive/ag/annualreports/agreporthumantrafficking2010.pdf>; see also [United States v. Norris](#), 453 F. App'x 861, 863 (11th Cir. 2011) (upholding thirty-five year sentence of defendant Harrison Norris, Jr. for child sex trafficking); [United States v. O'Connor](#), 650 F.3d 839, 844 (2d Cir. 2011) (upholding defendant Dean Sacco's sentence of life imprisonment for sex trafficking of children); [United States v. Curtis](#), 481 F.3d 836, 838-39 (D.C. Cir. 2007) (upholding defendant Carlos Curtis's sentence of life imprisonment for sex trafficking of children).

⁶ [United States v. Bonestroo](#), No. CR 11-40016-01-KES, 2012 WL 13704, at *1 (D.S.D. Jan. 4, 2012), rev'd sub nom. [United States v. Jungers](#), 702 F.3d 1066 (8th Cir. 2013); [United States v. Jungers](#), 834 F. Supp. 2d 930, 930 (D.S.D. 2011), rev'd, 702 F.3d 1066 (8th Cir. 2013).

⁷ [Bonestroo](#), 2012 WL 13704, at *1; [Jungers](#), 834 F. Supp. 2d at 931.

⁸ [Bonestroo](#), 2012 WL 13704, at *7; [Jungers](#), 834 F. Supp. 2d at 934.

⁹ No. 09-00036-01-CR-W-GAF, 2009 WL 4798900 (W.D. Mo. Dec. 7, 2009).

¹⁰ [Bonestroo](#), 2012 WL 13704, at *2; [Jungers](#), 834 F. Supp. 2d at 931.

¹¹ [Jungers](#), 834 F. Supp. 2d at 934. The court also noted, “whether Defendant’s conduct falls outside the scope of § 1591 essentially is a case of first impression.” *Id.* at 931.

¹² Brief for Appellant at 1, [United States v. Jungers](#), 702 F.3d 1066 (8th Cir. 2012) (Nos. 12-1006, 12-1100), 2012 WL 947968 [hereinafter Brief for Appellant, Jungers].

¹³ [Jungers](#), 702 F.3d at 1076.

¹⁴ See *infra* App. B.

¹⁵ 18 U.S.C. § 1591(a) (2012).

¹⁶ SHARED HOPE INT’L, DEMAND. A COMPARATIVE EXAMINATION OF SEX TOURISM AND TRAFFICKING IN JAMAICA, JAPAN, THE NETHERLANDS, AND THE UNITED STATES 7 (2007) [hereinafter DEMAND], available at <http://sharedhope.org/wp-content/uploads/2012/09/DEMAND.pdf>.

¹⁷ *Id.* at 3. See generally VICTOR MALAREK, THE JOHNS: SEX FOR SALE AND THE MEN WHO BUY IT (2009) (discussing the reality that men drive the demand for the market of women as a commodity—especially low income, uneducated, and young women in desperation).

¹⁸ DEMAND, *supra* note 16, at 3.

¹⁹ See CAPTIVE DAUGHTERS & THE INT’L HUMAN RIGHTS LAW INST. OF DEPAUL UNIV. COLL. OF LAW, DEMAND DYNAMICS: THE FORCES OF DEMAND IN GLOBAL SEX TRAFFICKING CONFERENCE REPORT 66 (Morrison Torrey & Sarah Dubin eds., 2004), available at http://www.childtrafficking.com/Docs/demand_dynamics_oct07.pdf; DEMAND, *supra* note 16, at 2.

²⁰ DEMAND, *supra* note 16, at 15.

²¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime art. 3, Nov. 15, 2000, 2237 U.N.T.S. 319 [[hereinafter U.N. Protocol], available at http://treaties.un.org/doc/Treaties/2000/11/20001115%2011-38%20AM/Ch_XVIII_12_ap.pdf; see also 22 U.S.C. § 7101(b)(2) (2012).

²² DEMAND, *supra* note 16, at 67. The report explains that:
Buyers of sexual services can be placed in three categories: situational, preferential and opportunistic. Situational buyers are defined as those who engage minors in commercial sex because they are available, vulnerable and the practice is tolerated. Preferential buyers, such as pedophiles, have a sexual preference and shop specifically in the markets providing the preferred victim or service. Opportunistic buyers are those who purchase sex indiscriminately because they do not care, are willfully blind to the age or willingness of the victim, or are unable to differentiate between adults and minors.
Id. at 3.

23 Id. at 67.

24 See Melissa Farley, “Renting an Organ for Ten Minutes”: What Tricks Tell Us About Prostitution, Pornography, and Trafficking, in *PORNOGRAPHY: DRIVING THE DEMAND FOR INTERNATIONAL SEX TRAFFICKING* 146 (David E. Guinn ed., 2007) (“Tricks are average citizens rather than abnormally sadistic psychopaths. They are all ages and from all social classes. Most are married or partnered.”); MARTIN A. MONTO, U.S. DEP’T OF JUSTICE, *FOCUSING ON THE CLIENTS OF STREET PROSTITUTES: A CREATIVE APPROACH TO REDUCING VIOLENCE AGAINST WOMEN— SUMMARY REPORT 4* (1999), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/182859.pdf> (finding that most arrested buyers had some college background); MICHAEL SHIVELY ET AL., NAT’L INST. OF JUSTICE, *FINAL REPORT ON THE EVALUATION OF THE FIRST OFFENDER PROSTITUTION PROGRAM: REPORT SUMMARY 10* (2008), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/221894.pdf> (studying San Francisco’s “john school” program participants, which found them to be largely well educated, employed, and married).

25 See DEMAND, *supra* note 16, at 3; Farley, *supra* note 24, at 147-48.

26 However, a substantial portion of men in the U.S. admit to having purchased sex at some point in their lives, with most surveys finding between 10% and 20% admitting to this crime. MICHAEL SHIVELY ET AL., ABT ASSOCS. INC., *DEVELOPING A NATIONAL ACTION PLAN FOR ELIMINATING SEX TRAFFICKING 2-52* (2010), available at http://www.demandabolition.org/wp-content/uploads/2011/07/2000_abtnactplan.pdf.

27 LINDA A. SMITH, SAMANTHA HEALY VARDAMAN & MELISSA A. SNOW, *SHARED HOPE INT’L, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA’S PROSTITUTED CHILDREN 20* (2009) [hereinafter NATIONAL REPORT], available at http://sharedhope.org/wp-content/uploads/2012/09/SHI_National_Report_on_DMST_2009.pdf.

28 JANICE G. RAYMOND & DONNA M. HUGHES, *SEX TRAFFICKING OF WOMEN IN THE UNITED STATES: INTERNATIONAL AND DOMESTIC TRENDS 71* (2001), available at http://www.uri.edu/artsci/wms/hughes/sex_traff_us.pdf.

29 Id. at 71. Bachelor parties or conventions might raise the number to twenty men per day. Id. “In the cheaper venues, and in street prostitution, some women have sex with 20-30 men per day.” Id.

30 Id.

31 See THE SCHAPIRO GRP., *MEN WHO BUY SEX WITH ADOLESCENT GIRLS: A SCIENTIFIC RESEARCH STUDY 1* (2009) [hereinafter GEORGIA STUDY], available at <http://www.womensfundingnetwork.org/sites/wfnet.org/files/AFNAP/TheSchapiroGroupGeorgiaDemandStudy.pdf>.

32 Id. at 4. According to the study, “young” is the term used by the men who participated in the study and refers to “very young adult females,” as well as some girls under eighteen years old. THE SCHAPIRO GRP., *CSEC DEMAND STUDY RESULTS: RESEARCH HIGHLIGHTS 2* (2009) [hereinafter CSEC DEMAND STUDY RESULTS].

33 GEORGIA STUDY, *supra* note 31, at 11.

34 Id. at 12.

35 Id. at 9.

36 CSEC DEMAND STUDY RESULTS, *supra* note 32, at 1.

37 Id.; see also MONTO, *supra* note 24, at 3-4. Client intervention programs in San Francisco, California (with 986 participants), Portland, Oregon (with 77 participants), Las Vegas, Nevada (with 269 participants), and Santa Clara, California (with 10 participants) found that within the total of 1,342 men arrested, the ages ranged from 18 to 84 years, with a median age of 37. MONTO, *supra* note 24, at 3-4.

38 CSEC DEMAND STUDY RESULTS, *supra* note 32, at 1.

39 GEORGIA STUDY, *supra* note 31, at 10.

40 JUVENILE JUSTICE FUND, ADOLESCENT GIRLS IN GEORGIA'S SEX TRADE: AN IN-DEPTH TRACKING STUDY 8 (2008), available at <http://www.perimeter.org/archives/files/1495/>.

41 MELISSA FARLEY ET AL., MEN WHO BUY SEX: WHO THEY BUY AND WHAT THEY KNOW 7 (2009).

42 Id. at 10.

43 Id.

44 RACHEL DURCHSLAG & SAMIR GOSWAMI, CHI. ALLIANCE AGAINST SEXUAL EXPLOITATION, DECONSTRUCTING THE DEMAND FOR PROSTITUTION: PRELIMINARY INSIGHTS FROM INTERVIEWS WITH CHICAGO MEN WHO PURCHASE SEX 7, 9 (2008), available at <http://www.salvationarmychicago.net/promise/files/2012/11/deconstructing.pdf>.

45 NATIONAL REPORT, *supra* note 27, at 20.

46 U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 2012, at 20 (2012), available at <http://www.state.gov/j/tip/rls/tiprpt/2012/>.

47 Id.

48 Press Release, White House Office of the Press Sec'y, Trafficking in Persons National Security Presidential Directive (Feb. 25, 2003), available at <http://www.fas.org/irp/offdocs/nspd/trafpers.html>.

49 Id.

50 DONNA M. HUGHES, THE DEMAND FOR VICTIMS SEX TRAFFICKING 6-7 (June 2005), http://www.uri.edu/artsci/wms/hughes/demand_for_victims.pdf (quoting George W. Bush in his address to the U.N. in October of

2003).

⁵¹ Press Release, White House Office of the Press Sec'y, President Announces Initiatives to Combat Human Trafficking (July 16, 2004), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2004/07/20040716-11.html>.

⁵² See U.N. Protocol, *supra* note 21, at 5.

⁵³ *Id.*

⁵⁴ See WORLD CONG. AGAINST SEXUAL EXPLOITATION OF CHILDREN & ADOLESCENTS III, THE RIO DE JANEIRO DECLARATION AND CALL FOR ACTION TO PREVENT AND STOP SEXUAL EXPLOITATION OF CHILDREN AND ADOLESCENTS 3 (Nov. 2008), available at http://www.unicef.org/protection/Rio_Declaration_and_Call_for_Action.pdf.

⁵⁵ *Id.*

⁵⁶ *Id.* at 7.

⁵⁷ Linda Smith, Founder and President, Shared Hope Int'l, Remarks at the Association of Missing and Exploited Children's Organizations Conference (Apr. 14, 2010).

⁵⁸ See, e.g., ATTORNEY GENERAL'S REPORT, *supra* note 5, at 62 (2010) (outlining several U.S. government-funded research projects and programs addressing demand and providing statistics for fiscal year 2010 and showing that there were 113 defendants charged under § 1591 and 85 convictions in 71 cases under § 1591).

⁵⁹ Melissa Farley et al., Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder, 2 J. TRAUMA PRAC. 33, 34 (2003).

⁶⁰ *Id.* at 35.

⁶¹ Janice G. Raymond, Legitimizing Prostitution as Sex Work: UN Labour Organization (ILO) Calls for Recognition of the Sex Industry, COALITION AGAINST TRAFFICKING IN WOMEN (July 12, 1999), <http://www.catwinternational.org/Home/Article/61-legitimizing-prostitution-as-sex-work-un-labour-organization-ilo-calls-for-recognition-of-the-sex-industry>.

⁶² JESSICA ASHLEY, ILL. CRIMINAL JUSTICE INFO. AUTH., THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN AND YOUTH IN ILLINOIS 10 (2008), available at <http://www.icjia.state.il.us/public/pdf/researchreports/csec%202008%C20icjia%20report.pdf>.

⁶³ Mimi H. Silbert & Ayala M. Pines, Occupational Hazards of Street Prostitutes, 8 CRIM. JUST. & BEHAV. 395, 396-97 (1981).

⁶⁴ See ASHLEY, *supra* note 62, at 6; Farley et al., *supra* note 59, at 34-35.

⁶⁵ End Demand for Sex Trafficking Act of 2005, H.R. 2012, 109th Cong. § 2(a)(6) (1st Sess. 2005).

⁶⁶ See, e.g., [ARK. CODE ANN. § 5-70-102\(b\)](#) (2007) (stating that prostitution is either a class A or B misdemeanor); [DEL. CODE ANN. tit. 11, § 1342\(a\)\(2\)](#) (2007) (stating that prostitution is a class B misdemeanor); [HAW. REV. STAT. ANN. § 712-1200\(3\)](#) (LexisNexis 2007 & Supp. 2012) (stating that prostitution is a petty misdemeanor).

⁶⁷ [Pub. L. No. 110-457, 122 Stat. 5044](#) (codified in scattered sections of [8 U.S.C.](#), [18 U.S.C.](#), and [22 U.S.C.](#)).

⁶⁸ [18 U.S.C. § 1591\(a\) \(2012\)](#) (stating that the requisite state of mind is knowingly). [Section 1591\(e\)\(2\)](#) defines coercion as: threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of law or the legal process.

Id.

In *United States v. Webster*, Nos. 08-30311, 09-30182, 2011 U.S. App. LEXIS 26438, at *3-5 (9th Cir. Nov. 28, 2011), the defendant challenged the court's jury instruction defining "force" as too broad, but the court dismissed this challenge as harmless error because the defendant's conduct satisfied the definition of coercion under [18 U.S.C. § 1591 \(e\)\(2\)\(B\)](#).

The severe beatings that Webster administered, which he had the other women and girls attend and observe, would naturally cause the observers to infer that similar violence might be inflicted on them if they disobeyed any of Webster's rules. Webster's pattern of fostering an environment of fear of physical harm where violations of various rules were severely punished constituted a "scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person...." This evidence is more than sufficient to sustain a conviction for sex trafficking through the use of coercion.

Id. (footnote omitted) (quoting [18 U.S.C. § 1591 \(e\)\(2\)\(B\)](#)).

For further discussion of the use of [§ 1591](#) to prosecute traffickers who threaten serious harm, see CHARLES DOYLE, CONG. RESEARCH SERV., AN ABBREVIATED SKETCH OF THE WILLIAM WILBERFORCE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2008 ([P.L. 110-457](#)): CRIMINAL LAW PROVISIONS 2-3 (2009), available at http://assets.opencrs.com/rpts/R40101_20090204.pdf.

The 2000 Trafficking legislation clearly stated that the forced labor and sexual trafficking bans in [sections 1589](#) and [1591](#) condemned violations accomplished by the use of physical restraint and abuse of law, but also by the threat of serious harm, or by a scheme intended to convey the impression of such coercive threats. The Wilberforce Act provides yet further clarification with specific definition of the terms (a) serious harm ("physical or nonphysical psychological, financial, or reputational" harm which a similarly situated, reasonable person would consider serious) and (b) abuse of law ("administrative, civil, or criminal" use of the law to cause another to engage in or refrain from conduct). The new definitions re-enforce recent judicial interpretations that have construed the terms found in [sections 1589](#) and [1591](#) broadly.

Id.

⁶⁹ H.R. 2012. It states that the purposes of the Act were:

(1) to support the development of more effective means of combating commercial sexual activities by targeting demand; (2) to protect children from the predators and exploiters who use them in commercial sexual activities; (3) to clarify that the operation of sex tours is prohibited under Federal law; and (4) to assist State and local governments in their enforcement of existing laws dealing with commercial sexual activities.

Id. § 2(b).

⁷⁰ See End Demand for Sex Trafficking Act of 2005, S. 937, 109th Cong. (2005).

⁷¹ See id. § 5(a).

⁷² See id.

⁷³ See *id.* § 2(b); see also Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. 108-21, 117 Stat. 650 (2003). Other provisions included a new federal grant program to encourage the development and implementation of demand-side strategies for the enforcement of laws against sex trafficking, the authorization and appropriation of \$45 million per year for fiscal years 2005 through 2007 to fund the grant program, and the establishment reporting requirements to strengthen efforts to combat unlawful commercial sex. S. 937 at § 4(d), § 7; see also Interview by Kathryn Jean Lopez with Donna Hughes, Women’s Studies Professor, Nat’l Review Online (Jan. 26, 2006), available at <http://old.nationalreview.com/interrogatory/hughes200601260824.asp>.

⁷⁴ Pub. L. No. 109-164, 119 Stat. 3558 (codified as amended at 22 U.S.C. §§ 7101-12).

⁷⁵ See 22 U.S.C. § 7102 (2012).

⁷⁶ § 201(a)(1)(B), 119 Stat. at 3558. To date, this study has not been completed.

⁷⁷ *Id.* § 104 (codified as amended at 22 U.S.C. § 7106 (2006 & Supp. V 2011)).

⁷⁸ *Id.* at § 104(b)(1)(A).

⁷⁹ See Donna M. Hughes, *Wolves in Sheep’s Clothing: No Way to End Sex-Trafficking*, NAT’L REV. ONLINE 1 (Oct. 9, 2002, 9:15 AM), <http://old.nationalreview.com/comment/comment-hughes100902.asp>; see also Brian W. Walsh & Andrew M. Grossman, *Human Trafficking Reauthorization Would Undermine Existing Anti-Trafficking Efforts and Constitutional Federalism*, 21 THE HERITAGE FOUND. LEGAL MEMORANDUM, Feb. 14, 2008, at 1, 2-4, available at http://s3.amazonaws.com/thf_media/2008/pdf/lm21.pdf. Speaking on the proponents of sex workers’ rights: [T]hey will passionately denounce the trafficking of women as a modern form of slavery, but steadfastly avoid mentioning prostitution as the demand that drives the trafficking. As part of the normalization of prostitution, nothing negative is ever said about it. They carefully “delink” trafficking from prostitution, which is like disconnecting the 18th century transatlantic slave trade from chattel slavery in the U.S.
Id.

⁸⁰ Letter from Brian A. Benczkowski, Principal Deputy Assistant Attorney Gen., U.S. Dep’t of Justice, to the Honorable John Conyers, Jr., Chairman, House Comm. on the Judiciary (Nov. 9, 2007), available at <http://justice.gov/olp/pdf/dept-view-letter-hjc-on-hr3887.pdf>. On behalf of the United States Department of Justice, Deputy Assistant Attorney General Benczkowski stated:
The Department does not require any additional statutory authority or expanded jurisdiction in order to continue its successful prosecution of human trafficking cases and related criminal conduct. Federal law prioritizes crimes in which victims have been trafficked as a result of force, fraud, or coercion, including the sex trafficking of children in which coercion is presumed, i.e., crimes that fall under the Thirteenth Amendment’s prohibition on slavery and involuntary servitude, and commercial sex involving transportation in interstate commerce
At the same time, pandering, pimping, and prostitution-related offenses have historically been prosecuted at the state or local level. This allocation between state and Federal enforcement authority does not imply that these crimes are less serious, but rather reflects important structural allocations of responsibility between state and Federal governments. Furthermore, the Department is not aware of any reasons why state and local authorities are not currently able to pursue prostitution-related crimes such that Federal jurisdiction is necessary. Finally, due to the high volume of prostitution-related crimes, the Federal government lacks the necessary resources and capacity to prosecute these offenses.
Therefore, to the extent that this expansion of the Mann Act would federalize the criminal prosecution of pandering, pimping, and prostitution-related offenses, it is unnecessary and a diversion from Federal law enforcement’s core anti-trafficking mission.
Id.

- ⁸¹ Letter from Alexandria House, Am. Civil Liberties Union, to the Honorable Patrick J. Leahy, Chairman, Comm. on the Judiciary (Jan. 23, 2008), available at <http://multiracial.com/site/content/view/1582/49/>; see Letter from James P. Fox, Nat'l Dist. Attorneys Ass'n, to the Honorable Patrick J. Leahy, Chairman, House Comm. on the Judiciary, and Arlen Specter, Ranking Member, House Comm. on the Judiciary (Jan. 22, 2008), available at <http://www.justice.gov/olp/pdf/ndaa.pdf>. Fox's letter stated: Because prostitution-related crimes are of a substantially local nature states and localities have historically and effectively prosecuted these types of crimes. The federalization of such crimes is of concern to local and state prosecutors who handle approximately 95% of the nation's prosecutions. Federalization of these types of crimes is ill-advised as these crimes have minimal federal contact; would divert federal resources from human trafficking cases involving fraud, coercion or force, and unnecessarily involve all levels of government. Letter from James P. Fox, *supra* note 81.
- ⁸² The Child Exploitation and Obscenity Section of the U.S. Department of Justice has responsibility for prosecuting cases of child sex trafficking and has used the Mann Act to prosecute buyers and traffickers in cases of prostitution of minors and a range of criminal statutes to prosecute the purchase, possession, or manufacture of child pornography. See Child Exploitation & Obscenity Section, U.S. DEPARTMENT OF JUSTICE, <http://www.justice.gov/criminal/ceos/> (last visited Apr. 10, 2013).
- ⁸³ See 18 U.S.C. § 1591 (2012).
- ⁸⁴ See The White Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421-2424 (2006)); see also *United States v. Delong*, No. 12-3282, 2013 U.S. App. LEXIS 636, at *1 (6th Cir. Jan. 7, 2013) (charging defendant with travel with the intent to engage in illicit sexual conduct in violation of 18 U.S.C. § 2423(b)); *United States v. Bradley*, 675 F.3d 1021, 1025 (7th Cir. 2012) ("18 U.S.C. § 2423(b) proscribes interstate travel with intent to engage in sexual conduct with a minor."); *United States v. Nielsen*, 694 F.3d 1032, 1036 n.4 (9th Cir. 2012) ("The two subsections of § 2422 share a common lineage in the Mann Act of 1910, and they are nearly identical in wording, except that § 2422(b) specifically addresses minors.").
- ⁸⁵ Before enactment of the Trafficking and Violence Protection Act, the Mann Act was used by federal prosecutors to prosecute sex trafficking and continues to be used primarily for child sex trafficking offenses. In *Jungers* decision granting the motion for judgment of acquittal, the court referred to the existence of the Mann Act, 18 USC §§ 2423 and 2422(b) in particular, to prosecute the actions of buyers of sex acts with minors, stating that this must mean that 18 U.S.C. § 1591 was not intended to reach the actions of buyers. See *United States v. Jungers*, 834 F. Supp. 2d 930, 934 (D.S.D. 2011), rev'd, 702 F.3d 1066 (8th Cir. 2013); see, e.g., *United States v. Murrell*, 368 F.3d 1283, 1290 (11th Cir. 2004) (affirming conviction despite defendant's argument that conduct in making an online deal with a purported adult father to have sex with the father's minor daughter was not within the purview of § 2422); *United States v. Carter*, No. 1:04-CR-05306-OWW, 2006 U.S. Dist. LEXIS 22501, at *7-9 (E.D. Cal. Apr. 17, 2006) (denying motion to dismiss complaint under § 2422(b) where defendant arranged to have sex with a minor through communications with an adult intermediary by a means of interstate commerce using a computer on the Internet).
- ⁸⁶ See 18 U.S.C. §§ 1591(a), 2422(b); see also Press Release, Matt J. Whitworth, Office of the U.S. Attorney, W. Dist. of Mo., Final Defendant Pleads Guilty to Sex Trafficking of a Child (Dec. 18, 2009) [hereinafter Press Release, Whitworth], available at <http://www.justice.gov/usao/mow/news2009/mikoloyck.ple.htm>.
- ⁸⁷ 18 U.S.C. §§ 1591(b), 1594, 2422(b); Press Release, Whitworth, *supra* note 85; see also Indictment at 2, *United States v. Oflyng*, No. 09-00084-01-CR-W-SOW (W.D. Mo. Mar. 10, 2009).
- ⁸⁸ See, e.g., Press Release, Press Office of the Attorney Gen. of Tex., Attorney General Convenes Human Trafficking Prevention Task Force (Jan. 21, 2010), available at <https://www.oag.state.tx.us/oagnews/release.php?print=1&id=3202>; Press Release, U.S. Attorney's Office, Dist. of Columbia, New York Man Sentenced to 210 Months (17 1/2 years) in Prison for Transportation of Minors to Engage in Prostitution and Simple Assault (Oct. 30, 2009), available at <http://www.justice.gov/usao/dc/news/2009/oct/09-276.pdf>.

- ⁸⁹ United States v. Mikoloyck, No. 09-00036-01-CR-W-GAF, 2009 U.S. Dist. LEXIS 131697, at *13 (W.D. Mo. Nov. 13, 2009).
- ⁹⁰ Id. at *18.
- ⁹¹ Id. (citing [United States v. Strevell](#), 185 F. App'x 841 (11th Cir. 2006) and [United States v. Roberts](#), 174 F. App'x 475 (11th Cir. 2006)).
- ⁹² Plea Agreement at 1-2, Mikoloyck, No. 09-0036-01-CR-W-GAF (W.D. Mo. Dec. 21, 2009).
- ⁹³ [702 F.3d 1066](#) (8th Cir. 2013).
- ⁹⁴ The district court opinion is located at [United States v. Bonestroo](#), No. CR 11-40016-01-KES, 2012 WL 13704 (D.S.D. Jan. 4, 2012), rev'd sub nom. [United States v. Jungers](#), 702 F.3d 1066 (8th Cir. 2013). On appeal to the Eighth Circuit, the Bonestroo case was consolidated with Jungers. See [Jungers](#), 702 F.3d at 1066.
- ⁹⁵ Press Release, U.S. Attorney's Office, Dist. of S.D., Sioux City Man Convicted of Sex Trafficking (Oct. 26, 2011), available at <http://www.justice.gov/usao/sd/pressreleases/2011/SF-2011-10-26-Jungers.html>; Press Release, U.S. Attorney's Office, Dist. of S.D., Sioux Falls Man Found Guilty of Commercial Sex Trafficking (Nov. 10, 2011), available at <http://www.justice.gov/usao/sd/pressreleases/2011/SF-2011-11-10-Bonestroo.html>.
- ⁹⁶ Brief for Appellant at 4-5, [United States v. Jungers](#), 702 F.3d 1066 (8th Cir. 2012) (Nos. 12-1006, 12-1100), 2012 WL 947968.
- ⁹⁷ Id. at 5-7.
- ⁹⁸ Id.
- ⁹⁹ Id.
- ¹⁰⁰ [United States v. Bonestroo](#), No. CR 11-40016-01-KES, 2012 WL 13704, at *1 (D.S.D. Feb. 11, 2011), rev'd sub nom. [United States v. Jungers](#), 702 F.3d 1066 (8th Cir. 2013); [United States v. Jungers](#), 834 F. Supp. 2d 930, 931 (D.S.D. 2011), rev'd, 702 F.3d 1066 (8th Cir. 2013).
- ¹⁰¹ [Jungers](#), 702 F.3d at 1068.
- ¹⁰² See id.
- ¹⁰³ FED. R. CRIM. P. 29(a).
- ¹⁰⁴ [Jungers](#), 834 F. Supp. 2d at 931.

¹⁰⁵ Bonestroo, 2012 WL 13704, at *3-4; Jungers, 834 F. Supp. 2d at 932.

¹⁰⁶ 18 U.S.C. § 1591(a) (2012).

¹⁰⁷ “As with any question of statutory interpretation, our analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009); see also YULE KIM, CONG. RESEARCH SERV., 97-589, STATUTORY INTERPRETATION: GENERAL PRINCIPLES AND RECENT TRENDS 39 n.227 (2008). The Congressional Research Service Report on statutory interpretation states:

The classic extremes are represented by *Caminetti v. United States*, 242 U.S. 470 (1917), and *Church of the Holy Trinity v. United States*, 143 U.S. 457 (1892). In *Caminetti*, the Court applied the plain meaning rule to hold that the Mann Act, or “White Slave Traffic Act,” which prohibits transportation of women across state lines for purposes of “prostitution, debauchery, or any other immoral purpose,” clearly applies to noncommercial immorality, in spite of legislative history showing that the purpose was to prohibit the commercial “white slave trade.” In *Holy Trinity*, the Court held that a church’s contract with a foreigner to come to this country to serve as its minister was not covered by a statutory prohibition on inducements for importation of aliens “to perform labor or service of any kind.” The Court brushed aside the fact that the statute made no exception for ministers, although it did so for professional actors, artists, lecturers, singers, and domestic servants, and declared the law’s purpose to be to prevent importation of cheap manual labor. “A thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers,” the Court explained. 143 U.S. at 459. KIM, *supra* note 107, at 39 n.227.

¹⁰⁸ The Jungers court even stated, “[b]ecause the text of § 1591 is not ambiguous, the Court need not consider the legislative history.” Jungers, 834 F. Supp. 2d at 934.

¹⁰⁹ See Bonestroo, 2012 WL 13704, at *4-5; Jungers, 834 F. Supp. 2d at 934. Before applying canons of construction in its decision, the Jungers district court opinion stated, “[a]pplying the established rules of statutory construction, including the rule that criminal statutes must be strictly construed, the Court finds Defendant has accurately evaluated and discerned the intent of Congress.” Jungers, 834 F. Supp. 2d at 934 (citation omitted).

¹¹⁰ Jungers, 834 F. Supp. 2d at 932.

¹¹¹ *Id.* at 931-32 (quoting *Holloway v. United States*, 526 U.S. 1, 6 (1999)).

¹¹² *Id.* at 933 (“Finally, Defendant contends that the broader statutory scheme indicates that § 1591 was aimed at those engaging in the business of human trafficking. The statute’s title section is ‘Peonage, Slavery, and Trafficking in Persons,’ and the subchapter title of § 1591 itself is ‘Sex trafficking of children or by force, fraud, or coercion[.]’ The intent of Congress is clear.”).

¹¹³ *Id.* at 934.

¹¹⁴ Bonestroo, 2012 WL 13704, at *4; see also *S.D. Warren Co. v. Me. Bd. of Env’tl. Prot.*, 547 U.S. 370, 378 (2006); *Dole v. United Steelworkers of Am.*, 494 U.S. 26, 36 (1990).

¹¹⁵ Bonestroo, 2012 WL 13704, at *4.

¹¹⁶ *Id.*

117 Id. at *7.

118 Id. at *5-6.

119 Id. at *6.

120 Id. at *6-7.

121 Brief for Appellant, Jungers, *supra* note 12, at 12.

122 Id.

123 Id. at 15.

124 Id.

125 Id. at 11 (“The courts further erred by failing to apply the correct canons of statutory construction and by considering unnecessary factors such as statutory captions and titles, other federal statutes involving sex with minors, punishment and Congressional intent, all without a finding that § 1591’s text was ambiguous.”); see also *INS v. Cardoza-Fonseca*, 480 U.S. 421, 452-53 (1987) (Scalia, J., concurring) (“Judges interpret laws rather than reconstruct legislators’ intentions. Where the language of those laws is clear, we are not free to replace it with an unenacted legislative intent.”).

126 Brief for Appellant, Jungers, *supra* note 12, at 15.

127 Id. at 21-22.

128 *United States v. Jungers*, 834 F. Supp. 2d 930, 933 (D.S.D. 2011), rev’d, 702 F.3d 1066 (8th Cir. 2013). The Jungers district court stated:
[A]ccording to Defendant, the act of engaging in a prohibited commercial sex act is not, standing alone, “sex trafficking.” Rather, “sex trafficking”—the organized activity of recruiting, enticing, harboring, transporting, providing, obtaining, and maintaining minors knowing that they “will be caused” to engage in commercial sex acts—is the predicate to the commercial sex act itself.
Id.

129 Appellant’s Reply Brief at 6-9, *Jungers*, 702 F.3d at 1066 (Nos. 12-1006, 12-1100), 2012 WL 1965455.

130 Brief for Appellee at 2-3, *Jungers*, 702 F.3d at 1066 (No. 12-1100), 2012 WL 6653175.

131 Id. at 17, 25; cf. *United States v. Gonzalez-Mendez*, 150 F.3d 1058, 1061 (9th Cir. 1998) (“Under the rule [of lenity], we construe ambiguities in criminal statutes in favor of defendants. However, we resort to the rule of lenity only if the statute is ‘truly ambiguous.’” (citation omitted) (quoting *United States v. LeCoe*, 936 F.2d 398, 402 (9th Cir. 1991))).

- ¹³² See [United States v. Ward](#), 686 F.3d 879, 882 (8th Cir. 2012) (“In reviewing a district court’s grant of a motion for a judgment of acquittal, this court reviews the sufficiency of the evidence de novo, viewing evidence in the light most favorable to the government, resolving conflicts in the government’s favor, and accepting all reasonable inferences that support the verdict.” (quoting [United States v. Johnson](#), 639 F.3d 433, 437-38 (8th Cir. 2011))); [United States v. Santana](#), 524 F.3d 851, 853 (8th Cir. 2008) (using the same language).
- ¹³³ [Jungers](#), 702 F.3d at 1071.
- ¹³⁴ [Id.](#) at 1069.
- ¹³⁵ [Id.](#) at 1072.
- ¹³⁶ [Id.](#) at 1070 (“To the contrary, the expansive language of § 1591 ‘criminalizes a broad spectrum’ of conduct relating to the sex trafficking of children.” (quoting [United States v. Jongewaard](#), 567 F.3d 336, 340 (8th Cir. 2009))).
- ¹³⁷ [Id.](#) at 1072.
- ¹³⁸ 18 U.S.C. § 1591(a)(1) (2012) states in part, “Whoever knowingly recruits, entices, harbors, transports, provides, obtains, or maintains by any means.” See [Jungers](#), 702 F.3d at 1070 (“The terms ‘whoever’ and ‘any’ are expansive.”).
- ¹³⁹ [Jungers](#), 702 F.3d at 1070-71 (“Neither term implicitly limits the application of § 1591(a)(1) to suppliers nor exempts purchasers from prosecution under the statute.”).
- ¹⁴⁰ [Id.](#) at 1072 (“Notwithstanding the defendants’ argument to the contrary, the TVPA definition of ‘sex trafficking’—broadly defined as ‘the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act’—readily includes the actions of a purchaser whose sole purpose is obtaining a child for sex. ‘Traffic, like trade, includes both the business of buying and selling for money and the business of exchanging commodities by barter.’” (citation omitted) (internal quotation marks omitted) (quoting [United States v. Horn](#), 187 F.3d 781, 791 (8th Cir. 1999))).
- ¹⁴¹ [United States v. Bonestroo](#), No. CR 11-40016-01-KES, 2012 WL 13704, at *4 (D.S.D. Feb. 11, 2011), rev’d sub nom. [United States v. Jungers](#), 702 F.3d 1066 (8th Cir. 2013) (“Although a bare reading of at least one of these three verbs may support a determination that § 1591 was meant to encompass purchasers of sex acts from minors, the entire language and design of the statute as a whole indicates that it is meant to punish those who are the providers or pimps of children, not the purchasers or the johns.”).
- ¹⁴² [Jungers](#), 702 F.3d at 1071 (“Specifically, the defendants assert the language of § 1591, read in context, indicates Congress intended to prohibit the potential ‘chronological’ steps a child sex-trafficking organization must take to gain control over child victims and prepare them to engage in commercial sex acts in the future, but stopped short of criminalizing the conduct of the purchasers of such acts.”).
- ¹⁴³ [Id.](#) at 1072.
- ¹⁴⁴ [Id.](#) at 1072-73.

¹⁴⁵ Id. at 1071-72 (“According to the defendants, the definitions of ‘sex trafficking’ and the phrase ‘will be caused’ indicate § 1591 only applies to ‘predicate conduct’ committed by suppliers of commercial sex acts.”).

¹⁴⁶ Id. at 1072.

¹⁴⁷ Id. at 1073 (“In many, if not all cases, the commercial sex act is still in the future at the time the purchaser entices, transports, obtains or otherwise traffics a child in violation of § 1591. Given that the commercial sex act can be in the future regardless of whether a supplier or purchaser commits the conduct prohibited by § 1591, we fail to see how the phrase ‘will be caused’ somehow manifests a congressional intent to limit § 1591 to suppliers.”).

¹⁴⁸ Id. at 1074.

¹⁴⁹ Id. (“Applying § 1591 to purchasers of commercial sex acts who violate the statute despite their exposure to punishment for related crimes is entirely consistent with Congress’s concerted efforts ‘to combat trafficking in persons’ and ‘ensure just and effective punishment of traffickers.’”).

¹⁵⁰ Since the parties agreed that the statute was unambiguous, the Eighth Circuit did not address the legislative history of 18 U.S.C. § 1591 or the rule of lenity. See *id.* at 1075 n.8.

¹⁵¹ *Id.* (citations omitted) (quoting *Jama v. ICE*, 543 U.S. 335, 341 (2005)).

¹⁵² See *supra* notes 110-20 and accompanying text.

¹⁵³ See Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558, § 104 (codified as amended at 22 U.S.C. § 7109 (2012)).

¹⁵⁴ Press Release, Congresswoman Carolyn B. Maloney, Pryce, Maloney Measure to Fight Sex Trafficking Unanimously Passes House (Dec. 15, 2005), available at <http://maloney.house.gov/press-release/pryce-maloney-measure-fight-sex-trafficking-unanimously-passes-house>.

¹⁵⁵ 151 CONG. REC. S8209 (2005) (statement of Sen. John Cornyn at the introduction of the End Demand for Sex Trafficking Act of 2005).

¹⁵⁶ 154 CONG. REC. H24601 (2008) (statement of Rep. Chris Smith).

¹⁵⁷ See *United States v. Bonestroo*, No. CR 11-40016-01-KES, 2012 WL 13704, at *5 (D.S.D. Feb. 11, 2011), *rev’d sub nom. United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013) (citations omitted).

¹⁵⁸ *United States v. Jungers*, 834 F. Supp. 2d 930, 933 (D.S.D. 2011), *rev’d*, 702 F.3d 1066 (8th Cir. 2013) (citation omitted).

¹⁵⁹ See 18 U.S.C. §§ 2243, 2241(c) (2012).

- ¹⁶⁰ The Jungers district court stated:
Because the text of § 1591 is not ambiguous, the Court need not consider the legislative history. The Court notes, however, that its examination of the legislative history cited by the parties reinforces the Court’s conclusion based on an analysis of the language of § 1591, and the legislative history supports Defendant’s interpretation of the statute.
Jungers, 834 F. Supp. 2d at 934 (citation omitted). Similarly, the Bonestroo district court stated, “While not necessary to the analysis, the court will also examine the legislative history of § 1591.” Bonestroo, 2012 WL 13704, at *5.
- ¹⁶¹ See Bonestroo, 2012 WL 13704, at *5 (“Congress clearly has shown that it knows how to reach and punish those who engage in the sex act itself with a child, and it did not explicitly do so in § 1591.”); Jungers, 834 F. Supp. 2d at 933-34 (“The list of activities prohibited by § 1591 does not include the activity of paying for sex itself.”).
- ¹⁶² The Jungers district court opinion states:
When § 1591 was passed in 2000 Congress was enhancing its statutory protection of minors from sexual slavery by properly singling out for greater punishment those who engage in “sex trafficking of children by force, fraud or coercion.” Accordingly, a defendant who violates § 1591 faces a mandatory minimum sentence of 15 years and a maximum term of life in prison, and under 18 U.S.C. § 2423(b), applicable to Johns, there is no mandatory minimum sentence and the maximum term of imprisonment is 30 years.
Jungers, 834 F. Supp. 2d at 933; see also Bonestroo, 2012 WL 13704, at *6 (“The legislative history is clear, therefore, that the TVPA was meant to apply to the suppliers who are most directly and deeply involved in the trafficking rings themselves.”).
- ¹⁶³ Jungers, 702 F.3d at 1075; see text accompanying note 151.
- ¹⁶⁴ Brief for Appellant, Jungers, supra note 12, at 23.
- ¹⁶⁵ Bonestroo, 2012 WL 13704, at * 4.
- ¹⁶⁶ The Eighth Circuit decision in Jungers contemplates various roles that a buyer may play in a child sex trafficking case and provides hypothetical situations to demonstrate the types of buyer conduct that not only violate the statute’s prohibition on obtaining a child for commercial sex, but also violate the prohibition on enticing, harboring, transporting, obtaining, or maintaining a minor “knowing she would be caused to engage in a commercial sex act.” Jungers, 702 F.3d at 1072-73.
- ¹⁶⁷ See KEVONNE SMALL ET AL., AN ANALYSIS OF FEDERALLY PROSECUTED COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN (CSEC) CASES SINCE THE PASSAGE OF THE VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000, at 22 (2008), available at http://www.urban.org/UploadedPDF/411813_CSEC_analysis.pdf; see also RICHARD J. ESTES & NEIL ALAN WEINER, UNIV. OF PA., THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO 25 (2002) (recommending the prosecution of more cases involving the sexual exploitation of children).
- ¹⁶⁸ See generally SHARED HOPE INT’L & AM. CTR FOR LAW & JUSTICE, PROTECTED INNOCENCE LEGISLATIVE FRAMEWORK: METHODOLOGY (2011) [hereinafter PROTECTED INNOCENCE], available at http://sharedhope.org/wp-content/uploads/2012/09/SHI_ProtectedInnocence_Methodology_FINAL.pdf (describing the methodology used to assess the effectiveness of states in combating human trafficking and noting that many states scored low in this assessment).
- ¹⁶⁹ NATIONAL REPORT, supra note 27, at 12-15; see also DARLENE C. LYNCH & KIRSTEN WIDNER, EMORY LAW BARTON CHILD LAW & POLICY CLINIC, ADDRESSING THE “DEMAND” SIDE OF COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: REVIEW OF FEDERAL AND STATE LAWS FOR PROSECUTING OFFENDERS 56-58 (2010) (analyzing the federal and Georgia’s statutory elements and penalties for CSEC and related crimes and finding Georgia’s

penalties and fines insufficient).

¹⁷⁰ See *infra* App. A.

¹⁷¹ See *infra* App. A.

¹⁷² 18 U.S.C. § 1591 (2012).

¹⁷³ See *infra* App. B.

¹⁷⁴ See *infra* App. B.

¹⁷⁵ See *supra* Part VI.A.

¹⁷⁶ See [DEL. CODE ANN. tit. 11, § 787\(b\)\(2\)](#) (2007) (“A person is guilty of sexual servitude of a minor when the person knowingly [c]auses a minor to engage in commercial sexual activity or a sexually explicit performance.”); [IDAHO CODE ANN. §§ 18-5614\(1\), 8602\(1\)](#) (2004 & Supp. 2012) (“‘Human trafficking’ means [s]ex trafficking in which the person induced to perform such act has not attained eighteen (18) years of age,” and also includes patronizing a prostitute.); [IND. CODE ANN. § 35-42-3.5-1\(c\)](#) (LexisNexis 2009) (“A person who knowingly or intentionally pays, offers to pay, or agrees to pay money or other property to another person for an individual who the person knows has been forced into: (1) forced labor; (2) involuntary servitude; or (3) prostitution; commits human trafficking, a Class C felony.”); [IOWA CODE ANN. § 710A.1\(4\)\(b\)](#) (West Supp. 2012) (“‘Human trafficking’ also means knowingly purchasing or attempting to purchase services involving commercial sexual activity from a victim or another person engaged in human trafficking.”); [LA. REV. STAT. ANN. § 14:46.3\(A\)\(1\)](#) (2012) (“For any person to knowingly purchase, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity.”); [MASS. GEN. LAWS ANN. ch. 265, § 50\(a\)](#) (West Supp. 2012) (“Whoever causes a person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of said chapter 272; shall be guilty of the crime of trafficking of persons for sexual servitude....”); [MISS. CODE ANN. § 97-3-54.1\(1\)\(c\)](#) (2006) (“A person who causes or attempts to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of sexually oriented material, shall be guilty of procuring sexual servitude of a minor....”); [MO. ANN. STAT. §§ 566.212\(1\), 566.213\(1\)](#) (West 2012) (“A person commits the crime of sexual trafficking if the individual knowingly [c]auses a person under the age of eighteen [or 12 for purposes of [MO. ANN. STAT. § 566.213](#)] to engage in a commercial sex act, a sexual performance, or the production of explicit sexual material as defined in section 573.010....”); [NEB. REV. STAT. § 28-831\(2\)](#) (2008) (“No person shall knowingly cause or attempt to cause a minor to engage in commercial sexual activity, sexually-explicit performance, or the production of pornography.”); [OKLA. STAT. ANN. tit. 21, § 748\(A\)\(6\)\(b\)](#) (West Supp. 2013) (“[R]ecruiting, enticing, harboring, maintaining, transporting, providing, purchasing or obtaining, by any means, a minor for purposes of engaging the minor in a commercial sex act....”); [R.I. GEN. LAWS § 11-67-6\(b\)\(2\)](#) (Supp. 2012) (“Sells or purchases a minor for the purposes of commercial sex acts.”); [TEX. PENAL CODE ANN. § 20A.02\(a\)\(8\)](#) (West Supp. 2012) (“[E]ngages in sexual conduct with a child trafficked in the manner described in Subdivision (7).”); [VT. STAT. ANN. tit. 13, § 2655\(a\)](#) (Supp. 2012) (“No person shall knowingly solicit a commercial sex act from a victim of human trafficking.”).

¹⁷⁷ See [18 U.S.C. § 2251](#) (2012) (entitled “Sexual exploitation of children”); [18 U.S.C. § 2251A](#) (2012) (entitled “Selling or buying of children”); [18 U.S.C. § 2252](#) (2012) (entitled “Certain activities relating to material involving the sexual exploitation of minors”); [18 U.S.C. § 2423](#) (2012) (entitled “Transportation of minors”).

¹⁷⁸ Brief for Appellant, Jungers, *supra* note 12, at 19-20.

179 See supra notes 66 and accompanying text.

180 SHARED HOPE INT'L ET AL., REPORT FROM THE U.S. MID-TERM REVIEW ON THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN AMERICA 27 (2006), available at http://www.humantrafficking.org/uploads/publications/Final_Report_11.6.06.pdf.

181 FARLEY ET AL., supra note 41, at 22.

182 Id.

183 DURCHSLAG & GOSWAMI, supra note 44, at 24.

184 Id.

185 Id.

186 FARLEY ET AL., supra note 41, at 26.

187 Id.

188 See infra App. B.

189 See Press Release, U.S. Attorney's Office, S. Dist. of Iowa, New Jersey Man Convicted on Sex Trafficking Charges (Nov. 21, 2012), available at <http://www.fbi.gov/omaha/press-releases/2012/new-jersey-man-convicted-on-sex-trafficking-charges> ("Evidence produced at trial showed the traveling prostitution venture operated in at least Arkansas, Iowa, Nebraska, Kansas, Colorado, Pennsylvania, Maryland, South Carolina, Louisiana, Georgia, Alabama, Texas, and Tennessee.").

190 NATIONAL REPORT, supra note 27, at 22.

191 Id. (citing MELISSA SNOW, SALT LAKE CITY ASSESSMENT: IDENTIFICATION OF DOMESTIC MINOR SEX TRAFFICKING VICTIMS AND THEIR ACCESS TO SERVICES 45 (2008), available at http://sharedhope.org/wp-content/uploads/2012/09/SaltLakeCity_PrinterFriendly.pdf).

192 Id. at 21.

193 See id. But see LA. REV. STAT. ANN. § 14:46.2(D) (2012) ("It shall not be a defense to prosecution for a violation of this Section that the person being recruited, harbored, transported, provided, solicited, obtained, or maintained is actually a law enforcement officer or peace officer acting within the official scope of his duties."); *United States v. Carter*, No. 1:04-CR-05306 OWW, 2006 WL 997867, at *1, *6 (E.D. Cal. 2006) (denying motion to dismiss complaint under 18 U.S.C. § 2422(b) where defendant arranged to have sex with a minor through communications with an adult intermediary by a means of interstate commerce using a computer on the Internet).

- ¹⁹⁴ NATIONAL REPORT, *supra* note 27, at 21-22. But see Hearing Before the Subcomm. on Int'l Orgs., Human Rights and Oversight of the H. Comm. on Foreign Affairs, 111th Cong. 5 (2009) (statement of Linda Smith, Founder and President, Shared Hope International), available at http://sharedhope.org/wp-content/uploads/2012/09/Linda-Smith_Testimony_ForAffairsSubcomm-on-IOHRO_10-09.pdf. Linda Smith recounted how a child victim was arrested, rather than buyer, quoting the declaration of arrest by a police officer in 2006: After watching the truck slow down and the female approach the truck, then later finding the truck on a side street with the female in the truck, through my training and experience I know this is a common practice for prostitution related crimes. We then approached the vehicle and came on a juvenile (DOB 3-19-1994) and male (DOB 11-4-1959) involved in a sex act. Due to the above circumstances, the stated agreement for \$40 for a hand job, observation that he had \$45 in U.S. currency hanging from his left front pocket of his pants, had lotion on both of his hands, she stating she was engaging in an act of prostitution [S]he was placed under arrest for soliciting prostitution and was transported to CCJH [P]robable cause exists to hold said person pending plea and trial.
Id.
- ¹⁹⁵ See *United States v. Marcus*, 487 F. Supp. 2d 289, 307 (E.D.N.Y. 2007) (“[T]he court concludes that, for purposes of criminal liability under the sex trafficking statute, a commercial sex act may include sexual acts that are photographed for commercial gain.”), *rev'd on other grounds*, 130 S. Ct. 2159 (2010).
- ¹⁹⁶ 18 U.S.C. § 2256(8) (2012).
- ¹⁹⁷ See, e.g., Press Release, Dep't. of Justice, Criminal Div., Florida Man Sentenced to Life in Prison for Sex Trafficking of Minors and Production of Child Pornography (May 7, 2012), available at <http://www.justice.gov/opa/pr/2012/May/12-crm-587.html>.
- ¹⁹⁸ PROTECTED INNOCENCE, *supra* note 168, at 5.
- ¹⁹⁹ See *id.*; see also The Protecting Children from Internet Pornographers Act: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Sec. of the H. Comm. on the Judiciary, 112th Cong. 5-7 (2011) (statement of Ernie Allen, President and CEO, National Center for Missing and Exploited Children), available at <http://judiciary.house.gov/hearings/pdf/Allen07122011.pdf> (discussing the use of the Internet in victimizing children). See generally NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN, http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=1504 (last visited Apr. 12, 2013).
- ²⁰⁰ Linda Smith & Samantha Healy Vardaman, The Problem of Demand in Combating Sex Trafficking, 81 INT'L REV. PENAL L. 607, 613 (2010), available at http://sharedhope.org/wp-content/uploads/2012/12/ProblemofDemand_AIDPRevuePenal_Spring2011_Excerpt.pdf.
- ²⁰¹ Smith & Vardaman, *supra* note 200, at 613-14 (footnotes omitted); see NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, ONLINE VICTIMIZATION OF YOUTH: FIVE YEARS LATER 8 (2006), available at http://www.missingkids.com/en_US/publications/NC167.pdf.
- ²⁰² Farley, *supra* note 24, at 144-45.
- ²⁰³ See generally LARA JANSON, CHI. ALLIANCE AGAINST SEXUAL EXPLOITATION, “OUR GREAT HOBBY”: AN ANALYSIS OF ONLINE NETWORKS FOR BUYERS OF SEX IN ILLINOIS (2013), available at http://g.virbcdn.com/_f2/files/22/FileItem-276524-FinalWeb_OurGreatHobby.pdf (examining the use of online message boards by men to discuss where to buy sex with women and girls in Illinois and how to evade law enforcement in the pursuit of what they call their “great hobby”).

204 DEMAND, *supra* note 16, at 17-18.

205 *Id.* at 18.

206 *Id.*

207 See ALEXANDRA GELBER, U.S. DEP'T OF JUSTICE, CRIMINAL DIV., CHILD EXPLOITATION & OBSCENITY SECTION, RESPONSE TO "A RELUCTANT REBELLION" 5-6 (2009), available at <http://www.justice.gov/criminal/ceos/downloads/ReluctantRebellionResponse.pdf>.

208 See *id.* at 14-15.

209 702 F.3d 1066 (8th Cir. 2013).

210 See *infra* App. B.

211 MELISSA FARLEY, PROSTITUTION AND TRAFFICKING IN NEVADA: MAKING THE CONNECTIONS 112 (2007).

212 ALEXANDRA PRIEBE & CRISTEN SUHR, ATLANTA WOMEN'S AGENDA, HIDDEN IN PLAIN VIEW: THE COMMERCIAL SEXUAL EXPLOITATION OF GIRLS IN ATLANTA 22, 24 (2005).

213 NATIONAL REPORT, *supra* note 27, at 12, (quoting Andrew Oosterbaan, Chief of the Child Exploitation and Obscenity Section U.S. Department of Justice at the Shared Hope International National Training Conference on the Sex Trafficking of America's Youth (transcript on file with author)).

214 U.S. DEP'T OF STATE, OFFICE TO MONITOR & COMBAT TRAFFICKING IN PERSONS, PREVENTION: FIGHTING SEX TRAFFICKING BY CURBING DEMAND FOR PROSTITUTION, available at <http://www.state.gov/documents/organization/167329.pdf>.

215 18 U.S.C. § 2423(a) (2012).

216 *Id.*

217 *Id.*

218 *Id.* § 2422(b).

219 *Id.*

220 *Id.*

221 Id. § 1591.

222 Id. § 1591(b); 18 U.S.C. § 2251(e) (2012).

223 18 U.S.C. § 1591(b); 18 U.S.C. § 2251(e).

224 18 U.S.C. § 1591(b)(2).

225 Id.

226 Id. § 2251 (defining exploitation to include interstate or foreign transportation of minors for producing sexually explicit depictions; parental consent to producing sexually explicit depictions; receiving, buying, exchanging, displaying, distributing, producing, or reproducing sexually explicit materials; participation in sexually explicit conduct for the purpose of making visual depictions; or transporting advertisements for visual depictions of sexually explicit conduct with or by a minor).

227 Id.

228 Id.

229 Id.

230 Id.

231 Id.

232 Id.

233 Id. § 2251A (2012).

234 Id.

235 Id.

236 Id. § 2252 (2012).

237 Id. § 2252(b)(1).

238 Id.

239 Id.

240 Id.

241 Id. § 2252(b)(2) (providing, however, that the offender would be fined as a minimum penalty).

242 Id. (providing that this sentence may also be combined with a fine).

243 Id.

244 Id.

245 Id. § 2252A (2012).

246 Id. § 2252A(b)(1).

247 Id.

248 Id.

249 Id.

250 Id. § 2252A(b)(2).

251 Id. (providing that a sentence may also be combined with a fine).

252 Id.

253 Id.

254 Id. § 1466A (2012).

255 Id.

256 Id., invalidated by [United States v. Handley](#), 564 F. Supp. 2d 996, 1007 (S.D. Iowa 2008). However, other federal courts have

upheld the statute. See, e.g., [United States v. Whorley](#), 550 F.3d 326, 337 (4th Cir. 2008) (as-applied challenge).

²⁵⁷ This data was compiled from a report by Shared Hope International that evaluated and graded all fifty states' anti-trafficking laws. SHARED HOPE INT'L, PROTECTED INNOCENCE CHALLENGE REPORT 11-15 (2012), available at http://sharedhope.org/wpcontent/uploads/2012/09/ProtectedInnocenceChallenge_FINAL_2012_wcover_web.pdf.

²⁵⁸ Missouri does not solely apply to buyers through use of the term ““obtains.” Id. at 168-69.

43 UMPSLR 917

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