No. 24-

IN THE

Supreme Court of the United States

DANIEL S. FITZGERALD,

Petitioner,

v.

THE UNITED STATES ATTORNEY'S OFFICE
FOR THE SOUTHERN DISTRICT OF NEW YORK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the 18 U.S.C. § 1595(b)(1) of the Trafficking Victims Protection Reauthorization Act ("TVPRA") requires a stay of all claims brought by all parties in civil case indefinitely until the final adjudication of a criminal case against a criminal defendant who is not a party in the civil action, including claims not involving the criminal defendant and without presenting any evidence the civil action arises out of the same occurrence where any plaintiff is an alleged victim.

PARTIES TO THE PROCEEDINGS

The Petitioner is Daniel S. Fitzgerald ("Fitzgerald") in his personal capacity. The Respondent is the United States Attorney's Office for the Southern District of New York ("Government"). Jane Doe Nos. 1-10, Plaintiffs below, asserted claims under the TVPRA but have not taken any position on appeal.

PRIOR PROCEEDINGS RELATED TO THIS CASE

Jane Doe No. 1, et al., v. Daniel S. Fitzgerald, C.D. Cal. No. 2:20-cv-10713-MWF-RAO (stay order granted December 14, 2022).

Jane Doe, Nos. 1-10 v. Daniel S. Fitzgerald, et al., 9th Cir. No. 22-56216 (stay order affirmed May 24, 2024).

TABLE OF CONTENTS

Table of Contents

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

CASES

Cited Authorities

Page

STATUTES

INTRODUCTION

Without any guidance from this Court or any other circuit court, the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") affirmed a stay order applying the TVPRA so expansively to effectively prohibit civil defendants who have never been under investigation or charged with any crime from clearing their names indefinitely until multiple criminal cases pending against a different party reach final adjudication, even when claims in the civil case have nothing whatsoever to do with the criminal defendant.

The stay order that the United States District Court for the Central District of California ("District Court") issued, and the Ninth Circuit affirmed, contradicts the plain language of the TVPRA providing a private cause of action against "the perpetrator" of certain trafficking offenses. The stay order granted an indefinite stay of all proceedings in a civil case although Fitzgerald is not "the perpetrator," has never been charged with any crime, and is not the subject of the criminal case prompting the Government's motion. The stay order also stays all claims in the civil case, even those brought by civil plaintiffs having nothing to do with the criminal defendant. The stay order conflicts with district courts who have addressed this unique situation, all agreeing the TVPRA's stay provision does not apply where the civil and criminal cases do not involve the same defendant.

The stay order also creates precedent allowing proceedings to be indefinitely halted with no evidence the civil and criminal cases arise from the "same occurrence." There is no dispute that certain plaintiffs and claims in

the civil case have nothing to do with the criminal case or the criminal defendant whatsoever. For other claims, the stay order allows the government to intervene in a civil case based only on the government's word that some allegations relate to a criminal case. The stay order allows the government to interfere with civil cases without producing a single piece of evidence to support its claims.

In the absence of any guidance from this Court or other circuits, the stay order creates a precedent that is ripe for governmental abuse, a recurrent problem this Court has addressed in other matters as well. Therefore, the District Court's stay order so far departed from the accepted and usual course of judicial proceedings, and the Ninth Circuit sanctioned such a departure, that this Court should grant Fitzgerald's petition. The meaning and scope of the TVPRA is an important question of federal law that has not been, but should be, settled by this Court.

OPINIONS BELOW

The Ninth Circuit's opinion is reported at 102 F.4th 1089. *See* App. A. The opinion affirmed the District Court's decision granting the government's motion to stay proceedings pursuant to Section 1595(b)(1).

JURISDICTION

The Ninth Circuit entered judgment on May 24, 2024. *See* App. A:1a. Petitioner requests a writ of certiorari pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The pertinent statutory provision involved is 18 U.S.C. § 1595. *See* App. C.

STATEMENT OF THE CASE

I. Plaintiffs Brought Civil Claims Against Mr. Fitzgerald.

On November 24, 2020, ten anonymous plaintiffs, Jane Doe Nos. 1-10, filed their lawsuit ("Fitzgerald Case") against Mr. Fitzgerald under the TVPRA, a statute that provides for a civil cause of action by a victim against "the perpetrator" of certain trafficking and other offenses.[1] The TVPRA also provides that any civil case brought against the perpetrator "shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim." *See* Section 1595(b)(1). Some plaintiffs (Jane Doe Nos. 1-4, and 7-9) alleged that Fitzgerald participated in alleged the trafficking with non-party Peter Nygard ("Nygard"). Other plaintiffs' allegations (Jane Doe Nos. 5, 6, and 10) are completely unrelated to Nygard.

Nygard, who is not a party to the Fitzgerald Case, is a Canadian national who was arrested in Canada in December 2020 for sexual misconduct and other claims. *See* App. A:4a-5a. That same month, Nygard was also indicted in the United States District Court for the Southern District of New York on federal racketeering,

1. The basis for federal jurisdiction in the District Court was federal question jurisdiction under 28 U.S.C. § 1331.

sex trafficking, and other charges (the "Nygard Case"). *See* App. A:4a. According to the indictment, Nygard participated in illegal sexual activities with "others known and unknown." *See* App. A:4a. Nygard stood trial in Toronto in September 2023, and faces two other trials: Montreal in 2004 and sometime thereafter in Winnipeg. The Government does not know when Nygard will be extradited, and the criminal cases are expected to take years. See App. A:6a; App. B:31a-32a.

Fitzgerald denied all the allegations against him and asserted a counterclaim against Jane Doe No. 5 for libel and conspiracy to commit fraud. Fitzgerald was never charged with any crime in connection with any plaintiff's allegations, nor is there any evidence that he has ever been under criminal investigation.

II. The Government Intervened to Stay the Civil Proceedings.

On October 19, 2022, the Government moved to intervene and stay the Fitzgerald Case pursuant to Section 1595(b)(1) of the TVPRA. However, Fitzgerald is not a defendant in the Nygard Case, nor is Nygard a party in the Fitzgerald Case. In fact, there is no mention of Fitzgerald in the Nygard Case whatsoever. Therefore, according to the Government, Section 1595 imposed a mandatory stay of the Fitzgerald Case.

The Government also sought to stay the entire Fitzgerald Case, although some plaintiffs (Jane Doe Nos. 5, 6, and 10) and claims had nothing to do with the Nygard Case at all. According to the Government, Section 1595(b)(1) mandates a stay if there is a criminal case pending

against *any* criminal defendant, even if the criminal defendant is not "the perpetrator" against whom a civil claim is brought under the TVPRA.

III. The District Court Entered, and the Ninth Circuit Affirmed, the Stay Order.

On December 14, 2022, the District Court granted the Government's motion and stayed the Fitzgerald Case entirely with respect to all claims and all parties until there is a final adjudication in the Nygard Case ("Stay Order"). *See* App. B:27a-28a. Fitzgerald appealed and the Ninth Circuit affirmed on May 24, 2024. *See* App. A:2a.

REASONS FOR GRANTING THE PETITION

I. This Court Should Exercise its Supervisory Power Because the Stay Order Contradicts the Plain Language of Section 1595(b)(1).

A. The plain language of Section 1595(b)(1) applies only when a criminal and civil case involve the same perpetrator.

Section 1595(a) of the TVPRA allows the victim of certain trafficking offenses to bring a civil action against "the perpetrator." 18 USC § 1595(a). Section 1595(b)(1) in turn provides that a civil action against "the perpetrator" shall be stayed during the pendency of a criminal action "arising out of the same occurrence in which the claimant is the victim." 18 USC § 1595(b)(1).

The plain language of the statute is that "same occurrence" must refer to that occurrence involving "the

perpetrator" who is also the subject of the civil action. This makes sense since defendants, not third parties, typically, move to stay the civil action pending the outcome of criminal proceedings against them. *See*, *e.g.*, *Lunkes v. Yannai*, 882 F. Supp. 2d 545, 549 (S.D.N.Y. 2012); *Sharma v. Mann*, No. 21-cv-00480-BLF, 2021 U.S. Dist. LEXIS 187541, *1 (N.D. Cal. Sep. 29, 2021). The TVPRA does not mandate, or even contemplate, a stay under any other circumstance. Therefore, the TVPRA stay provision applies when the civil defendant is the subject of the criminal action.

B. The purpose of Section 1595(b)(1) to prevent interference with criminal proceedings does not apply here, where "the perpetrator" is not facing criminal charges or investigation.

Limiting the stay provision to cases where the civil and criminal defendant are the same is consistent with the purpose of the TVPRA. The purpose of the TVPRA is ostensibly to protect the victims of trafficking and strengthen the government's ability to prosecute criminal cases without risking interference from parallel civil proceedings. *Kolbek v. Twenty First Century Holiness Tabernacle Church, Inc.*, No. 4:10-CV-04124, 2011 U.S. Dist. LEXIS 125968, *2 (W.D. Ark. Oct. 31, 2011); *Plaintiff A v. Schair*, 744 F.3d 1247, 1254-55 (11th Cir. 2014) ("[T]he mandatory stay provision was added to § 1595 to alleviate the [DOJ's] concern that civil suits could hinder a domestic prosecutor's ability to try criminal cases unfettered by the complications of civil discovery.").

Where the civil defendant is not part of any criminal proceedings, there is no risk of interference and no need

for a stay. There is no reason for Nygard or Fitzgerald to interfere with either case, since Nygard is not a party to the Fitzgerald case and vice-a-versa. As such, the TVPRA's purpose of preventing civil cases from interfering with parallel criminal proceedings, to whatever extent it applies, is preserved.

C. The District Court and Ninth Circuit ignored authority from the district courts who have addressed this issue.

The Stay Order also departs from consensus among district courts regarding the scope and meaning of § 1595(b)(1). District courts who have confronted this issue have not granted a stay under these circumstances. *Wang v. Gold Mantis Constr. Decoration*, No. 1:18-cv-00030, 2020 U.S. Dist. LEXIS 188676, *6-15 (D. N. Mar. I. Oct. 9, 2020) (denying corporate defendant's motion to stay where the corporate executives were the subjects of the criminal case, not the corporate defendant in the civil action); *see also Kolbek*, 2011 U.S. Dist. LEXIS 125968 at *9 (explaining that staying the case without proof the civil defendant is under criminal investigation would be "nonsensical and contrary to the statute's purpose.").

Few district courts and no appellate courts have been faced with the situation presented here, where the Government sought to impose a stay against a civil defendant who is not facing criminal charges or under investigation. Nonetheless, the few district courts that have weighed in on this question both reached the same (but contrary to the Ninth Circuit) conclusion. *See Wang* and *Kolbek*, *supra*. That consensus is significant, especially under these circumstances where courts

rarely encounter this question. The Stay Order departs from this consensus and creates a conflict justifying this Court's exercise of its supervisory power, especially since it involves governmental overreach in the exercise of its powers.

D. The Stay Order, as issued by the District Court and affirmed by the Ninth Circuit, contradicts the plain language and purpose of Section 1595(b)(1) and disrupts the Consensus among District Courts.

In issuing and affirming the Stay Order, the District Court and Ninth Circuit ignored the plain language of Section 1595. Section 1595(a) has built-in language providing for a stay only under circumstances where the criminal case is pending against "the perpetrator" in the civil case. The Stay Order turns Section 1595(b)(1) on its head—it incorrectly applies the stay provision when *any* perpetrator is part of a criminal case, not just "the perpetrator" who is the subject of the civil case as the plain language of the TVPRA contemplates.

Words in a statute do not exist on their own. Courts must read the words in a statute "in their context and with a view to their place in the overall statutory scheme." *King v. Burwell*, 576 U.S. 473, 474 (2015). Had the District Court and Ninth Circuit read Sections 1595(a) and (b) together (as the canons of statutory interpretations require), they would have concluded that the statute contemplates a stay only when there is a criminal action pending against "the perpetrator" in the civil action. The District Court and Ninth Circuit failed to read the TVPRA as a whole and in doing so expanded the statute far beyond its words.

II. Even If the Stay Provision in Section 1595(b)(1) Applies, it Does Not, There Was No Evidence that the Fitzgerald Case and the Nygard Case Arose From the Same Occurrence.

A. The stay order is contrary to the plain language of the TVPRA that requires the civil and criminal cases to arise from the "same occurrence."

Another requirement for a stay under the TVPRA is that the civil and criminal cases arise from the "same occurrence" where the claimant is the victim. Here, there is no evidence in the record the Fitzgerald Case and Nygard Case involve the same occurrence, or that the victims in the two cases are the same. In fact, there was no evidence whatsoever of the identity of the alleged victims in the Fitzgerald Case.

Instead, the Government simply adopted Plaintiffs' anonymous allegations (none have yet to be proven or subject to any discovery) and asserted legal conclusions to invoke the TVPRA stay provision. Essentially, the Government requested to be—and it was—taken for its word without providing any evidentiary support whatsoever. By granting and affirming the Stay Order, the District Court and Ninth Circuit affectively created precedent where the government can intervene in civil cases without presenting evidence to support its claims. Such a standard should not exist for anyone, especially not the Government. This precedent warrants this Court's supervisory authority especially to rein in the Government's overreach.

B. The District Court and Appellate Court decisions contradict authority from district courts that have addressed this issue.

Neither this Court nor any circuit courts have addressed what evidence a movant must show to establish that the civil and criminal cases involve the "same occurrence" such that the case should be stayed under Section 1595(b)(1).

Those few district courts that have addressed this question agree movants must present at least some evidence the civil and criminal cases involve the same "victims" and "occurrence." *See Wang*, 2020 U.S. Dist. LEXIS 188676, *13 (noting lack of evidence to support request for stay); *Cortez-Romero v. Corp*, No. 2:20-CV-14058, 2020 U.S. Dist. LEXIS 102830, *3 (S.D. Fla. June 11, 2020) ("The Court agrees with Plaintiffs that the Defendants have presented insufficient evidence of the subject of the criminal investigation to justify staying this case under § 1595(b)(1), which would be an indeterminate, potentially lengthy, stay.").

The District Court blew right past this authority, departed from the consensus among district courts, and held the government to a "lower evidentiary Burden" because it "had no reason to question the representations made to the Court by the [Government]." *See* App. B:37a.

The Stay Order creates precedent where a case can be stayed even with no evidence the civil and criminal cases involve the same victims or the same occurrence, both plainly required by statute. Therefore, this Court should exercise its supervisory authority to resolve the

conflict between the Stay Order and consensus among other district courts and restrain unchecked government power to indefinitely stay civil proceedings based on its word alone.

III. Even If the Stay Provision Applies and the Cases Involve the Same Occurrence, Section 1595(b)(1) Does Not Require a Stay of Unrelated Claims Brought by Different Alleged Victims.

This Court should grant the Petition to clarify the scope of the stay provision in the TVPRA. Even if some plaintiffs in a civil case are the same as the alleged victims in a criminal case and some of the claims in the two cases arise from the same occurrence, nothing in the text of the TVPRA requires or authorizes a stay of all claims—even those brought by plaintiffs who are undisputedly unrelated to the criminal case.

The Government claims the purpose of a stay is to avoid interfering with prosecuting criminal cases where the alleged victims have civil claims pending. *See* App. A:9a. However, there can be no dispute Plaintiff Jane Doe Nos. 5, 6, and 10 brought claims directed to Fitzgerald only and do not involve Nygard whatsoever. Still, the District Court extended its Stay Order to all plaintiffs, even to plaintiffs whose allegations have nothing to do with Nygard. There is no reason in the statute or otherwise to cobble all of those claims together and impose one blanket stay over claims having nothing to do with Nygard or even coming close to implicating the protections afforded by the TVPRA.

Without any guidance from this Court or others, the Stay Order takes Section 1595(b)(1) to an absurd end

and this Court should exercise its supervisory authority to correct course and rein in this unfettered abuse of government power.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED MAY 24, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-56216
D.C. No. 2:20-cv-10713-MWF-RAO

JANE DOE, NOS. 1-10,

Plaintiff-Appellee,

v.

DANIEL S. FITZGERALD,

Defendant-Appellant,

US ATTORNEY'S OFFICE SOUTHERN DISTRICT OF NEW YORK,

Real-party-in-interest-Appellee.

Appeal from the United States District Court
for the Central District of California
Michael W. Fitzgerald, District Judge, Presiding

March 29, 2024, Argued and Submitted,
Pasadena, California;
May 24, 2024, Filed

Appendix A

Before: Ronald M. Gould, Sandra S. Ikuta, and Danielle J. Forrest, Circuit Judges.

OPINION

IKUTA, Circuit Judge:

Ten plaintiffs sued Daniel Fitzgerald under the civil remedy provision of the Trafficking Victims Protection Reauthorization Act (TVPRA), 18 U.S.C. § 1595(a), for multiple sex trafficking violations, among other things. The government intervened and moved to stay the litigation pending the resolution of a criminal action involving a different defendant, Peter Nygard. The district court granted the motion under 18 U.S.C. § 1595(b)(1), which requires that "[a]ny civil action" filed under § 1595(a) "shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim." *Id.* § 1595(b)(1). Fitzgerald appeals the grant of the stay. We hold that we have jurisdiction to review the stay order in this case under 28 U.S.C. § 1291, and we affirm the issuance of the stay order.

I

A

In 2000, Congress passed the Trafficking Victims Protection Act (TVPA), Pub. L. No. 106-386, div. A, 114 Stat. 1466 (2000) (codified as amended at 18 U.S.C. §§ 1589-1592), which "created several new federal criminal offenses intended to more comprehensively and effectively

combat human trafficking," *Ratha v. Phatthana Seafood Co.*, 35 F.4th 1159, 1164 (9th Cir. 2022) (citation omitted). Among other things, the TVPA criminalized engaging in sex trafficking by means of force, fraud, or coercion. *See* 18 U.S.C. § 1591. In 2003, Congress enacted the TVPRA, which, among other things, gives victims a civil cause of action to seek damages from the perpetrators of criminal sex trafficking violations. Pub. L. No. 108-193, § 4(a)(4)(A), 117 Stat. 2875, 2878 (2003).[1] It provides:

> An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, or attempts or conspires to benefit, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

18 U.S.C. § 1595(a). The TVPRA also requires courts to stay an action brought under § 1595(a) in certain circumstances: "Any civil action filed under subsection (a) shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim." *Id.* § 1595(b)(1). The phrase "'criminal action'

1. Congress amended the civil remedy provision in 2008 and 2023 in ways not relevant here. *See* William Wilberforce Trafficking Victims Protection Reauthorization Act, Pub. L. No. 110-457, 122 Stat. 5044 (2008); Abolish Trafficking Reauthorization Act, Pub. L. No. 117-347, 136 Stat. 6199 (2023).

includes investigation and prosecution and is pending until final adjudication in the trial court." *Id.* § 1595(b)(2).

B

In December 2020, a New York grand jury charged Peter Nygard, "the leader and founder of an international clothing design, manufacturing, and supply business headquartered in Winnipeg, Canada," with racketeering conspiracy, conspiracy to commit sex trafficking, sex trafficking, and transportation for purposes of prostitution. According to the indictment, which covers the period between 1995 and 2020, Nygard "and others known and unknown . . . used company funds, employees, resources, and influence to recruit, entice, transport, harbor, and maintain adult and minor-aged female victims for Nygard's sexual gratification and, on occasion, the gratification of Nygard's personal friends and business associates by, among other things, sex trafficking, interstate and international transport for purposes of engaging in prostitution and other illegal sexual activities, and related offenses." The indictment further alleged that "Nygard, and others known and unknown . . . used force, fraud, and coercion to cause women to engage in commercial sex with Nygard and others, and to remain with Nygard against their will."

The indictment provided a specific description of how Nygard and his co-conspirators in the racketeering conspiracy allegedly used the Nygard business enterprise to "facilitate and to conceal their racketeering activity." The racketeering conspiracy allegedly involved using

funds from Nygard's business enterprise to host events, recruit victims (referred to as "girlfriends"), and arrange for travel, accommodation, and services to those victims for the purpose of luring them into Nygard's sex trafficking scheme. Among other activities, Nygard allegedly invited victims to his residences, including in the Bahamas and in Marina del Rey, California, "where Nygard regularly hosted dinner parties and larger, so-called 'Pamper Parties' for female guests." The "Pamper Parties" were "named for the free food, drink, and spa services that Nygard made available at such parties." At these events, Nygard allegedly "engaged in sexual 'swaps' with male friends and business associates, who would bring Nygard a 'date' for sex in exchange for access to one of Nygard's 'girlfriends' for sex."

On December 14, 2020, Nygard was arrested in Canada, where he remains in custody pending extradition to the United States. Nygard has not yet entered an appearance in the New York criminal case. In the meantime, the government is engaged in an ongoing investigation into Nygard's co-conspirators. News reports indicate that Canada has also brought criminal charges against Nygard, resulting in a guilty verdict by a Toronto jury and pending criminal prosecutions in Winnipeg and Montreal. Vjosa Isai, *Peter Nygard, Former Fashion Mogul, Convicted of Sexual Assault*, N.Y. Times (Nov. 12, 2023), https://www.nytimes.com/2023/11/12/world/canada/peter-nygard-sexual-assault-verdict.html. At oral argument, counsel for the government stated that Nygard would be extradited to the United States "following the resolution of" the Canadian cases. The government

represented that it could "not provide a date certain" for when Nygard would be extradited, but that "there is forward movement" in the Canadian criminal actions against Nygard.

C

In June 2022, ten plaintiffs (Jane Doe Nos. 1-10) filed the operative fourth amended complaint (complaint) against Daniel Fitzgerald under the TVPRA's civil remedy provision, § 1595(a), and state law, bringing claims of violations of § 1591 (sex trafficking), as well as state law claims. The complaint seeks damages and injunctive relief.[2]

The complaint refers extensively to the Nygard criminal indictment and alleges that Fitzgerald was a conspirator in Nygard's sex trafficking venture and also formed his own sex trafficking venture.[3] For instance, the complaint quotes the Nygard indictment's allegation that Nygard used "force, fraud, and coercion to cause women to engage in commercial sex with Nygard *and others*,'" and claims that Fitzgerald was "one of the 'others' that participated in the coerced sexual acts, including with

2. The action was originally filed on November 24, 2020, and later amended on February 8, 2021, October 30, 2021, January, 24 2022, June 2, 2022, and June, 23, 2022.

3. Jane Doe Nos. 1-4 and 7-9 allege that they are victims of trafficking as a result of conspiracy between Fitzgerald, Nygard, and others. Jane Doe Nos. 5, 6, and 10 allege that they are victims of Fitzgerald's own sex trafficking venture.

several Plaintiffs in this case." The complaint also quotes the Nygard indictment's allegation that Nygard and his associates, including Fitzgerald, "used fraud, force and coercion to cause at least dozens of adult and minor-aged female victims to engage in commercial sex . . . for Nygard's sexual gratification and, on occasion, the gratification of *Nygard's personal friends* and business associates." It then alleges that Fitzgerald "was one of Nygard's 'personal friends' who engaged in the coerced commercial sex acts with adult and minor-aged female victims." In addition, the complaint quotes the Nygard indictment's allegation that Nygard would engage in "'sexual 'swaps' with male friends and business associates, who would bring Nygard a 'date' for sex in exchange for access to one of Nygard's 'girlfriends' for sex." The complaint alleges that Fitzgerald was "one of the 'male friends' referred to in the [Nygard] indictment." The complaint also alleges that Fitzgerald "was Nygard's companion at the pamper parties and dinners," where "Nygard would instruct his young girlfriends to engage in sex acts" with Fitzgerald. According to the complaint, Fitzgerald "would routinely be at Nygard's house, engaging in numerous commercial sex acts" when Nygard was in Marina del Rey.

The complaint further asserts that some of the plaintiffs were victims of Nygard's sex trafficking venture that was described in the indictment. The complaint alleges that Jane Doe Nos. 1-4 and 7-9 were "survivors of the 'sexual swap' trafficking scheme exploited by" Fitzgerald and Nygard, and that they can attest that "they were 'shared' by Nygard, as part of a coerced sex swap with" Fitzgerald. More specifically, the complaint alleges

that Jane Doe No. 1 was swapped and forced to engage in sexual acts with Fitzgerald at a party at Nygard's Marina del Rey property. Jane Doe No. 2 alleges she "was lured into a bedroom at Nygard's Marina del Rey Property" where she was forced to engage in sex acts with Fitzgerald against her will. The complaint likewise alleges that Jane Doe Nos. 3, 4, 7, and 9 were forced to engage in sex acts with Fitzgerald against their will at parties at Nygard's Marina del Rey Property.

In July 2022, Fitzgerald answered the complaint and asserted counterclaims of libel and conspiracy to commit fraud. Fitzgerald alleged that Jane Doe No. 5 attempted to lure him into compromising situations and developed false evidence in order to make false allegations and claims against him.

In October 2022, after discovery commenced in the civil action, the government moved to intervene and stay the proceedings under § 1595(b)(1), the TVPRA's mandatory stay provision. The government contended that there was "a significant factual overlap between the allegations in the Complaint and the Nygard indictment," and that some of Nygard's victims were plaintiffs in the civil action. The government asserted that this overlap satisfied § 1595(b)(1)'s requirements that the civil and criminal actions "aris[e] out of the same occurrence in which the claimant is the victim," and therefore a stay was mandatory. The government also argued that the entire civil action should be stayed, including the claims relating to Fitzgerald's separate sex trafficking venture. Fitzgerald opposed the stay, and Jane Doe No. 5 opposed the stay of the counterclaims against her.

The district court granted the motion as to all claims, counterclaims, and parties. It determined that because the complaint alleged that Fitzgerald was a co-conspirator with Nygard, and the government asserted that some of the plaintiffs in the civil action were victims in the criminal action against Nygard, a stay was mandatory under § 1595(b)(1). The court rejected Fitzgerald's argument that "there must be a baseline evidentiary threshold to warrant the requested stay." According to the district court, the government had a "lower evidentiary burden" for several reasons: the government had special knowledge of the criminal case; the purported purpose of the statute is to protect the government's "ability to try criminal cases unfettered by the complications of civil discovery"; and the government, as opposed to a civil defendant, would not improperly use § 1595(b)(1) for purposes of delaying a civil action. The district court also held that § 1595(b)(1) required it to stay the entire civil action. Therefore, the district court issued a "complete mandatory stay" pending a "final adjudication in the Nygard Case."

Fitzgerald now appeals the district court's stay order, arguing that the district court erroneously concluded that a stay was mandated under § 1595(b)(1) and also erred in staying the entire civil action rather than staying only those proceedings that have a connection to the criminal case against Nygard.

II

We begin by determining whether we have appellate jurisdiction under 28 U.S.C. § 1291 to review the district court's stay order.

Appendix A

A

We "have jurisdiction of appeals from all final decisions of the district courts of the United States." *Id.* § 1291. As a general rule, a decision is final under § 1291 "only if it 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712, 116 S. Ct. 1712, 135 L. Ed. 2d 1 (1996) (quoting *Catlin v. United States*, 324 U.S. 229, 233, 65 S. Ct. 631, 89 L. Ed. 911 (1945)). A stay order, therefore, is typically "not an appealable final decision." *Davis v. Walker*, 745 F.3d 1303, 1308 (9th Cir. 2014). The Supreme Court, however, "'has long given' § 1291 a 'practical rather than a technical construction.'" *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106, 130 S. Ct. 599, 175 L. Ed. 2d 458 (2009) (quoting *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949)).

The Supreme Court has held that a stay order is final and appealable if it places the litigants "effectively out of court." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 10, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983) (quoting *Idlewild Bon Voyage Liquor Corp. v. Epstein*, 370 U.S. 713, 715 n.2, 82 S. Ct. 1294, 8 L. Ed. 2d 794 (1962) (per curiam)). In *Idlewild*, a district court declined to convene a three-judge panel to consider a federal suit challenging the constitutionality of a state statute, on the ground that it should abstain from deciding the case under *R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 61 S. Ct. 643, 85 L. Ed. 971 (1941). *See Moses H. Cone*, 460 U.S. at 9 (explaining *Idlewild*). *Idlewild*

held that the district court's abstention ruling put the appellant "effectively out of court" and therefore was final and reviewable. *Id.* (quoting *Idlewild*, 370 U.S. at 715 n.2). In *Moses H. Cone*, a district court stayed an action seeking to compel arbitration of a contract dispute pending resolution of the same arbitrability issue in state court. *Id.* at 7. In light of its decision in *Idlewild*, the Supreme Court concluded that the stay order was a final decision under § 1291 because the stay "meant that there would be no further litigation in the federal forum; the state court's judgment on the issue [of arbitrability] would be res judicata." *Id.* at 10. The appellant was therefore "effectively out of court." *Id.*; *see also Quackenbush*, 517 U.S. at 715 (asserting jurisdiction over a district court order that was "functionally indistinguishable" from the order held appealable in *Moses H. Cone*).

Moses H. Cone characterized its rule narrowly, stating that "[w]e hold only that a stay order is final when the sole purpose and effect of the stay is precisely to surrender jurisdiction of a federal suit to a state court." 460 U.S. at 10 n.11. However, we have expanded the *Moses H. Cone* doctrine in a series of cases. First, we have applied the doctrine even when a district court's stay order would not necessarily result in surrendering jurisdiction of a federal action to a state court. For instance, in *Lockyer v. Mirant Corp.*, we considered a district court's stay of a state attorney general's antitrust proceeding against a corporation pending the resolution of that corporation's Chapter 11 bankruptcy petitions. 398 F.3d 1098, 1100 (9th Cir. 2005). We noted that the parties and the district court thought there was a "substantial possibility" that

the bankruptcy proceedings would moot the attorney general's action, although such mooting was not inevitable. *Id.* at 1102-03. We concluded that the stay put the attorney general "effectively out of court," and therefore we had jurisdiction to consider the stay order. *Id.* at 1103.

We took this one step further in *Blue Cross & Blue Shield of Alabama v. Unity Outpatient Surgery Center, Inc.*, where we applied the *Moses H. Cone* doctrine in circumstances where the stays at issue were "lengthy and indefinite" even though the district court could be expected to resume proceedings after its stay orders had expired. 490 F.3d 718, 724 (9th Cir. 2007). *In Blue Cross*, a district court issued several orders staying a civil suit pending the resolution of related criminal proceedings in state or federal court, or both. *Id.* at 723. Although "[t]he precise duration of the stays [was] difficult to discern," we noted that "most of the defendants requested stays 'pending the resolution of the criminal investigations and/or prosecutions that have arisen in connection with the acts alleged in plaintiffs' complaint.'" *Id.* After reviewing cases in other circuits, we concluded that "lengthy and indefinite stays place a plaintiff effectively out of court." *Id.* at 724. While acknowledging that the plaintiffs' civil litigation "may eventually resume," we nevertheless thought that "such stays create a danger of denying justice by delay," raising "the risk that witnesses' memories will fade and evidence will become stale," or that "plaintiffs may go out of business awaiting recovery or face irreparable harm during the time that their suits are on ice." *Id.* (internal quotation marks and citations omitted). *Blue Cross* then

determined that the district court's stays put the plaintiffs "effectively out of court" because the stays were "both indefinite and expected to be lengthy." *Id.* The stays "could easily last as long as the five- or six-year limitations period in the criminal cases, or even longer if the government initiates criminal prosecutions shortly before the end of that period." *Id.* And even stays for defendants that lasted "only for the duration of the criminal proceedings already initiated against them, have thus far lasted longer than the 18-month delays that other courts have considered sufficient to place the plaintiffs effectively out of court." *Id.* Therefore, we concluded we had jurisdiction over the stay orders. *Id.*

Finally, we have applied the *Moses H. Cone* doctrine in a case where the duration of the district court's stay order did not depend on the conclusion of proceedings in another court. *See Davis*, 745 F.3d at 1307. In *Davis*, a district court stayed the federal civil rights claim of a prisoner until he was found restored to competency. *Id.* We held that the stay was "both lengthy and indefinite, if not infinite," and had "already lasted longer than the 18-month delay we deemed sufficient for review in *Blue Cross*." *Id.* at 1309. Therefore, we concluded that the stay put the plaintiff effectively out of court, and that we had jurisdiction under § 1291. *Id.*

In sum, our cases have applied the *Moses H. Cone* doctrine broadly. We have asserted jurisdiction over a district court's stay order that effects a lengthy and indefinite stay, regardless whether the district court is

surrendering jurisdiction to a state or federal court, and even when it is possible that the district court issuing the stay will resume proceedings after the stay has expired. We have also indicated that an 18-month delay may qualify as a "lengthy" stay for purposes of this doctrine. *Blue Cross*, 490 F.3d at 724; *Davis*, 745 F.3d at 1309. While we have established no "categorical rule" for how long a stay must last to be considered a final order, 18 months is a "guidepost for our analysis." *In re PG&E Corp. Sec. Litig.*, No. 22-16711, ___ F.4th ___, 2024 U.S. App. LEXIS 10827, 2024 WL 1947143, at *6 (9th Cir. May 3, 2024).

B

In light of our precedent, we conclude that the district court's stay order here effectively placed the litigants out of court and is therefore a final decision under § 1291. As in *Blue Cross*, this case involves the stay of a civil suit pending the resolution of a related criminal proceeding. Since the district court issued its order in December 2022, the case has been pending for about 16 months. The government does not know when Canada may extradite Nygard, the government's investigation into the alleged criminal enterprise is ongoing, and there is no expected start date for the Nygard criminal prosecution. The length of the district court stay is therefore indefinite. *See Davis*, 745 F.3d at 1309; *In re PG&E Corp.*, ___ F.4th at ___, 2024 U.S. App. LEXIS 10827, 2024 WL 1947143, at *6 (holding that a stay order was "indefinite" because its end date was "triggered by the occurrence of an external event that is not time limited"). It is also lengthy, since

it is nearly certain that the stay will last longer than the 18 months that "we deemed sufficient for review in *Blue Cross*." *Davis*, 745 F.3d at 1309. Because the district court's stay order is "lengthy and indefinite," *id.*, it is a final and appealable order under § 1291.

In contesting this conclusion, the government argues that the *Moses H. Cone* doctrine applies when the stay order places the *plaintiff* effectively out of court, but not when the stay order places the *defendant* out of court, as is the case here. According to the government, the doctrine is intended to allow plaintiffs to vindicate their claims, not provide defendants an avenue for quicker resolution of the claims against them. We disagree. The Supreme Court has not made such a distinction between plaintiffs and defendants. In *Quackenbush*, for instance, it was the defendant who sought review of the district court's remand order that the Supreme Court held put "the *litigants* in this case 'effectively out of court.'" 517 U.S. at 714 (emphasis added) (quoting *Moses H. Cone*, 460 U.S. at 10 n.11). *Quackenbush* concluded that the remand order was appealable under the *Moses H. Cone* doctrine even though review was sought by the defendant alone. *Id.* at 715. Nor do we see a basis for holding that the identity of the appellant has any bearing on the question whether the stay order constituted a final decision of the district court for purposes of § 1291. The finality of a stay order is not contingent on which party benefits from judicial review of that order. We conclude that a "lengthy and indefinite" stay order "amounts to a dismissal of the suit and is reviewable as a final decision under § 1291," *Davis*, 745 F.3d at 1308 (internal quotation marks and citation

omitted), regardless whether the plaintiff or defendant appeals the order.[4]

The government makes several additional arguments based on distinctions between this case and relevant precedent. First, it argues that the stay order at issue here is not final because Fitzgerald failed to show that "the *sole purpose and effect* of the stay" was to surrender jurisdiction of the plaintiffs' civil claims to the court where the relevant criminal action is pending, as was the case in *Moses H. Cone*. It further argues that Fitzgerald failed to establish that the stay order "amounts to a dismissal of the suit," *Moses H. Cone*, 460 U.S. at 10, or "amounts to a refusal to proceed to a disposition on the merits,'" *Blue Cross*, 490 F.3d at 724. But under our precedent, a district court's stay order need not effect a surrender of jurisdiction to another court, *Davis*, 745 F.3d at 1309, and an "indefinite delay amounts to a refusal to proceed to a disposition on the merits," *Blue Cross*, 490 F.3d at 724. Therefore, the government's arguments fail. The government also contends that the *Moses H. Cone* doctrine does not apply here because the stay is not likely "infinite" as was the case in *Davis*. 745 F.3d at 1309. This argument also fails, because *Davis* did not modify *Blue Cross*'s requirement that the stay order need only be lengthy and indefinite. Finally, the government argues that the *Moses H. Cone* doctrine does not apply here because "the TVPRA itself contemplates the possibility of lengthy stay

4. Because we decide on this basis, we do not address Fitzgerald's argument that because Fitzgerald raised counterclaims in the underlying suit, he should be deemed to be a plaintiff who is put effectively out of court.

orders, as it mandates a stay even on the existence of a criminal 'investigation.'" Again, we disagree. While the language of § 1595(b)(1) indicates that the statute permits a lengthy stay order, it sheds no light on whether we have jurisdiction to review that order.[5]

III

Having confirmed our jurisdiction, we now consider whether the district court erred in issuing a stay under § 1595(b)(1).

We first consider our standard of review. Section 1595(b)(1) imposes a mandatory obligation on the district court: a civil action filed under § 1595(a) "shall be stayed" during the pendency of any criminal action that arises "out of the same occurrence in which the claimant is the victim." Generally, we review the district court's interpretation of a statute de novo. *United States v. Paulk*, 569 F.3d 1094, 1095 (9th Cir. 2009). This principle is equally applicable to a statute mandating a stay. For instance, in the context of the Federal Arbitration Act, 9 U.S.C. § 3, which mandates the imposition of a stay pending arbitration, we have held (along with the majority of circuits) that "the denial of a mandatory stay . . . is a question of law that we review de

5. Because we have jurisdiction under *Blue Cross*, we need not decide whether we also have jurisdiction under the collateral order doctrine. *See In re PG&E Corp.*, F.4th at, 2024 U.S. App. LEXIS 10827, 2024 WL 1947143, at *6 n.8 (declining to conduct an analysis under the doctrine set forth in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949), because the appeal clearly fell within *Moses H. Cone*).

novo." *Blair v. Rent-A-Center, Inc.*, 928 F.3d 819, 832 (9th Cir. 2019). *But see Setty v. Shrinivas Sugandhalaya LLP*, 3 F.4th 1166, 1167-68 (9th Cir. 2021). To the extent we are reviewing the district court's interpretation of § 1595(b), therefore, our review is de novo.

A

In considering whether the district court erred in granting the mandatory stay, we begin with the text of the statute. *See United States v. Brown*, 42 F.4th 1142, 1146 (9th Cir. 2022).

Under § 1595(b)(1), "[a]ny civil action filed under [§ 1595(a)] shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim." The phrase "'criminal action' includes investigation and prosecution and is pending until final adjudication in the trial court." *Id.* § 1595(b)(2). A civil action filed under § 1595(a) is an action brought by a "victim of a violation" of the TVPRA against a "perpetrator" of the violation or against any person who "knowingly benefits, or attempts or conspires to benefit" in certain ways "from participation in a venture which that person knew or should have known has engaged in an act in violation" of the TVPRA. Reading these provisions together, the district court "shall" stay a civil action filed under § 1595(a) if (1) a criminal action or investigation is pending; (2) the criminal action arises "out of the same occurrence" as the civil action; and (3) the plaintiff in the civil action is the victim of an occurrence that is the same in the civil and criminal proceedings. *Id.* § 1595(b)(1).

Fitzgerald argues that § 1595(b)(1) imposes a fourth requirement, namely, that a stay must issue only if the defendant in the civil action is a named defendant in the related criminal action. His argument proceeds as follows. First, § 1595(a) provides victims of a violation of the TVPRA with a civil action "against the perpetrator" of a TVPRA violation. Second, § 1595(b)(1) requires that a stay issue only during the pendency of a "criminal action" arising out of "the same occurrence in which the claimant is the victim." Therefore, Fitzgerald concludes, since the victim's civil action arises from the same occurrence that is the basis of the criminal action, it necessarily must be against the same perpetrator.

This argument fails, because it is based on the assumption that if a civil action and criminal action arise out of the same occurrence, then the defendants in the civil action and the criminal action must be the same. But this is not necessarily the case. For instance, where an occurrence involves multiple perpetrators or persons who benefit from a TVPRA violation, the government may choose to prosecute only some of the perpetrators or culpable individuals involved, while a plaintiff may choose to bring a civil action against additional persons involved in the same occurrence. Here, for example, the government may decide to focus on Nygard alone, regardless whether Fitzgerald was involved in the "same occurrence" giving rise to the Nygard indictment. *See United States v. Armstrong*, 517 U.S. 456, 464, 116 S. Ct. 1480, 134 L. Ed. 2d 687 (1996) ("[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not

to prosecute . . . generally rests entirely in his discretion." (citation omitted)). Given that § 1595(b)(1) refers only to the identity of victims, not of perpetrators, we cannot read Fitzgerald's proposed fourth requirement into the statute. *See Ratha*, 35 F.4th at 1176 (stating that the court cannot read additional words into § 1595 without violating "a fundamental principle of statutory interpretation that absent provision[s] cannot be supplied by the courts") (internal quotation marks omitted) (quoting *Rotkiske v. Klemm*, 589 U.S. 8, 14, 140 S. Ct. 355, 205 L. Ed. 2d 291 (2019)).

B

Having identified the three requirements that, if present, mandate the issuance of a stay, we consider whether those requirements are satisfied here.

First, there is no dispute that a criminal action is pending. Nygard has been charged in a criminal indictment, and the government's investigation into Nygard remains ongoing.

We next consider whether this civil action and the Nygard criminal action arose out of the "same occurrence." Because the phrase "same occurrence" is not defined in the statute, our textual analysis "begins by consulting contemporaneous dictionaries, because we are 'bound to assume that the legislative purpose is expressed by the ordinary meaning of the words used.'" *Diaz-Rodriguez v. Garland*, 55 F.4th 697, 712 (9th Cir. 2022) (en banc) (quoting *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431, 107

S. Ct. 1207, 94 L. Ed. 2d 434 (1987)). In 2003, when the TVPRA was enacted, the word "same" meant "resembling in every relevant respect," Merriam-Webster's Collegiate Dictionary 1099 (11th ed. 2003), and "occurrence" meant "something that occurs" or "something that happens or takes place," *id.* at 858. Therefore, we must determine whether one or more of the events that took place and gave rise to the claims in the plaintiffs' action resembles in every relevant respect one or more of the events that gave rise to the charges in the indictment.

Because the government did not introduce any evidence on this issue, we make this determination based on the pleadings. Contrary to Fitzgerald's argument that a litigant may not satisfy § 1595(b)(1)'s requirements based on the pleadings alone,[6] courts routinely rely on pleadings to determine whether legal actions overlap or are related. For example, courts may decide whether two actions arise out of the same "transaction or occurrence" by comparing the allegations in the respective pleadings. *See*, *e.g.*, *Mattel, Inc. v. MGA Ent., Inc.*, 705 F.3d 1108, 1110 (9th Cir. 2013) (comparing allegations in a complaint with allegations in a counterclaim to determine whether claims arose out of "same transaction or occurrence" for purposes of Rule 13 of the Federal Rules of Civil Procedure). Courts also review the pleadings to determine whether a civil forfeiture action is sufficiently related to a criminal action in various statutory contexts. *See United*

6. Fitzgerald's counsel retreated from this position at oral argument by conceding that if the civil complaint copied the factual allegations in the criminal indictment, the requirements of § 1595(b)(1) would be met.

States v. $6,976,934.65, Plus Int. Deposited into Royal Bank of Scotland Int'l, Acct. No. 2029-56141070, Held in Name of Soulbury Ltd., 554 F.3d 123, 131 (D.C. Cir. 2009) (comparing plaintiff's complaint to charging documents in criminal prosecutions in order to determine whether the actions were sufficiently "related" under 28 U.S.C. § 2466 for purposes of disallowing the plaintiff from pursuing a civil forfeiture claim); *In re Ramu Corp.*, 903 F.2d 312, 319-20 (5th Cir. 1990) (reviewing pleadings in assessing the propriety of a stay under 21 U.S.C. § 881(i), which requires a stay of a civil forfeiture proceeding upon filing of an indictment or information "related" to that proceeding and a good cause showing).

In arguing that there must be a "baseline evidentiary threshold" beyond the pleadings, Fitzgerald relies on two unreported district court cases, *Tianming Wang v. Gold Mantis Constr. Decoration (CNMI), LLC.*, No. 1:18-cv-0030, 2020 U.S. Dist. LEXIS 188676, 2020 WL 5983939 (D. N. Mar. I. Oct. 9, 2020), and *Cortez-Romero v. Marin J Corp*, No. 2:20-cv-14058, 2020 U.S. Dist. LEXIS 102830, 2020 WL 3162979 (S.D. Fla. June 11, 2020). Neither is on point. In *Tianming Wang*, the district court denied the defendant's motion for a stay under § 1595(b)(1) because the defendant had failed to show it was subject to a criminal action, and the criminal action against the defendant's officers was not based on the same occurrence as the civil complaint. 2020 U.S. Dist. LEXIS 188676, 2020 WL 5983939, at *3. The district court compared the civil complaint and the superseding indictment, and concluded they did not involve the same occurrence. 2020 U.S. Dist. LEXIS 188676, [WL] at *4. In *Cortez-Romero*, the district

court denied the defendants' motion to stay a civil action where an indictment had not been issued, and the record did not demonstrate that the criminal investigation arose from the "same occurrence" in which the plaintiffs were the victim. 2020 U.S. Dist. LEXIS 102830, 2020 WL 3162979, at *1. Neither case held that a party seeking a stay under § 1595(b)(1) must proffer evidence, and both are distinguishable from this case, where the indictment alleges the same occurrences which are the subject of the civil complaint.

Comparing the plaintiffs' complaint and the Nygard indictment here, we conclude that the complaint alleges events that are identical to the events that gave rise to the claims in the indictment. To start, a clear connection exists between the events alleged in the indictment and the events at issue in the complaint. For instance, the complaint quotes the indictment's allegations that Nygard used "force, fraud, and coercion to cause women to engage in commercial sex with Nygard and others," and alleges that Fitzgerald was "one of the 'others' that participated in the coerced sexual acts, including with several Plaintiffs in this case." The complaint also quotes the indictment's allegations that "Nygard would engage in sexual 'swaps' with male friends and business associates, who would bring Nygard a 'date' for sex in exchange for access to one of Nygard's 'girlfriends' for sex," and alleges that Fitzgerald was "one of the 'male friends' referred to in the [Nygard] indictment." Further, the complaint alleges that Fitzgerald was involved in specific events described in the indictment. According to the indictment, Nygard hosted "Pamper Parties" and dinners at his property in

Marina del Rey, and forced victims to comply with his sexual demands. The complaint alleges that Fitzgerald "was Nygard's companion at the pamper parties and dinners," where "Nygard would instruct his young girlfriends to engage in sex acts" with Fitzgerald, and that Fitzgerald "would routinely be at Nygard's house, engaging in numerous commercial sex acts" in Marina del Rey. This establishes that the complaint is based, at least in part, on the same occurrences that gave rise to the Nygard indictment.

The third element, that the plaintiffs in the civil action are the victims of the same occurrence alleged in the criminal action, is also satisfied. The complaint alleges that seven of the plaintiffs, Jane Doe Nos. 1-4 and 7-9, "are survivors of the 'sexual swap' trafficking scheme exploited by [Fitzgerald] and Nygard," and that "they were 'shared' by Nygard, as part of a coerced sex swap with" Fitzgerald. The complaint also alleges that Jane Doe Nos. 1-4, 7, and 9 were swapped or forced by Nygard to engage in sexual acts with Fitzgerald at various events at Nygard's Marina del Rey property. Therefore, the complaint sufficiently alleges that some of the plaintiffs were victims in some of the same occurrences that gave rise to the criminal action against Nygard.

We conclude that the three requirements that mandate the issuance of a stay under § 1595(b)(1) are present, and therefore affirm the district court's issuance of a stay. Although we affirm the district court's ruling, it erred in concluding that the government has a "lower evidentiary burden" than other litigants when seeking a stay under

§ 1595(b)(1). The text of § 1595(b)(1) does not give the government special status when seeking a stay. Nor does the government's unique knowledge of the criminal case relieve it of the burden of showing similarities between the civil and criminal actions; rather, it puts the government in a better position than most litigants to do so. Nevertheless, we may affirm the district court on any ground supported by the record, *see Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1067 (9th Cir. 2007), and as shown above, the pleadings reveal that this civil action and the criminal indictment arose out of the same occurrence, and that some of the Jane Doe plaintiffs were victims of Nygard's alleged crimes.

C

Finally, we consider whether, if a stay is required under § 1595(b)(1), the district court must stay the entire civil action.

Section 1595(b)(1) provides that "[a]ny civil action filed under [§ 1595(a)] shall be stayed" if the requirements for a stay are met. The term "action" in the legal context refers to the entire legal proceeding. *See* Black's Law Dictionary 31 (8th ed. 2004) (defining "action" as "[a] civil or criminal judicial proceeding"); Merriam-Webster's Collegiate Dictionary 12 (11th ed. 2003) (defining "action" as "the initiating of a proceeding in a court of justice by which one demands or enforces one's rights; *also* : the proceeding itself"); *Naturaland Tr. v. Dakota Fin. LLC*, 41 F.4th 342, 348 (4th Cir. 2022) ("In the legal context, the term 'action' typically refers to 'an entire case or suit[.]'" (citation

omitted)). Given the lack of "contextual evidence that Congress intended to depart from the ordinary meaning of an undefined term," *Trim v. Reward Zone USA LLC*, 76 F.4th 1157, 1161 (9th Cir. 2023), we hold that the word "action" in § 1595(b)(1) reflects its ordinary meaning and encompasses the entire civil lawsuit. Accordingly, the district court properly issued a complete stay of the proceedings.

AFFIRMED.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA, FILED DECEMBER 14, 2022

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 20-10713-MWF (RAOx)

JANE DOE NO. 1 *et al*

v.

DANIEL S. FITZGERALD

Honorable MICHAEL W. FITZGERALD, United States District Judge.

December 14, 2022, Decided;
December 14, 2022, Filed

CIVIL MINUTES—GENERAL

ORDER GRANTING UNITED STATES ATTORNEY'S OFFICE'S MOTION TO INTERVENE AND TO STAY PROCEEDINGS [210]

Before the Court is the United States Attorney's Office for the Southern District of New York's ("USAO") Motion to Intervene and to Stay Proceedings (the "Motion"), filed on October 19, 2022. (Docket No. 210).

In light of the Motion, this Court ordered the current parties to this action to show cause why the Motion

should not be granted (the "OSC"). (Docket No. 214). On November 8, 2022, Plaintiff Jane Doe No. 5 filed a Response to the OSC ("JD5 Response"). (Docket No. 215). On November 10, 2022, Defendant Daniel S. Fitzgerald filed a Response to the OSC ("Fitzgerald Response"). (Docket No. 216). On November 17, 2022, the USAO filed a Reply. (Docket No. 217).

The Court has read and considered the papers and held a hearing on December 12, 2022.

Because there is an overlap between the claimant-victims and conduct at issue in this civil action and the federal criminal case pending against Peter Nygard in the Southern District of New York (the "Nygard Case"), a complete mandatory stay of this action is required pursuant to 18 U.S.C. § 1595(b)(1). Therefore, the Motion is **GRANTED**, and this action is **STAYED** until there is a final adjudication in the Nygard Case.

I. BACKGROUND

Plaintiffs in this action have alleged claims under the Trafficking Victims Protection Reauthorization Act ("TVPRA"), 18 U.S.C. §§ 1591, *et seq.*, and other laws, allegedly arising from, among other things, Fitzgerald's trafficking of women, and his conspiring with Peter Nygard and others to do the same, in California and elsewhere. The Amended Fourth Amended Complaint (the "Complaint") alleges that Fitzgerald trafficked certain Plaintiffs (Plaintiffs Jane Doe Nos. 1-4 and 7-9) as part of a conspiracy with Nygard, and other plaintiffs

as part of his own sex trafficking venture. (*See* Docket. 177 ("Compl.") ¶¶ 3-4).

In or about December 2020, a grand jury sitting in the Southern District of New York charged Peter Nygard in a nine-count Indictment with racketeering, sex trafficking, and Mann Act offenses, including violations of 18 U.S.C. §§ 1591 and 1594. (Motion at 2) (referencing *United States v. Peter Nygard*, 20 Cr. 624 (PGG) (the "Nygard Indictment")). As alleged in the Nygard Indictment, Nygard engaged in a decades-long scheme to use the corporate entities he controlled to facilitate his sexual exploitation of dozens of adult and minor victims and conspired with others to do the same. (*Id.*). On December 14, 2020, Nygard was arrested in Canada and is currently detained pending extradition to the United States. (*Id.*). Therefore, Nygard has not yet entered an appearance in the criminal action and the action is being held in abeyance. In addition to the pending charges against Nygard, according to the USAO, investigations into Nygard's co-conspirators are ongoing. (*Id.*).

The USAO has been informed by certain of Plaintiffs' counsel that, as part of discovery in this civil action, at least some Plaintiffs have been served with discovery requests, seeking, *inter alia*, information and materials relating to Nygard and the "Nygard-Defendant Sex Trafficking Venture." (*Id.*). The USAO notes that while the TVPRA authorizes victims of the sex trafficking statutes to bring a civil action against perpetrators, the TVPRA also includes a mandatory stay provision requiring that any civil action filed under the TVPRA "shall be stayed

during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim." 18 U.S.C. § 1595(b)(1).

Pursuant to the mandatory stay provision and Federal Rule of Civil Procedure 24, the USAO seeks to intervene in this action as of right and asks this Court to issue a complete stay of this civil action during the pendency of the criminal proceedings. (Motion at 4).

In response, Plaintiff Jane Doe No. 5 does not oppose a stay as to her claims but argues that the mandatory stay provision does not require a stay of Fitzgerald's counterclaims against her for (1) libel per se; (2) libel per quod; and (3) conspiracy to commit fraud. (*See* Fitzgerald's Answer and Counterclaims ¶¶ 408-434 (Docket No. 181); *see also* JD5 Response at 3). Jane Doe No. 5 contends that because her free speech rights are implicated by the counterclaims, it is important that she have the ability to timely "frankly and completely respond[]" to the counterclaims in the public record. (JD5 Response at 3). No other Plaintiff filed a response to the Court's OSC.

Defendant Fitzgerald opposes the stay in its entirety, arguing that "there is no evidence showing an identity of plaintiffs or facts to hinder any criminal case." (Fitzgerald Response at 1). Further, Fitzgerald argues that if a stay is granted it should not extend to include any Jane Does not shown by actual evidence, to be alleged victims in a parallel criminal proceeding (including, at least, Plaintiffs Jane Doe Nos. 5, 6, and 10). (*Id.* at 7). Defendant argues that having to "endure additional years without being able

to respond to the[] false allegations [in the Complaint] is improper—particularly, where the sole basis for the requested stay is an unrelated criminal proceeding not involving Fitzgerald." (*Id.* at 1).

In response to both Jane Doe No. 5's and Fitzgerald's papers, the USAO argues that "[o]n its face, the statute mandates a stay of any civil action while an overlapping criminal case is pending" and because the mandatory stay provision clearly applies here, a complete stay over the entire action is mandatory. (Reply at 2).

II. DISCUSSION

The USAO seeks to intervene in this action under Federal Rule 24 and seeks a stay under 18 U.S.C. § 1595(b)(1).

A. Intervention as of Right

None of the parties to the current action have directly opposed the USAO's motion to intervene. The Court determines that the USAO is entitled to intervene as of right under Federal Rule 24(a).

Rule 24(a) permits intervention as of right where the movant files a timely motion and either: (1) the movant "is given an unconditional right to intervene by a federal statue," or (2) the movant shows an interest in the litigation, that its interest may be impaired by the disposition of the action, and that its interest is not adequately protected by the parties to the action. Fed. R. Civ. P. 24(a)(1), 24(a)(2).

The Court agrees with the USAO that intervention is appropriate under either provision. As noted by the USAO, Congress implicitly granted the USAO a right to intervene by including the mandatory stay provision in the TVPRA, as intervention is the only way for the United States to move for and obtain the stay to which it is statutorily entitled. (Motion at 3). Further, the USAO clearly has an interest in the civil litigation that may be impaired by disposition of this action and inadequately protected by the parties. (*Id.*).

Accordingly, the Court **GRANTS** the Motion to the extent it seeks intervention as of right.

B. TVPRA Mandatory Stay Provision

Fitzgerald argues that the mandatory stay provision in the TVPRA does not apply to this action because the Nygard Case does not arise out of the "same occurrence" as the civil complaint, particularly because Fitzgerald is not an indicted defendant in the Nygard Case. (Fitzgerald Response at 4). Further, Fitzgerald argues that the USAO has failed to make an evidentiary showing that Plaintiffs in this action are the victims in the Nygard Case. (*Id.* at 5). Jane Doe No. 5 argues that any stay should not extend to Fitzgerald's counterclaims against her because "there is no overlap" between Fitzgerald's counterclaims and the Nygard Case. (JD5 Response at 4).

The USAO contends that TVPRA stay provision does not require the civil defendant be named in the parallel criminal proceeding; that the USAO's proffer

that there is overlap between the Jane Doe Plaintiffs and the victims in the Nygard Case is all that is required by the statute; and that permitting any subset of claims to go forward would be inconsistent with the statute's plain meaning. The USAO argues that the statute's plain text requires that the entire civil "action" be stayed, and that a complete stay is necessary to serve the legislative purpose of allowing criminal investigations and prosecutions to proceed without hinderance. (Reply at 3-4, 6).

1. Whether the USAO Has Established that the TVPRA Stay Provision Applies

The TVPRA provides that "[a]n individual who is a victim of [sexual trafficking] may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in [sexual trafficking])." 18 U.S.C. § 1595(a). The statute, however, also requires that "[a]ny civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim." 18 U.S.C. § 1595(b)(1). For purposes of the TVPRA, a "criminal action" includes investigation and prosecution and is pending until final adjudication in the trial court. 18 U.S.C. § 1595(b)(2). The statute requires that "a civil action be stayed if the victim of the criminal action is the same as the claimant in the civil action, and if the conduct underlying both cases arise out of the same occurrence." *Doe v. Mindgeek USA Inc.*, No. SA CV 21-00338-CJC-ADSx, 2021 U.S. Dist. LEXIS 251759, 2021 WL 6618628, at *3.

Appendix B

The USAO contends that some of the victims in the Nygard Case are the same as the plaintiffs in this civil action and that the conduct alleged in the civil Complaint "relates directly to the criminal conduct alleged against Peter Nygard and his co-conspirators in the Nygard Indictment." (Reply at 3). The USAO explains that Fitzgerald is "alleged to have acted as Nygard's co-conspirator in the sex trafficking conduct described in the Nygard Indictment and to have modeled his solo trafficking exploits on that same venture." (*Id.*). Indeed, the civil Complaint appends and extensively quotes the Nygard Indictment. (*Id.* at 4). Therefore, the USAO contends, that "there is no plausible argument that the allegations in the instant case are not 'arising out of the same occurrence in which the claimant[s] [are] the victim[s].'" (*Id.* at 3-4) (citing 18 U.S.C. § 1595(b)(2)).

At the hearing, Jane Doe No. 5's and Fitzgerald's counsel reiterated their contention that there is not a significant "overlap" between this action and the Nygard Case. However, to reiterate, the Defendant in this case is an alleged ***co-conspirator*** with the defendant in the Nygard Case, and the USAO contends that some of the ***Plaintiffs in this case are victims in the Nygard Case***. Those facts alone are sufficient to convince the Court that the mandatory stay provision has been fairly invoked by the USAO.

Fitzgerald argues that the USAO has not made the required evidentiary showing to demonstrate "an identity of 'claimant[-]victims' or the 'conduct at issue.'" (Fitzgerald Response at 5).

Fitzgerald relies on two cases for the proposition that "there must be a baseline evidentiary threshold to warrant the requested stay, establishing the identity of 'victims' and the same 'occurrences' involved in the criminal proceeding." (*Id.* at 6) (citing *Tianming Wang v. Gold Mantis Constr. Decoration (CNMI), LLC*, No. 1:18-CV-0030, 2020 U.S. Dist. LEXIS 188676, 2020 WL 5983939, at *2 (D. N. Mar. I. Oct. 9, 2020); *Cortez-Romero v. Marin J Corp*, No. 2:20-CV-14058, 2020 U.S. Dist. LEXIS 102830, 2020 WL 3162979, at *1 (S.D. Fla. June 11, 2020). However, in both *Tianming* and *Marin*, it was the ***civil defendant***, not the USAO, seeking a stay. That distinction is significant given the USAO prosecuting a parallel criminal case is inevitably in a better position than any other party to determine whether there is an overlap of claimant-victims and conduct at issue. Indeed, the *Tianming* court noted that it had urged (without success) the civil defendant to contact the USAO to obtain the information it needed to justify the request for a stay. 2020 U.S. Dist. LEXIS 188676, 2020 WL 5983939, at *1. Moreover, in *Marin*, the defendant sought a stay based on an uncharged investigation and the court could not even determine the subject of the investigation based on the proffer of the defendant. 2020 U.S. Dist. LEXIS 102830, 2020 WL 3162979, at *1.

The fact that it is the USAO, rather than the civil defendant, seeking a stay justifies a lower evidentiary burden not only because of the USAO's unique knowledge of the parallel criminal case, but also because of the purpose of the statute. As a case cited by Fitzgerald acknowledges, "courts that considered the legislative

history of the TVPRA have held that the mandatory stay provision was designed to protect the DOJ's ability to try criminal cases unfettered by the complications of civil discovery." *Tianming*, 2020 U.S. Dist. LEXIS 188676, 2020 WL 5983939, at *2. The *Tianming* court noted that while courts have granted stays by the motion of the defendant, courts have nonetheless cautioned that the purpose of the stay provision is "not [to] help defendants delay civil actions." *Id.* Therefore, it appears that some courts have required a civil defendant seeking a TVPRA stay to make a threshold evidentiary proffer to demonstrate that the provision applies to ensure the provision was not being improperly used as a delay tactic by the civil defendant. But where, as here, the USAO seeks a stay, there is no similar concern.

Indeed, at least one court has issued a stay in response to a request by the USAO without even allowing responses by the civil parties. *See Ara v. Khan*, No. CV 07-1251 (ARR) (JO, 2007 U.S. Dist. LEXIS 43170, 2007 WL 1726456, at *1 (E.D.N.Y. June 14, 2007) ("The relief the government seeks is mandatory if a criminal investigation is pending, and the government is uniquely competent to provide a conclusive report of that fact. Accordingly, there is nothing that any party to the civil action could say in response to the motion for a stay that would likely change the outcome I now order.").

Fitzgerald insists that the standard must require more than the USAO's "say so," and cites to another case where a district court required a city defendant to make an evidentiary showing that a years-long investigation of

the plaintiff warranted a stay of a civil case brought by that plaintiff against the city. (Fitzgerald Response at 3-4) (citing *Klein v. City of Beverly Hills*, No. CV 13-110-JFW (VBKX), 2013 U.S. Dist. LEXIS 208819, 2013 WL 12470381, at *1 (C.D. Cal. Apr. 19, 2013)). However, *Klein* was not a TVPRA case, and it is particularly inapposite given the city was a defendant to the civil action it wished to stay, and therefore the moving party could have had self-interested intentions in seeking a stay. Here, the USAO seeks a stay of a civil action to which it has no direct stake, except to the extent that the action may interfere with its criminal prosecution and investigation. Given the USAO's limited interest in this action, the Court has no reason to question the representations made to the Court by the USAO.

Therefore, the Court concludes that the USAO has sufficiently established that the mandatory, TVPRA-stay provision applies.

2. The Proper Scope of the Stay

Neither any party nor the Court has identified binding authority that answers the question of whether the TVPRA-stay provision is limited to particular defendants or claims. However, every district court to consider the issue has apparently determined that the plain language of the statute requires a stay of "***any*** civil ***action***," and is, therefore not limited to particular defendants or claims. *See* 18 U.S.C. § 1595(b)(1) (emphasis added)*; see also Sharma v. Balwinder*, No. 21-CV-00480-BLF, 2021 U.S. Dist. LEXIS 187541, 2021 WL 4865281, at *2 (N.D.

Cal. Sept. 29, 2021) ("[W]here, as here, the statute's language is plain, the sole function of the courts is to enforce it according to its terms."); *Mindgeek*, 2021 U.S. Dist. LEXIS 251759, 2021 WL 6618628, at *3 ("Section 1591(b) does not contain any limiting language suggesting that it applies only when there is an overlap in defendants in the relevant civil and criminal actions."); *Lunkes v. Yannai*, 882 F. Supp. 2d 545, 548-49 (S.D.N.Y. 2012) (collecting cases noting that a stay under § 1595 extends to a plaintiff's non-TVPRA claims and holding that the stay also must encompass all defendants in a related civil action regardless of whether a particular defendant has been indicted).

As the *Lunkes* court reasoned, "[d]iscovery with respect to those civil defendants not facing criminal charges . . . will frequently overlap significantly with the discovery relating to criminally charged defendants." 882 F. Supp. 2d at 550. Therefore, "the risk of interference with criminal prosecution is fully addressed only be extending the stay to all defendants." *Id.* Likewise, "discovery with respect to a plaintiff's non-TVPRA claims will commonly overlap with the TVPRA-specific discovery." *Id.* Therefore, courts have read the stay provision broadly to effectuate "the statute's goal of protecting the government's ability to prosecute traffickers criminally." *Id.*

Jane Doe No. 5 argues that Fitzgerald's counterclaims are limited to allegations relating to a single sexual assault in Mexico. But, in fact, Fitzgerald's allegations are not so limited and clearly refer to relevant aspects of the Nygard Case. (*See*, *e.g.*, Fitzgerald Answer and Counterclaims,

¶ 399) (referencing statements allegedly made by Jane Doe No. 5 about Fitzgerald being "investigated by the fbi for sex trafficking/rape/sex w minors etc" and that Fitzgerald was attempting to prevent Jane Doe No. 5 from "testifying in the trial.").

The Court also rejects Fitzgerald's arguments that the stay should not extend to claims brought by Plaintiffs who are not victims in the Nygard Case. As an initial matter, such parsing of claims would inevitably require the USAO to publicly identify the identity of the victims in the Nygard Case. Fitzgerald does not explain how such parsing could possibly be consistent with the provision's purpose of allowing a criminal case to be unfettered by related civil litigation. Furthermore, because Fitzgerald is alleged to have modeled his individual trafficking exploits on Nygard's model, the claims by Plaintiffs who allege only to have been victims of Fitzgerald's trafficking are nonetheless substantially related to the Nygard Case.

At the hearing, Jane Doe No. 5's and Fitzgerald's counsel reiterated the lack of evidence regarding overlap between the claims and defendant in this action verses the claims and defendant in the Nygard Case. However, as the Assistant U.S. Attorney argued, it would undermine the purposes of the statute if the USAO were to be required to come forward with evidence and defend the stay as to each and every claim and defendant because such a requirement could impede and unduly burden ongoing criminal investigations.

The Court therefore concludes that the stay provision extends to all counterclaims and parties. *See Sharma*, 2021 U.S. Dist. LEXIS 187541, 2021 WL 4865281, at *2 ("The plain language of [§ 1595] requires a stay of '[a]ny civil ***action***'. . . . The statute does not limit the stay to particular defendants or claims.") (citing 18 U.S.C. § 1595(b)(1)) (emphasis in original).

While the Court acknowledges that Fitzgerald has an interest in promptly clearing his name of the allegations in the Complaint, and that Jane Doe No. 5 has First Amendment interests at stake with respect to the counterclaims against her, as noted by the USAO, applying the typical balancing test under the factors set forth in *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995) would be "contrary to the statute's clear, broad, and mandatory language." *See Doe v. Athens Cnty.*, No. 2:22-CV-00855, 2022 U.S. Dist. LEXIS 89151, 2022 WL 1569979, at *1 (S.D. Ohio May 18, 2022) (citing *Mindgeek*, 2021 U.S. Dist. LEXIS 251759, 2021 WL 6618628, at *3)). Therefore, the Court concludes that a complete stay is required here given the overlap in the identity between the claimant-victims and the conduct at issue in the civil and criminal actions.

Finally, the Court addresses Fitzgerald's concerns regarding the aging and availability of evidence by ordering all parties to this action to preserve evidence until the proceedings in the civil action resume, as more fully described below.

Accordingly, the stay is **GRANTED**.

III. CONCLUSION

The Motion is **GRANTED** as to both the intervention and the stay. This action is **STAYED** until there is a final adjudication in the Nygard Case.

All parties to this action are **ORDERED** to preserve and protect all relevant documents, data compilations (including electronically recorded or stored data), and tangible objects in their custody or control, including the custody or control of their subagents. In this context, "relevant" refers to relevance for purposes of discovery, which is "an extremely broad concept." *See Lunkes*, 882 F. Supp. 2d at 551 (implementing a similar protective order after granting at TVPRA stay).

Going forward, as an intervening party, the USAO will be required to make all filings directly on the public docket. The USAO should decide how it wants to present its positions. It may either file its briefs on behalf of the United States of America and act through the Civil Division of the United States Attorney's Office for the Central District of California, as is routinely done with trial attorneys from "Main Justice." Or it may file its briefs as its own entity, in which case the AUSAs should apply for admission *pro hac vice* and designate a Central District AUSA as local counsel.

In either case, the USAO shall file a status report concerning the proceedings in the Nygard Case in this action every six months. If at any time prior to the final adjudication of the Nygard Case the USAO determines

that it is no longer necessary to stay this action to protect the integrity of its investigation and prosecution, the USAO shall immediately file a status report in this action to that effect.

At the hearing, Fitzgerald's counsel asked if the Court would consider requiring a status report every three months. The Court declines that invitation given the above instruction requires the USAO immediately notify the Court if and when it determines that a stay is no longer necessary.

IT IS SO ORDERED.

APPENDIX C — RELEVANT STATUTORY PROVISION

18 USCS § 1595

Civil remedy

(a) An individual who is a victim of a violation of this chapter [18 USCS §§ 1581 et seq.] may bring a civil action against the perpetrator (or whoever knowingly benefits, or attempts or conspires to benefit, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter [18 USCS §§ 1581 et seq.]) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

(b)

(1) Any civil action filed under subsection (a) shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim.

(2) In this subsection, a "criminal action" includes investigation and prosecution and is pending until final adjudication in the trial court.

(c) No action may be maintained under subsection (a) unless it is commenced not later than the later of—

(1) 10 years after the cause of action arose; or

(2) 10 years after the victim reaches 18 years of age, if the victim was a minor at the time of the alleged offense.

(d) In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person who violates section 1591 [18 USCS § 1591], the attorney general of the State, as parens patriae, may bring a civil action against such person on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.