No. __-____

IN THE

Supreme Court of the United States

JASON DEE TAYLOR, AKA Capthaze69, AKA Sugar Daddy, AKA RumbleFingers, AKA Seahorse869,

Petitioner,

v.

UNITED STATES OF AMERICA,

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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November 25, 2024

QUESTIONS PRESENTED

Whether The Government's Application Of A Federal Criminal Statute For Sex Trafficking To The Purely Local Crime Of Prostitution Is An Invasion Of The States' Traditional Police Powers, A Violation Of The Tenth Amendment, And Inconsistent With The Principles Of Federalism.

PARTIES TO THE PROCEEDING

The United States is represented by the U.S. Attorney's Office. Jason Dee Taylor, the petitioner, is represented by Stephen N. Preziosi, Esq.

RELATED CASES

- *United States v. Jason Dee Taylor* Docket No. 20-cr-00191 United States District Court Central District of California Judgment dated February 15, 2022.
- *United States v. Jason Dee Taylor* Number 22-50028 United States Court of Appeals for the Ninth Circuit Judgment dated March 14, 2024.
- *United States v. Jason Dee Taylor* No. 22-50028 United States Court of Appeals *en banc* Order dated June 28, 2024.

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PETITION FOR A WRIT OF CERTIORARI

Jason Dee Taylor respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The United States Court of Appeals for the Ninth Circuit's opinion is reported at 2024 WL 1108829 (App. 3a) The Ninth Circuit's decision denying *en banc* review can be found in the Appendix at App. 1a. The United States District Court decision is contained in the Appendix at App 15a.

JURISDICTION

On March 14, 2024, the United States Court of Appeals for the Ninth Circuit issued a decision affirming the judgment and conviction of Jason Dee Taylor after a jury trial. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Tenth Amendment states: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Title 18 U.S.C. §1591, entitled Sex Trafficking of Children or by force, fraud, or coercion under chapter 77 Peonage, Slavery, and Trafficking in Persons in the Victims of Trafficking and Violence Protection Act of 2000.

(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, advertises, maintains, patronizes, or solicits by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

Knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a

commercial sex act, or 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 as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is--

(1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.

(c) In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained, maintained, patronized, or solicited, the Government need not prove that the defendant knew, or reck-

lessly disregarded the fact, that the person had not attained the age of 18 years.

(d) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned for a term not to exceed 25 years, or both.

(e) In this section:

(1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term "coercion" means--

(A) threats of serious harm to or physical restraint against any person;

(B) 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

(C) the abuse or threatened abuse of law or the legal process.

(3) The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.

(4) The term "participation in a venture" means knowingly assisting, supporting, or facilitating a violation of subsection (a)(1).

(5) The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

(6) The term "venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

INTRODUCTION

In 2000, Congress passed the Trafficking Victims Protection Act. The stated purpose of the Act was "to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims." 22 U.S.C.A. §7101(a) Purposes and findings.

Congress' findings of fact immediately followed the stated purpose of the statute. The factual find-

ings of Congress are important as they indicate the types of crimes and the nature of criminal activity to which the statute ought to be applied. There are twenty-four separate sub-sections of findings of fact listed in the Purposes and Findings preamble of the statute. Each of these sub-sections contains a description of the types of activity that Congress intended to proscribe, including, but not limited to, slavery, international sex trade, forced labor, selling women into prostitution, sex acts by physical violence, threats of physical violence, trafficking by criminal enterprises, forcible rape, violations of labor law and immigration laws, brutalization of women, and involuntary servitude.

The first subsection of Congress' findings of fact, §7101(b)(1), is generally indicative of the statute's objective: "As the 21st century begins, the degrading institution of slavery continues throughout the world. Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today. At least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year." 22 U.S.C.A. 7101(b)(1).

As part of the Trafficking Victims Protection Act, Congress enacted Chapter 77 entitled Peonage, Slavery, and Trafficking in Persons. Title 18 U.S.C. §1591 entitled Sex Trafficking of Children or by

Force, Fraud, or Coercion is a section within Chapter 77.

The stated purpose of the statute in combination with the contextual findings of fact demonstrate that §1591 was applied too broadly in this case and was applied beyond the scope of Congress' intention and beyond the scope of Congress' authority under the Commerce Clause.

STATEMENT OF THE CASE

Jason Taylor was charged with one count of sex trafficking under 18 U.S.C. §1591 and one count of coercion and enticement under 18 U.S.C. §2422(b). The charges stem from his contact with a girl he met through a website called Seeking Arrangements. The site is known for pairing older men with younger women seeking "sugar daddy" type relationships. The complainant created a profile, referring to herself as a "sugar baby" and stated on her profile that she was 19 years old (she was 15 years old), and she was seeking friends with benefits. Jason contacted her on the site and the two communicated for two days before they decided to meet.

Because of the nature of the site, there was an immediate discussion of gifts for the complainant. Although Jason offered her money as part of the "sugar daddy" arrangement, there was never a conversation or anything to the effect that there would be an exchange of money for sex. In fact, just the

opposite is true; the complainant stated in various messages that she was not in such an exchange. Jason subsequently sent her gifts, such as a cell phone, and vape pens. They eventually met at her request. Jason picked her up near her home and they went to a hotel that she had chosen. They did have sexual relations, but it was never an arrangement of money for sex. It was, as per their discussions, a "sugar daddy" arrangement.

The complainant's family became aware and reported this to the police. Prior to any federal charges, Jason was charged under California Penal Law with an improper sex act under California Penal Code §288(c)(1) entitled Lewd or Lascivious Act. This charge is known as a "wobbler offense," a statute that allows the accused to be charged with either a misdemeanor or a felony. The other state charge was Contact of minor with intent to commit sexual offense under California Penal Code §288.4(b), punishable up to four years in prison. Conversely, both federal charges carry a mandatory minimum of ten years in prison. Had Jason been charged exclusively by the State of California, he would have faced a maximum jail sentence of four years.

The Tenth Amendment Argument By Defense Counsel in the District Court.

Defense counsel submitted motions on September 13, 2021 to argue that the application of federal

statues to the purely local crimes was a case of overreaching federal authority and in violation of the principle of federalism and the Tenth Amendment. The trial court denied the motion to dismiss pursuant to the Tenth Amendment (App. 15a.) and denied the motion at oral argument on October 8, 2021.

In federally prosecuting Jason under a statute designed to protect against transnational sex trafficking, the government overreached and exceeded its authority, triggering a violation of the Tenth Amendment. The federal charge invaded traditional state law police power. The United States Supreme Court has made clear that, "it is incumbent upon the federal courts to be certain of the intent of Congress before finding that federal law overrides" the usual constitutional balance of federal and state powers." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991).

The Ninth Circuit's Decision.

Mr. Taylor appealed the conviction to the Federal Court of Appeals for the Ninth Circuit. The Ninth Circuit affirmed the conviction (App. 3a), holding the defense argument that the Tenth Amendment precluded the application of §1591 in this case was foreclosed by *United States v. Walls*, 784 F.3d 543 (9th Cir. 2015), which held that §1591 includes a clear statement from Congress demonstrating its

intent to exercise its full powers under the Commerce Clause.

The Ninth Circuit stated that under *Walls*, any individual instance of conduct regulated by §1591 need only have a *de minimis* effect on interstate commerce. The factual findings of the Ninth Circuit were that Taylor's conduct had a *de minimis* effect on interstate commerce because he used the internet, a computer, and a cell phone to communicate with the complaining witness, and he ordered items for her through Amazon and FedEx, and booked a hotel room for their meetings. That Court found that as both the means to engage in commerce and the method by which transactions occur, the Internet is an instrumentality and channel of interstate commerce.

Mr. Taylor moved to reargue the Ninth Circuit's decision and moved for rehearing *en banc*, arguing that the *Walls* case was factually distinguishable from Mr. Taylor's case and that the statute could not apply equally to both factual scenarios. The Ninth Circuit denied reargument and *en banc* rehearing on June 28, 2024 (App. 1a).

REASONS FOR GRANTING THE WRIT

THE GOVERNMENT'S APPLICATION OF A FEDERAL CRIMINAL STATUTE FOR SEX TRAFFICKING TO THE PURELY LOCAL CRIME OF PROSTITUTION IS AN INVASION OF THE STATES' POLICE POWERS, VIOLATES THE

TENTH AMENDMENT, AND IS INCONSISTENT WITH THE PRINCIPLES OF FEDERALISM.

In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder. The States have broad authority to enact legislation for the public good, often called "police powers." The Federal Government, by contrast, has no such authority and can exercise only the powers granted to it. *Bond v. United States*, 572 U.S. 844, 845 (2014) citing *McCulloch v. Maryland*, 4 Wheat. 316, 405, 4 L.Ed. 579 (1819).

The application of 18 U.S.C. §1591 to a purely local crime constitutes a dramatic intrusion upon traditional state criminal jurisdiction and federal courts should avoid reading statues to have such reach in the absence of a clear indication that they do. *United States v. Bass*, 404 U.S. 336, 350 (1971). The application of 18 U.S.C. §1591 to Jason's case constitutes federal government overreaching and violates the Tenth Amendment, especially where local laws of California are sufficient to prosecute the charges against him. In fact, as addressed in the motion to dismiss filed in the lower court, there were pending California state criminal charges against Jason alleging the same conduct. There is no reason for the federal government to override the usual constitutional balance of federal and state powers, particularly when the state govern-

ment was addressing the same allegations. *Gregory*, 501 U.S. at 460.

Rule Of The Tenth Amendment And The Principles Of Federalism: Purely Local Conduct Cannot Be Prosecuted Federally.

In determining whether a federal statute reaches local conduct better prosecuted by the state pursuant to its police power, that federal statute must "be read consistent with principals of federalism inherent in our constitutional structure. Part of a fair reading of statutory text is recognizing that 'Congress legislates against the backdrop' of certain unexpressed presumptions." *Bond v. United States,* 572 U.S. 844 (2014).

Because our constitutional structure leaves local criminal activity primarily to the States, federal courts have generally declined to read federal law as intruding on that responsibility unless Congress has clearly indicated that the law should have such reach. Where the federal law contains no clear indication that its application should intrude upon the traditionally held space occupied by state law, the federal statute is inapplicable. Under the principles of federalism, the federal statute for which Jason was convicted does not reach the purely local offense of soliciting prostitution or soliciting an underage victim.

Bond v. United States and the Tenth Amendment

In *Bond v. United States*, the Supreme Court found that the Chemical Weapons Convention Implementation Act contained no clear indication that federal law should supplant state law and concluded that it did not cover an unremarkable local offense. *Bond v. United States*, 572 U.S. 844, 848 (2014). In the *Bond* case, the defendant attempted to injure her husband's lover by placing a chemical on objects that the woman was likely to touch: her mailbox, car door handle, doorknob of her home, in the hope that she would develop an uncomfortable rash. The resulting injury was only a minor thumb burn treated by rinsing with water.

The defendant was indicted on two counts of violating 18 U.S.C. §229, which forbids knowing possession or use of any chemical that can cause death, temporary incapacitation or permanent harm to humans or animals. The statute was part of the Chemical Weapons Convention Implementation Act of 1998, enacted to comply with a treaty that the United States ratified in 1997 pursuant to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons.

Bond challenged the constitutionality of the statute under the Tenth Amendment, and the issue in that case became whether she had standing to argue the Tenth Amendment. The case wended its

way to the U.S. Supreme Court where it was held that the defendant had standing under the Tenth Amendment to challenge the constitutionality of the statute because the challenge to her conviction and sentence satisfied the case-or-controversy requirement and because the incarceration constitutes a concrete injury. The case was remanded to the Third Circuit, which held that Congress did not exceed its power under the Necessary and Proper Clause and appealed again to the U.S. Supreme Court. The holding in *Bond II* is pertinent here.

In *Bond v. United States*, 572 U.S. 844 (2014) (*Bond II*), it was held that the federal statute imposing criminal penalties for possessing and using a chemical weapon and implementing chemical weapons treaty did not reach the unremarkable local offense by the defendant to injure her husband's lover. The Supreme Court instructed that a federal statute must be read consistent with the principles of federalism inherent in our constitutional structure. Federal courts have a duty to be certain of Congress's intent before finding that federal law overrides the usual constitutional balance of federal and state powers. The criminal acts that Jason was charged with were purely local and they do not fit the profile of sex trafficking or slavery that the federal statute was designed to prevent. Applying §1591 to the facts of this case constitutes an overly broad and too expansive an interpreta-

tion of a statute that was not conceived to apply to local criminal conduct.

Congress Must Clearly Express Their Intent To Override The Traditionally Held Position Local Prosecutors Hold In The Prosecution Of Purely Local Criminal Acts.

There is no indication within the federal statute that expresses Congress's intent to supplant state law. This is especially relevant where the alleged crimes, soliciting prostitution and statutory rape, are traditionally within the ambit of state law.

Closely related to the principle of federalism is the well-established principle that " 'it is incumbent upon the federal courts to be certain of Congress' intent before finding that federal law overrides' " the "usual constitutional balance of federal and state powers." *Gregory v. Ashcroft,* 501 U.S. 452, 460, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991). Where there is some ambiguity in the federal statute, precedent makes clear that it is appropriate to refer to the basic principles of federalism embodied in the Constitution to resolve ambiguity in the federal statute. The Supreme Court found that local criminal acts are traditionally a state responsibility, and the federal courts should not be quick to assume that Congress meant to effect a significant change in the sensitive relation between federal and state criminal jurisdiction. *Bond*, 572 U.S. at 858-859.

The *Bond* Court noted two cases where the crimes were paradigmatically common law state crimes: *United States v. Bass*, 404 U.S. 336 (1971) and *Jones v. United States*, 529 U.S. 848 (2000). In both cases, the Court found that the reading of the federal criminal statute was too broad and that it did not and should not reach the purely local criminal activities like possession of a firearm (*Bass*) or arson (*Jones*).

Analysis

In this case, 18 U.S.C. §1591 does not reach the crime of soliciting prostitution or statutory rape, both of which are paradigmatic state law crimes. The intention of Congress in §1591 was to prevent sex trafficking on a grand scale. In fact, the statute's stated purpose is as follows: *"The purposes of this division are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.*" (See 22 U.S.C. §7101(a)).

Immediately following the stated purpose are the specific findings Congress made when enacting the statute. The findings are significant because they are indicative of the scope of conduct that Congress intended to prohibit. That conduct includes slavery, trafficking across international borders, participation in the sex industry, forced labor, physical

violence, and slave labor. None of these facts are present here.

Statutory Purpose And Congress's Findings.

A comparison of the findings to the facts of this case, confirms that Congress never intended that the prohibited conduct under §1591 deal with the purely local conduct found in this case. The following are several examples of Congress's findings under this statute.

Title 22 U.S.C. § 7101(b)(1) states: "As the 21st century begins, the degrading institution of slavery continues throughout the world. Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today. At least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year."

The factual findings are important as they indicate the types of crimes to which the statute ought to be applied. Title 22 U.S.C. § 7101(b)(2), (3), (5), and (6) contain Congress' factual findings that are compelling as they stand in stark contrast to the facts of this case. They are as follows:

22 U.S.C. § 7101(b)(2) Many of these persons are trafficked into the international sex trade, often by force, fraud, or coercion. The sex industry has rapidly expanded over the past several decades. It

involves sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services. The low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry.

In contrast to these factual findings, Jason did not try to entice the complainant in this case into the international sex trade or the sex industry. He responded to a profile placed by the victim on a website called Seeking Arrangements. The site is known for young adult women seeking relationships with older men who are willing to provide them with financial stability. Jason and the complainant messaged each other through the website and via Instagram and agreed to meet. The colloquy between them makes it clear that this was not a meeting through force or fraud or coercion and had nothing to do with the sex trade or the sex industry.

Neither do the facts bear any resemblance to transnational crime through forced labor for violation of human rights standards, as is set out as stated in the goals and findings of the statute.

22 U.S.C. § 7101(b)(3) Trafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide.

Neither did Jason try to transport the victim away from her home community to an unfamiliar destination. In fact, it was just the opposite. The place where they went was chosen, priced and suggested by the victim. She chose the hotel they went to; she suggested that they go to a hotel, and she chose the hotel near her home. These facts stand in contradiction by comparison to the findings of Congress and the reasons the law was enacted:

22 U.S.C. § 7101(b)(5) Traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable.

Even greater disparity is found in Congress's findings and stated goals for this statute because in this case there was no physical violence, physical abuse, torture, threats, imprisonment, etc.

22 U.S.C. § 7101(b)(6) Victims are often forced through physical violence to engage in sex acts or perform slavery-like labor. Such force includes rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion.

It is clear from the findings of Congress that the statute was enacted to prevent a very different type of crime. Wide scale trafficking, enslavement of young women, and forced labor are not the facts of

this case. The concept of federalism separates the facts of this case from the embrace of a federal statute designed to prevent human trafficking, slavery, forced labor, and violent physical abuse and coercion.

Jason Taylor contacted a young girl who placed an advertisement on a website known for connecting older men and younger women; she actively pursued a "sugar daddy" type relationship and held herself out as 19 years old. While they did have a physical relationship, it in no way resembles the elements or the purposes of the federal statute, 18 U.S.C. § 1591. A criminal act committed wholly within a State cannot be made an offence against the United States, unless it has some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States. *Bond v. United States*, 572 U.S. at 854 quoting *United States v. Fox*, 95 U.S. 670, 672 (1878).

The federal statute was not designed to reach the facts of this case.

CONCLUSION

This Court should grant Certiorari to determine the scope of the statutes application and whether as applied in this case, it violated the Tenth Amendment and the concept of our system of federalism.

Respectfully submitted,

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November 25, 2024

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-50028

D.C. No. 5:20-cr-00191-JGB-1

Central District of California, Riverside

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JASON DEE TAYLOR, AKA capthaze69, AKA Sugar Daddy, AKA RumbleFingers, AKA Seahorse869,

Defendant-Appellant.

ORDER

Before: CALLAHAN, CHRISTEN, and BENNETT, *Circuit Judges*.

Defendant-Appellant filed a petition for panel rehearing and rehearing en banc. Dkt. No. 73. The panel has unanimously voted to deny the petition for rehearing and to deny the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and rehearing en banc is DENIED.

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FILED
JUN 28 2024
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-50028

D.C. No. 5:20-cr-00191-JGB-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JASON DEE TAYLOR, AKA capthaze69, AKA Sugar Daddy, AKA RumbleFingers, AKA Seahorse869,

Defendant-Appellant.

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Jesus G. Bernal, District Judge, Presiding

Argued and Submitted January 9, 2024
Pasadena, California

Before: CALLAHAN, CHRISTEN, and BENNETT, *Circuit Judges.*
Concurrence by Judge CALLAHAN.

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

Jason Taylor met 15-year-old E.B. on a website called Seeking Arrangements (Seeking.com) and had sex with her twice in exchange for $700, a cellphone, and clothes. A jury convicted Taylor of sex trafficking a minor under 18 U.S.C. § 1591 and enticement of a minor to engage in criminal sexual activity under 18 U.S.C. § 2422(b). Taylor now appeals his jury conviction and sentence. We assume the parties' familiarity with the facts and recite them only as necessary. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

1. Taylor challenges the district court's denial of his motion to dismiss the indictment. This court reviews the denial of a motion to dismiss an indictment de novo. *United States v. Marguet-Pillado*, 560 F.3d 1078, 1081 (9th Cir. 2009).

Taylor argues that because his crime was "purely local," § 1591 does not reach his conduct and the Tenth Amendment required the district court to dismiss the § 1591 charge. This argument is foreclosed by *United States v. Walls*, 784 F.3d 543 (9th Cir. 2015), which held that § 1591 includes a clear statement from Congress demonstrating its intent to exercise its full powers under the Commerce Clause. *Id.* at 546-47. Under *Walls*, "any individual instance of conduct regulated by [§ 1591] need only have a *de minimis* effect on interstate commerce." *Id.* at 548.

Taylor's conduct had at least a *de minimis* effect on interstate commerce because he used the internet, a computer, and a cell phone to communicate with E.B., order items for her through Amazon and FedEx, and book hotel rooms for their meetings.

See, e.g., *United States v. Sutcliffe*, 505 F.3d 944, 953 (9th Cir. 2007) ("[A]s both the means to engage in commerce and the method by which transactions occur, the Internet is an instrumentality and channel of interstate commerce." (cleaned up)).

2. Taylor argues that the district court erred by admitting his statement at his arraignment that "[t]his was an isolated incident," claiming *Miranda* barred admission of his statement. *Miranda*, however, applies only to custodial interrogations, and does not apply to volunteered statements. *United States v. Zapien*, 861 F.3d 971, 974 (9th Cir. 2017) (per curiam) ("Pursuant to *Miranda v. Arizona*, a person has a right to the assistance of counsel during custodial interrogations." (citation omitted)); *Miranda v. Arizona*, 384 U.S. 436, 478 (1966) ("Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence."). Here, there was no interrogation by the magistrate judge, and Taylor's statement was volunteered. After the magistrate judge indicated he was going to detain Taylor, Taylor asked if he could speak, the magistrate judge said he could, and Taylor volunteered the above statement.[1] *Miranda* does not apply, and thus the district court correctly denied Taylor's motion in limine to exclude the statement.

3. Taylor argues that the district court erred in excluding, under Federal Rule of Evidence 412, evidence of the nature of the website Seeking.com and

[1] Moreover, this was after the magistrate provided Taylor with *Miranda* warnings.

E.B.'s reasons for going on the website. Taylor claims this exclusion violated his constitutional right to present a defense.[2] We review a district court's evidentiary rulings for abuse of discretion and a district court's interpretation of the Federal Rules of Evidence de novo. *United States v. Haines*, 918 F.3d 694, 697 (9th Cir. 2019). In addition, we "review de novo whether a district court's evidentiary rulings violated a defendant's constitutional rights." *Id.*

18 U.S.C. § 2422(b) criminalizes "[w]hoever . . . knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution . . . ." Count 2 of the indictment alleged that Taylor did:

> knowingly *persuade, induce, entice, and coerce* an individual who had not attained the age of 18 years, namely, a 15-year-old girl whom defendant TAYLOR knew to be less than 18 years old, to engage in a sexual activity for which a person can be charged with a criminal offense, namely, unlawful sexual intercourse with a person under the age of 18 years . . . . (emphasis added)

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[2] Although the district court appeared to base its decision only on Rule 412, the government brought its motion in limine under Rule 412 and, in the alternative, under Rule 403. In addition to arguing that the evidence is inadmissible under Rule 412(a), the government also argued that the Rule 412(b)(1)(C) exception does not apply because the evidence was "irrelevant to the charges," and Taylor was "not constitutionally entitled to present irrelevant evidence."

As the government conceded at argument, it did not have to charge Taylor with using *all* these statutory means. The government also sought and obtained a jury instruction that instructed the jury that one element of the offense was that Taylor did "knowingly persuade, induce, entice, or coerce" E.B.[3] The evidence about the nature of Seeking.com and E.B.'s reasons for going on the website—that E.B. was seeking a "sugar daddy" relationship—was directly relevant to the charge, because it at least goes to the charged "coercion" of E.B.[4]

The district court erred here. The court stated that "one can be . . . convinced and enticed without [] their will [being] overcome . . . . [T]he consent of the minor in this case is not relevant . . . . I don't think it's a defense that she was willing to go along with it." "Consent" per se may not be a defense, but evidence that shows that defendant neither forced, threatened, nor compelled E.B., negates (i.e., is a "defense" to) the grand jury's charge that Taylor coerced E.B.

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[3] The court also instructed the jury: "In considering whether a defendant persuaded, induced, enticed, or coerced an individual who had not attained the age of 18 years, I instruct you to use the ordinary, everyday definitions of these terms." An "ordinary, everyday" definition of coerce is "to compel to an act or choice" or "to achieve by force or threat." *Coerce*, Merriam-Webster, https://www.merriam-webster.com/dictionary/coerce (last visited Jan. 22, 2024).

[4] In its answering brief, the government concedes that "Taylor's proffered evidence arguably might have been relevant to disprove that he 'coerced' E.B."

The court also stated:

> The problem with that statute is it conflates four verbs that have widely different meanings, right? So to coerce is to overcome the will of somebody. When you're coercing somebody, you're forcing somebody, but to persuade or entice are not necessarily overcoming the will of anybody. Those don't have to do with an initial opposition to something and then an overcoming of that opposition to get what you want.
>
> Persuade or induced, you could be neutral one way or the other and you're persuaded to do something or you're induced to do something.
>
> So, yeah, there's a tension between those words, but I think that the Government has the better of it on this argument. So that evidence will be excluded at trial.

The court was correct that coercing means forcing (or at least trying to force). The court was also correct that persuading and enticing someone is not necessarily overcoming the will of that person. And if the government had only charged persuading, enticing, and inducing, then the district court might not have abused its discretion in barring evidence that clearly showed (or at the very least was highly relevant to showing) that Taylor did not coerce E.B. But since the government charged coercion, the court instructed the jury as to coercion, and the excluded evidence went directly to coer-

cion, the district court abused its discretion in excluding that evidence.[5]

But the district court's error was harmless. Non-constitutional errors are harmless if the government can establish that "it is more probable than not that the error did not materially affect the verdict." *United States v. Torres*, 794 F.3d 1053, 1063 (9th Cir. 2015) (quoting *United States v. Seschillie*, 310 F.3d 1208, 1214 (9th Cir. 2002)). "The test for determining whether a constitutional error is harmless is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *United States v. Walters*, 309 F.3d 589, 593 (9th Cir. 2002) (citation and internal quotation marks omitted). Our "[r]eview for harmless error requires not only an evaluation of the remaining incriminating evidence in the record, but also the most perceptive reflections as to the probabilities of the effect of error on a reasonable trier of fact." *Torres*, 794 F.3d at 1063 (quoting *United States v. Bishop*, 264 F.3d 919, 927 (9th Cir. 2001)).

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[5] Perhaps the evidence at issue—in addition to going to whether E.B. was coerced—could also be interpreted as going to E.B.'s sexual predisposition, and thus initially covered by Rule 412(a)(2)'s evidentiary bar. But even if we take the broad view that the evidence could go to her sexual predisposition, it would still be error to exclude the evidence, as it would violate Taylor's constitutional rights for him to both (1) be charged with coercion and (2) be barred from proving lack of coercion. Thus, the evidence would be admissible under Rule 412(b)(1)(C)'s exception.

Even assuming constitutional error,[6] the error was still harmless. The evidence presented at trial overwhelmingly supported the jury's conclusion that one or more of the verbs in § 2422(b) and the indictment, other than "coerced," (e.g., "entices") was satisfied.

First, many text messages between Taylor and E.B. show that he enticed, induced, and attempted to persuade E.B. by offering (and providing) her money and other items for sex. For example, the following messages were read into evidence:

> Do you like sex, baby? . . . Be my sugar baby and I'll take care of you, okay? . . . I'll treat you like a princess, baby. Let me know how much a phone is and if you can receive money.
>
> * * *
>
> You need a phone. And I want to see pics of you, please, before Saturday . . . . I will be soft and treat you good.
>
> * * *
>
> Mmm, I like you. Would you send me nudes, baby? . . . I'll bring 400 if you send me some nudes of you.
>
> * * *
>
> I need your nudes. I'm so [redacted][7] hard.
>
> * * *

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[6] Defendant claims he was denied the "constitutional right to present a defense" because "the excluded evidence was demonstrative of . . . [E.B.'s] willingness to participate in [the] arrangement." However, Taylor was not prevented from presenting *all* evidence that negated the verbs in the statute, including coerced.

[7] Redacted in disposition only. Actual word read to jury.

> Lots of legs spread. I want to see your 16-year-old [redacted][8] spread wide.
>
> * * *
>
> Cus daddy's gonna take it on Saturday.
>
> * * *
>
> I'll be honest. I like your age. It's kinda hot. So I'm gonna be there for sure Sat.
>
> * * *
>
> If you can send pics before, like tomorrow, I'll bring 400 instead of 300. And if you can prove age . . . I'll even give you a little more.
>
> * * *
>
> If we go on for a while, I'll get you a nice phone.

And, directly relevant to E.B. not being "coerced," the jury learned from E.B.'s testimony, including cross-examination, that she sought the arrangement for money and other tangible consideration, and was a willing, non-coerced, participant.

There could have been no doubt, reasonable or otherwise, that E.B. was, for example, "enticed" by Taylor. Nor, given the state of the evidence, could the jury have concluded (notwithstanding the evidentiary exclusions), that E.B. *was* "coerced" by Taylor. The error was therefore harmless.

4. The district court did not—as Taylor contends—engage in impermissible double counting by applying the use of a computer and sex act enhancements under USSG § 2G1.3(b)(3)(B) and (b)(4)(A), respectively. "[W]e review the district court's interpretation of the Sentencing Guidelines

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[8] Redacted in disposition only. Actual word read to jury.

de novo and its factual findings for clear error." *United States v. Harrington*, 946 F.3d 485, 487 (9th Cir. 2019) (quoting *United States v. Smith*, 719 F.3d 1120, 1123 (9th Cir. 2013)). "Impermissible double counting occurs when a court applies an enhancement for a necessary element of the underlying conviction." *United States v. Hornbuckle*, 784 F.3d 549, 553 (9th Cir. 2015). Because the use of a computer and "the commission of a sex act or sexual contact" are not necessary elements of § 1591 (which provided the base offense level of 30 under USSG § 2G1.3(a)(2)), *id.* at 554, there was no impermissible double counting.

5. The district court did not impose a sentence that represents an unlawful disparity among similarly situated defendants. The relevant inquiry is whether the district court's sentence was "reasonable or whether the judge instead abused his discretion in determining that the § 3553(a) factors supported the sentence imposed." *Holguin-Hernandez v. United States*, 140 S. Ct. 762, 766 (2020) (citation and internal quotation marks omitted). The district court sentenced Taylor below the guideline range and above the ten-year mandatory minimum required by § 2422(b) and § 1591. Taylor compares his case to *United States v. Dhingra*, 371 F.3d 557 (9th Cir. 2004), a case in which a defendant charged under § 2422(b) was given a custodial sentence of twenty-four months. Even were we to be persuaded of an unreasonable disparity based on a single case, § 2422(b) did not require a ten-year mandatory minimum at the time of the sentencing in *Dhingra*. There is nothing to suggest

that the sentence here was unreasonable or that the district court abused its discretion "in determining that the § 3553(a) factors supported the sentence imposed." *Holguin-Hernandez*, 140 S. Ct. at 766.

AFFIRMED.

CALLAHAN, Circuit Judge, concurring:

I concur in the majority's disposition and agree that *if* the district court erred in excluding evidence under Federal Rule of Evidence 412, then that error was harmless. I write only to indicate that I do not see any error in the exclusion.

I agree with the majority that the excluded evidence was relevant to whether Taylor coerced E.B. The majority's principal concern with excluding this evidence is that Count 2 of the government's indictment alleged that Taylor did knowingly "persuade, induce, entice, *and* coerce" E.B. The problem with the majority's conclusion is that the jury was not privy to the language of Count 2, and instead was instructed that the government must prove that Taylor did "knowingly persuade, induce, entice, *or* coerce" E.B. The majority therefore based its analysis on language that never made it to trial, which by definition could not be "relevant and material" to Taylor's defense or otherwise have "affected the judgment of the trier of fact." *Murray v. Schriro*, 882 F.3d 778, 810 (9th Cir. 2018) (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)).

There was also no constitutional violation. Because the jury only had to find that Taylor persuaded, *or* induced, *or* enticed, *or* coerced E.B., coercion was not "an element that must be proven to convict [Taylor]," *Clark v. Arizona*, 548 U.S. 735, 769 (2006), the excluded evidence was not "central to [Taylor's] claim of innocence," *Crane v. Kentucky*, 476 U.S. 683, 690 (1986), and E.B.'s testimony vitiated Taylor's need to present evidence to "defend against the State's accusations" relating to this element of the crime. *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973).

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U.S. COURT OF APPEALS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CRIMINAL MINUTES—GENERAL

Case No. EDCR 20-191 JGB

Date October 28, 2021

Title *United States v. Jason Dee Taylor*

Present: The Honorable JESUS G. BERNAL,
UNITED STATES DISTRICT JUDGE

Maynor Galvez	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Government:
None Present

Attorney(s) Present for Defendant(s):
None Present

Proceedings: Order (1) DENYING Defendant's Motion to Dismiss the Indictment (Dkt. No. 64); (2) DENYING Defendant's Motion to Strike (Dkt. No. 65); (3) GRANTING Defendant's Motion to Exclude (Dkt. No. 66) (In Chambers)

Before the Court are motions to dismiss the indictment, strike surplusage, and exclude uncharged conduct filed by Defendant Jason Dee Taylor. (Dkt. No. 64; Dkt. No. 65; Dkt. No. 66.) After considering papers filed in support of and opposition to the Motions, the Court DENIES Defen-

dant's Motion to Dismiss, DENIES Defendant's Motion to Strike, and GRANTS-IN-PART and DENIES-IN-PART Defendant's Motion to Exclude.

I. BACKGROUND

Jason Dee Taylor is charged with Sex Trafficking of a Minor in violation of 18 U.S.C. § 1591(a)(1), (b)(2), (c); and Enticement of a Minor to Engage in Criminal Sexual Activity in violation of 18 U.S.C. § 2422(b). ("Indictment," Dkt. No. 1.)

On September 13, 2021, Jason Dee Taylor ("Defendant") moved to dismiss the indictment lodged against him for conduct occurring in April 2020. ("MTD," Dkt. No. 64.) Defendant filed six exhibits in support of his MTD on September 13, 2021. (Exhibits A-F, Dkt. No. 64). He also filed a motion to strike surplusage from the indictment and a motion to exclude uncharged conduct on the same day. ("MTS," Dkt. No. 65; "MTE," Dkt. No. 66.) The Government opposed the MTD, MTS, and MTE on September 27, 2021. ("Opp. to MTD," Dkt. No. 71; "Opp. to MTS," Dkt. No. 70; "Opp. to MTE," Dkt. No. 72.)

II. FACTS

The Government alleges as follows: in March 2020, Defendant contacted a fifteen-year-old minor female victim ("MV") on Seeking.com, formerly known as "SeekingArrangement.com," a dating website offering "sugar daddies" and "sugar babies" a platform on which to connect. (Opp. to MTD. at 3.) MV claimed to be 19 years old on her profile. (Id.) Defendant and MV communicated on Seek-

ing.com's online platform before changing communication platforms to Instagram messenger. (Id.)

Defendant inquired as to MV's "real age," assuring her that they would "hook up regardless" of her response. (Id.) MV disclosed that she was sixteen years old but was actually fifteen years old at the time. (Id.) Defendant then asked to meet in person. (Id.) Defendant negotiated an arrangement in which Defendant would pay MV $300 each week they met. (Id.) Defendant pressed to MV that she could not tell her family about the arrangement. (Id.) He also stated that he liked her young age, and would pay her more if she could prove her age by sending him a copy of her ID. (Id.) Defendant also asked her to send him nude photos of herself, directing her to pose suggestively, and asked if he could film her performing oral sex when they met in person. (Id. at 3-4.) Defendant also opined about bringing marijuana and smoking it while with MV. (Id. at 4.)

On two occasions—April 11 and April 22, 2020—Defendant drove from Fontana, California to Santa Barbara County, California, to pick up MV from her home. (Id.) Then he drove the two of them to a nearby hotel where they had sexual relations. (Id.) Defendant paid MV approximately $400 on the first occasion, and $300 on the second. (Id.)

III. DISCUSSION

A. Motion to Dismiss the Indictment

Defendant seeks to dismiss the indictment under Fed.R.Crim.P 12(b)(3)(A)(iv), selective or vindictive

prosecution. He argues the Government's decision to charge his conduct under 18 U.S.C. §§ 1591 and 2422 violates federalism, equal protection, due process, and the Fifth, Sixth, and Tenth Amendments. Part of his argument rests on the contention that it is improper for the government to charge his "local" conduct under federal law.

Prosecutors have broad discretion to enforce laws. See United States v. Armstrong, 517 U.S. 456, 464 (1996). This broad discretion is not unfettered. Instead, it is subject to constitutional constraints, including the equal protection component of the Due Process Clause. (Id.) For that reason, a prosecutor's decision to prosecute may not be based on race, religion, or other arbitrary classification. (Id.) Taylor attempts to argue that prosecutors in this case have exceeded their broad discretion by selectively prosecuting him under statutes that are not of his choosing—and that, from his vantage point, deny him the opportunity to present a defense of "mistake of age." But he has not argued that other similarly situated individuals have not been prosecuted, or that there is an improper motive underlying his prosecution.

To be successful, a defendant who alleges selective prosecution "must demonstrate that (1) other similarly situated individuals have not been prosecuted and (2) his prosecution was based on an impermissible motive." United States v. Sutcliffe, 505 F.3d 944, 954 (9th Cir. 2007); United States v. Bourgeois, 964 F.2d 935, 938 (9th Cir. 1992). This is a "particularly demanding" standard that

requires "clear evidence" to overcome the presumption that a prosecutor acted lawfully. Sutcliffe, 505 F.3d at 954.

Defendant fails to meet this standard. By simply pointing to the possibility that he could have been charged under a preferred statute, he fails to demonstrate that "others similarly situated were not prosecuted." This failure leaves the court and the Government to guess at what he is attempting to prove. As discussed above, fundamental fairness requires a defendant to identify the basis or bases of a motion to dismiss. Defendant's failure to identify even one other similarly situated individual who was not prosecuted is fatal to his selective prosecution claim. Without such an identification, the court cannot begin to examine whether Defendant's prosecution is based on an impermissible motive.

Defendant's Motion to Dismiss the Indictment is therefore DENIED.

B. Motion to Strike

Defendant seeks to strike several aliases from the indictment: "SugarDaddy," "capthase69," "Seahorse 869," and "RumbleFingers." Defendant also seeks to exclude reference to that alleged aliases at trial. Defendant argues that the alleged alias is inflammatory and prejudicial. At the hearing, the Government agreed that if the parties successfully craft a stipulation addressing Defendant's usage of the relevant email address and cell phone account,

the Government will not need to refer to the alleged alias at trial.

Although courts may strike "surplusage" from the indictment, Fed. R. Crim. P. 7(d), the Court finds that it is premature to characterize the aliases as extraneous material. The Government intends to use the aliases at trial not as "other act evidence" as Defendant contends but rather to identify Defendant's accounts used to communicate with MV.

Accordingly, the Defendant's request to strike the aliases from the Indictment and to strike the aliases at trial are DENIED.

C. Motion to Exclude

Pursuant to Rule 404(b), evidence of a defendant's crimes, wrongs, or other bad acts may be admitted to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident[.]" Fed. R. Evid. 404(b). Rule 404(b) is an "inclusi[ve]" rule, meaning "other acts evidence is admissible whenever relevant to an issue other than defendant's criminal propensity." United States v. Mehrmanesh, 689 F.2d 822, 830 (9th Cir. 1982). Evidence is therefore admissible under Rule 404(b) if it (1) tends to prove a material fact; (2) the other act is not too remote in time; (3) the evidence is sufficient to support a finding that the person committed the act; and (4) if admitted to prove intent or knowledge, the act is similar to that charged. United States v. Tsinnijinnie, 91 F.3d 1285, 1288-89 (9th Cir. 1996). Such evidence

should be admitted "unless its prejudicial impact substantially outweighs its probative value" pursuant to Rule 403. United States v. Johnson, 132 F.3d 1279, 1282 (9th Cir. 1997).

The Government argues that the other act evidence should be admitted under Rule 404(b) because it is relevant to "motive, modus operandi, intent, preparation, plan, knowledge, absence of mistake and lack of accident." (Opp. to MTE at 7.) The evidence proffered consists of four instances of uncharged criminal conduct occurring between 2011 and 2014. The Government asserts that the evidence is similar enough to the instant charged conduct to be admitted under 404(b). The Government also argues that if it is not admitted under 404(b), the Court should admit under Rule 413.

The Court recognizes that these acts appear to have some relevance. But on balance, their prejudicial effect substantially outweighs any relevance to the Government's case-in-chief insofar as their admission would invite the opportunity to appeal to the prejudice and bias of members of the jury to punish uncharged conduct.

Defendant's Motion to Exclude the other act evidence is GRANTED.

IV. CONCLUSION

For the reasons above, the Court DENIES Defendant's Motion to Dismiss the Indictment and DENIES the Motion to Strike Surplusage from the Indictment. The Court GRANTS Defendant's Motion to Exclude other act evidence.

IT IS SO ORDERED.

[Initials of Deputy Clerk MG]