

**United States House of Representatives  
Committee on the Judiciary  
Subcommittee on Crime, Terrorism, Homeland Security,  
and Investigations**

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**THE CATHOLIC UNIVERSITY OF AMERICA**

Chairman Goodlatte, Chairman Sensenbrenner, Vice Chairman Gohmert, Ranking Member Jackson Lee, and Members of the Committee, thank you for convening this hearing to address online sex trafficking and the challenges to combatting it posed by the Communications Decency Act (the “CDA” or “Section 230”). I am grateful for the opportunity to address these issues and engage in a dialog to ensure the effectiveness of our laws and achieve the stated goals of Congress to protect the most vulnerable crime victims as outlined in the Trafficking Victims Protection Act (“TVPA”) of 2000 and its subsequent reauthorizations in 2003, 2005, 2008, 2013, and 2015.

During the course of my testimony I intend to address the comprehensive approach to human trafficking that Congress already has put in place and the current reality that notwithstanding these substantial measures taken by Congress, sex trafficking continues to rise, in large part due to the “viable business model of child sex trafficking online.”<sup>1</sup> The very thoughtful and effective structure Congress developed to combat human trafficking has been undermined by an overly broad interpretation of the CDA that has effectively created a form of absolute immunity for online entities who partner with sex traffickers to advertise and sell children and vulnerable adults online for sex. Further, this flawed interpretation of the CDA specifically undermines essential components of this Congressional approach including private rights of action for victims and the right of state and local prosecutors to protect the most vulnerable of their citizens and enforce their laws. The Allow States and Victims to Fight Online Sex Trafficking Act of 2017 is a positive step in ending this loophole.

**I. Congressional Intent to End Sex Trafficking Through a Comprehensive Multidisciplinary Approach**

Congress has formally recognized the complex and dynamic nature of human trafficking and acknowledged that it permeates all levels of society and created a legal framework to combat human

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<sup>1</sup> Amicus Curiae Brief of National Center for Missing and Exploited Children, *Doe v. Backpage.com*, 2016 WL 5543294 at \*6 (S.Ct. 2016)(No.16-276).

trafficking on each of these levels. Congress was the primary architect of a thoughtful multidisciplinary approach to combat human trafficking – an approach that became a model for all fifty states. Since the initial enactment of the TVPA, Congress has continued to pass legislation to attack human trafficking at multiple pressure points – nationally and internationally – by endorsing tools both state and federal as well as criminal and civil. This approach was informed by Congress’s findings that human trafficking was “the fastest growing source of profits for organized crime in the world,” and its perpetrators perniciously “primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities.”<sup>2</sup> Importantly, Congress recognized in 2000 that existing legislation, which by definition included the CDA, was “inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offenses involved.”<sup>3</sup>

Acknowledging the challenging task before it, Congress embarked on a path to develop a “victim centered approach” to combat trafficking. It created a structure to revisit the legislation regularly through reauthorizations to update Congress’s legal framework as it continued to gain more knowledge about the many forms of human trafficking. From the original TVPA Congress recognized human trafficking could not be eliminated through federal criminal law alone but required diverse stakeholders to participate and support the rights of victims.<sup>4</sup> The hallmarks of this Congressional approach was a comprehensive methodology that included not only criminal law, but civil lawsuits, a recognition of the essential role of states in combatting human trafficking, and a recognition of the need to provide victims and survivors with access to justice.<sup>5</sup>

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<sup>2</sup> 22 U.S.C. 7101(b)(4), (8).

<sup>3</sup> 22 U.S.C. 7101(b)(14).

<sup>4</sup> 22 U.S.C. 7101(b)(3).

<sup>5</sup> *E.g.*, 146 Cong. Rec. S7781 (daily ed. July 27,2000)(Statement of Sen. Wellstone).

**A. Congress Recognizes the Private Right of Action for Sex Trafficking Victims to Seek Civil Redress**

Congress has recognized that a civil right of action is necessary to combat human trafficking. In 2003, Congress explicitly authorized a private right of action for sex trafficking victims, thus providing them with access to justice and also empowering them to participate in achieving the TVPA's goals.<sup>6</sup> In 2015, Congress again reiterated the importance of victims accessing funds to address the long-term harms caused by human trafficking by increasing compensation and restitution for victims.<sup>7</sup>

**B. Congress Recognizes the Essential Role of Both Federal and Local Prosecutorial Authorities in Combatting Sex Trafficking**

In 2005, Congress explicitly recognized the essential role of local law enforcement and prosecutors in combatting sex trafficking by introducing to the TVPRA a section titled "Enhancing State and Local Efforts to Combat Trafficking in Persons." This section established grants to "establish, develop, expand, or strengthen programs...to investigate and prosecute acts of severe forms of trafficking in persons...."<sup>8</sup> In so doing, Congress required that such local entities embrace a multidisciplinary approach advocated by Congress.<sup>9</sup>

This clear intent to attack human trafficking on every legal front – criminal and civil, state and federal, international and domestic – was again emphasized just this summer when this body passed three separate pieces of human trafficking legislation including the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2017. Congress's efforts over nearly two decades

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<sup>6</sup> 18 USC 1595. See, e.g., Kathleen Kim and Kusia Hreshchyshyn, *Human Trafficking Private Right of Action: Civil Rights for the Trafficked Person in the United States*, 16 HASTINGS WOMEN'S L.J. 1 (2004) (recognizing that, because public enforcement lacks resources to enforce civil rights of human trafficking victims, including these private rights of actions in the TVPRA "is indicative that the state is willing to rely on private actors to enforce the civil rights of trafficked persons...").

<sup>7</sup> Justice for Victims of Trafficking Act of 2015, Sec. 105.

<sup>8</sup> 34 U.S.C. 20705.

<sup>9</sup> 34 U.S.C. 20705(b).

demonstrate its commitment to a victim centered approach to human trafficking. In the words of Speaker Ryan, “this is truly a national problem, and that means it’s going to take a national effort to solve it.”<sup>10</sup>

## **II. Notwithstanding Congress’s Multi-Faceted Approach to Combatting Human Trafficking, Online Advertisements Have Fueled a Huge Increase in Sex Trafficking**

In 2000, Congress noted that human trafficking was the fastest growing source of profit for criminal enterprises in the world,<sup>11</sup> and despite Congress’s efforts to date, that pace has not decreased. Just two weeks ago the International Labor Organization released its Global Estimate on Modern Slavery and concluded that 40 million people in the world are victims of modern slavery, including sexual slavery, and women and girls comprise 99% of victims of forced labor in the commercial sex industry, with 21% of those victims being children.<sup>12</sup>

This growth, which has similar trends in the United States, is largely attributed to the use of the Internet to facilitate the sale of human beings, including children, for rape and sexual abuse. While exact numbers are difficult to ascertain, it is beyond dispute that the use of online advertising to commercialize sex trafficking is a significant factor in the increase of this form of victimization. This is not a surprising development because the sale of vulnerable victims for sex trafficking is not only a crime, but also a highly lucrative illicit business. As such, it thrives in an online atmosphere that currently all but guarantees low cost, low risk, and high profit. The ability to legally operate online advertising platforms to sell victims allows traffickers to exponentially expand their exploitation by providing a forum where they can access countless purchasers, sell victims to an even greater number of purchasers who will rape them repeatedly, while limiting their public exposure.

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<sup>10</sup> Emma Kinnery, House Passes Sweeping Overhaul of Law to Combat Human Trafficking, USA Today (July 11, 2017).

<sup>11</sup> 22 U.S.C. 7101(b)(8).

<sup>12</sup> Global Estimates of Modern Slavery: Forced Labor and Forced Marriage, International Labor Organization (2017).

The National Center for Missing and Exploited Children receives an average of 9,000-10,000 CyberTipline reports relating to child sex trafficking each year.<sup>13</sup> Of those, 81% relate to child sex trafficking online.<sup>14</sup> This victimization often targets the most vulnerable in our society. A study by Loyola University and Covenant House found that nearly 1 in 5 homeless children have been the victims of human trafficking.<sup>15</sup> That is consistent with NCMEC's experience that 1 in 6 runaways reported to NCMEC were likely sex trafficking victims.<sup>16</sup> From 2010 to 2015, NCMEC experienced an 846% increase in reports of suspected child sex trafficking.<sup>17</sup> These increasing trends of child sex trafficking seem correlated to the increased use of the Internet to sell children. Of reports received by NCMEC to the CyberTipline from members of the public regarding suspected child sex trafficking, 73% related to ads on Backpage.com.<sup>18</sup> Survivor organization My Life My Choice has stated that approximately half of the clients with whom they work were trafficked online.<sup>19</sup> Other research has found that 63% of human trafficking victims interviewed were advertised online.<sup>20</sup> California Attorney General Becerra testified before the Senate two weeks ago that in his office almost every sex trafficking case involves online marketing.<sup>21</sup>

### **III. Online Sex Trafficking is Thriving Despite Strong Anti-Trafficking Laws at the Federal and State Levels due to the Current Interpretation of the Communications Decency Act**

The CDA as currently interpreted impedes Congressional, federal, and state efforts to combat human trafficking. This reality has been ignored until the recent introduction of legislation by Congress to address this legal injustice.

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<sup>13</sup> Statement of Yiota Souras to Senate Committee on Commerce, Science, and Transportation (September 19, 2017), p.2.

<sup>14</sup> *Id.*

<sup>15</sup> Laura T. Murphy, *Labor and Sex Trafficking Among Homeless Youth*, 4 (2016).

<sup>16</sup> [http://www.missingkids.com/en\\_US/documents/Fact\\_Sheet\\_Parents\\_Guardians2017.pdf](http://www.missingkids.com/en_US/documents/Fact_Sheet_Parents_Guardians2017.pdf).

<sup>17</sup> Testimony of Yiota Souras to Senate Permanent Subcommittee on Investigations (November 19, 2015).

<sup>18</sup> Statement of Yiota Souras to Senate Committee on Commerce, Science, and Transportation (September 19, 2017), p.2.

<sup>19</sup> Interview of My Life, My Choice Co-Founder and Director Lisa Goldblatt Grace, *I Am Jane Doe*.

<sup>20</sup> A Report on the Use of Technology to Recruit, Groom, and Sell Domestic Minor Sex Trafficking Victims, 10, Thorn (2015).

<sup>21</sup> Statement of Attorney General Xavier Becerra to Senate Committee on Commerce, Science, and Transportation (September 19, 2017), p.3.

States and survivors have been thwarted when they attempt to hold bad actor entities responsible under the laws written by Congress or the states, because these entities distort the CDA and argue that its immunity provisions protect them from being sued or prosecuted for online sex trafficking acts. The CDA was never intended to provide absolute immunity to service providers. However, since its enactment in 1996, forces have combined to create an atmosphere of de facto absolute immunity for online businesses. The CDA, as the name implies, was passed as part of a broad Congressional effort to address the impending challenges of the nascent Internet. Section 230, entitled **Protection for Private Blocking and Screening of Offensive Material**, manifested Congress's intent to have a flourishing Internet, which was then in its infancy, and remove disincentives to develop and utilize technology to block harmful content. Congress struck that balance by providing limited immunity for service providers, allowing immunity for Good Samaritan providers and those who host third party content but do not create it. However, Congress explicitly stated that this immunity should not be construed to limit enforcement of federal criminal laws or consistent state laws. Although Congress intended limited immunity, the current interpretation of the CDA perversely undermines that Congressional intent.

It was impossible for Congress to explicitly include a specific exception for sex trafficking in the CDA for several reasons. First, Congress could not have anticipated the emergence of a massive online marketplace where victims of sex trafficking would be publicly sold and purchased for sex. The Internet of the mid-1990's is incomparable to the Internet we know today. Americans with Internet access spent less than 30 minutes a month searching the web, the first webmail site was not launched until 1996, and instant messaging did not even exist.<sup>22</sup> Many of the victims exploited today by online advertisements were not even born. The issues facing Congress when enacting the CDA in 1996 did not contemplate the Internet of 2017. Congress, however, did anticipate that the nascent Internet could be used to spread explicit material and drafted Section 230 to respond to the harmful material known to them at the time.

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<sup>22</sup> Farhad Manjoo, Jurassic Web, Slate (Feb. 24, 2009).

Indeed one purpose was to encourage service providers to develop new technologies to block such material.<sup>23</sup>

However, a new form of exploitation has not only emerged on the Internet, but is uniquely empowered by it. The Internet has become one of the most sizeable marketplaces to buy and sell victims with one study of survivors of sex trafficking finding 63% of them report being advertised online.<sup>24</sup> These ads are neither ambiguous nor hidden and use words such as “fresh meat, young, virgin, prime, coochie (shaved), non-pro, new, ... daddy’s little girl, ... new in the life, liked girls, youthful, and fantasy.”<sup>25</sup> This lack of secretiveness is essential to the business because, as one survivor told researchers, “most people who are going to like pay for sex don’t care how old you are. Cause actually the younger you are, the better it is for them. The younger you are, the more money it is. Because, innocence. And that’s what everybody wants.”<sup>26</sup>

Not only could Congress not have anticipated this type of online exploitation, it also could not have expected that some online businesses would knowingly participate with traffickers to profit from the sale of humans for sex. However, a 20-month investigation by the Senate Permanent Subcommittee on Investigations identified the extreme lengths at least one company will go to participate in trafficking ventures, including designing a business model around profiting from the advertising of sex trafficking.<sup>27</sup>

Second, because the United States did not even recognize human trafficking as a crime until 2000, Congress could not have clarified in the CDA that human trafficking was an explicit exemption from the immunity provided to service providers. Although Congress could and did exempt certain laws that existed in 1996 from this immunity, such as intellectual property laws and the Electronic

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<sup>23</sup> S47 U.S.C. 230(b)(4).

<sup>24</sup> A Report on the Use of the Technology to Recruit, Groom and Sell Domestic Minor Victims of Sex Trafficking, 19, Thorn (2014).

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Backpage.com’s Knowing Facilitation of Online Sex Trafficking, Senate Permanent Subcommittee on Investigations, Staff Report (January 10, 2017).

Communications Privacy Act, it could not do so regarding human trafficking because the TVPA had not yet been enacted.

The initial body of CDA caselaw that emerged addressed situations such as defamation and deceptive trade practices, and courts began to generally recognize a very broad immunity, arguably broader than Congress intended. By the time online sex trafficking cases began to percolate through the judicial system in approximately 2010, caselaw arguably expanding the intended immunity provided by the CDA was established.<sup>28</sup> However, this precedent was in tension with the more recent pronouncement of another goal of Congress: to stop the sale of children and vulnerable adults for sex through human trafficking.

Certain bad actors have seized on the precedent of a broadly expanded CDA to hijack this well-intended law and distort the intended limited immunity into an almost absolute immunity – a de facto absolute immunity. The result of this history is that courts now find themselves struggling to reconcile the two Congressional expressions of intent in the CDA and the TVPA, which are squarely in tension with each other under current legal precedent. From this tension has flowed a body of law that has allowed bad actor companies to use the CDA not as the shield it was intended to be, but as a sword to allow them to partner with sex traffickers and sell children online with impunity.

This trend is exemplified in a 2016 ruling by the Court of Appeals for the First Circuit, where it acknowledged that the child victim plaintiffs “made a persuasive” case that Backpage tailored its website to facilitate child sex trafficking online, but dismissed the case noting that “Congress did not sound an uncertain trumpet when it enacted the CDA, and it chose to grant broad protections to internet publishers.”<sup>29</sup> Today, in multiple cases in multiple jurisdictions across the country, victims of sex

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<sup>28</sup> M.A. v. Village Voice Media Holdings, et al., 809 F.Supp. 2d 1041 (ED Mo. 2011).

<sup>29</sup> Jane Doe v. Backpage, LLC, 817 F.3d 12 (1<sup>st</sup> Cir. 2016).

trafficking have sought justice, but have been denied even basic access to the court to present their case. One published exception is a state law claim, has survived a motion to dismiss.<sup>30</sup>

Even while denying the ability of these victims to proceed with their cases, courts have become more vocal in asking Congress to clarify that the CDA does not allow an online entity to participate with sex traffickers to sell people online multiple times a day, subjecting them to what three Presidents, one Pope, and three Secretaries of State have called modern day slavery.<sup>31</sup>

For example, just last month the Sacramento Superior Court asserted that “[i]f and until Congress sees fit to amend the law, the broad reach of section 230 of the Communications Decency Act even applies to those alleged to support the exploitation of others by human trafficking.”<sup>32</sup> This echoes one of the earlier appeals to Congress issued by the Eastern District of Missouri in 2011: “Congress has declared such websites to be immune from suits arising from such injuries. It is for Congress to change the policy that gave rise to such immunity.”<sup>33</sup>

#### **IV. Pending Legislation in the House Clarifies the CDA and Returns it to its Original Intent of Limited Liability from the Current De Facto Blanket Immunity for Bad Actors**

The bipartisan Allow States and Victims to Fight Online Sex Trafficking Act of 2017 provides the clarification long sought by a growing number of courts and sex trafficking survivors. It responds to the long ignored Congressional intent articulated in the TVPA and repeated in subsequent reauthorizations. While some have characterized the bill as major legislation that will end the Internet,

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<sup>30</sup> J.S., S.L., and L.C. v. Village Voice Media Holdings, LLC, 359 P.3d 714 (Wash. 2015).

<sup>31</sup> President Barack Obama, Remarks by the President to the Clinton Global Initiative (Sept. 25, 2012); President George W. Bush, Statement by His Excellency Mr. George W. Bush, President of the United States of America Address to the United Nations General Assembly (Sept. 23, 2003)]; “*Created in the Image of God, Treated Like Slaves....*,” CARITAS INTERNATIONALIS (Oct. 2005,); Rex Tillerson, Sec’y of State, Remarks at the Annual Trafficking in Person Report Release (June 27, 2017; John Kerry, Sec’y of State, Remarks at the Annual Trafficking in Persons Report (TIP) Release, (June 19, 2013)]; Hillary Rodham Clinton, Sec’y of State, Remarks at Release of the Ninth Annual Trafficking in Persons Report, (June 16, 2009).

<sup>32</sup> People of the State of California v. Carl Ferrer et al, No. 16FE024013, Ruling on Defendant’s Motion to Dismiss (Aug. 23, 2017).

<sup>33</sup> M.A. v. Village Voice Media Holdings, et al., 809 F.Supp. 2d 1041, 1058 (E.D. Mo. 2011).

that seems a hyperbolic description of the six page bill, whose purpose is stated in the uncontroversial finding that “Section 230...was never intended to provide legal protection to websites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims.”<sup>34</sup> This is a fact beyond dispute. It furthers this goal by emphasizing that it is the policy of the United States “to ensure vigorous enforcement against providers and users of interactive computer services of the Federal and State criminal and civil law relating to sexual exploitation of children or sex trafficking including through the availability of a civil remedy for victims of trafficking.”<sup>35</sup>

Importantly, the legislation leaves Section 230(c), the Good Samaritan immunity section, *untouched*. It adds the TVPA to the list of laws unaffected by the CDA’s immunity section. It also exempts from immunity civil laws relating to sexual exploitation of children and sex trafficking. The legislation further clarifies the current liability for participating in a venture with human traffickers and amends current criminal law to address online advertising of sex trafficking victims.

The impact of these amendments is to reflect the expressed intent of Congress both in the TVPA and its subsequent reauthorizations, as well as the CDA to allow limited immunity for service providers but not immunity from accountability when their actions include partnering with sex traffickers. There are several important components of this legislation, but I will focus on three essential elements: the right of victims to pursue civil litigation; the right of states attorneys generals and district attorneys to enforce their state laws; and the mens rea standard.

Through its TVPA legislation, Congress has recognized the obvious – that sex trafficking, like all complex social problems, requires a comprehensive response from many quarters including criminal law, civil law, etc. These mechanisms are necessary to respond to a dynamic form of victimization that is constantly adapting. For many crimes we look to federal, state, local, civil, criminal, medical, and

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<sup>34</sup> HR 1865, Sec. 2.

<sup>35</sup> *Id.*, Sec. 3.

educational institutions to respond. Sex trafficking is no different. In fact, the need to do so is more apparent with this type of illicit activity.

The Internet has grown all aspects of our modern economy including the illicit economy of sex trafficking. Often state and local prosecutors are uniquely situated to be the first to see the emergence of new websites engaged in such illegal activity. They must have the ability to respond quickly to these harmful sites that are preying on children and vulnerable adults in their local communities. Federal prosecution is discretionary. Because of the limited resources of the federal government, traditionally, federal prosecutors take cases only of certain magnitudes and with broad impact. Each advertising site that partners with traffickers is often first seen on the local level. Therefore, it is more effective to enable state and local prosecutors to investigate and prosecute these sites when they are small – before they become large enough to exploit larger numbers of victims and garner federal attention.

This is not only effective law enforcement, it is essential in the sex trafficking context because each ad represents a person being monetized for brutal rape and sexual exploitation multiple times a day. The more effective law enforcement approach is to investigate and prosecute those websites that participate in trafficking victims as they emerge and before the number of “hits” from purchasers number in the thousands. In so doing hundreds of trafficking victims will not be sold and thousands of rapes can be prevented.

Online sex trafficking is an extremely lucrative criminal enterprise<sup>36</sup> with many tentacles. One of the reasons human trafficking is growing so rapidly is the large role the Internet plays in enabling this

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<sup>36</sup> Trafficking in Persons Report, U.S. Department of State 1 (2017); Belinda Luscombe, Inside the Scarily Lucrative Business Model of Human Trafficking, *Time* (May 20, 2014).

crime.<sup>37</sup> Many pressure points must be applied to contain and eradicate this victimization at both the state and federal level. Indeed most criminal prosecution of human trafficking is based on state laws.<sup>38</sup>

Furthermore, states have the right – indeed the obligation – to protect their citizens. In most crimes, and human trafficking is no exception, where the amount of criminal activity is massive, it must be combatted by applying pressure to all possible pressure points. Any national epidemic, such as narcotics, child pornography, or gun violence – and including sex trafficking – depends on enabling all law enforcement actors in the system to respond through their laws and handle these cases.

Civil law is also an essential tool to fight online trafficking. The TVPA and many state trafficking laws recognize that businesses can play a role in human trafficking when they actually traffic in human beings, benefit from participating in an enterprise of human trafficking, or conspire with human traffickers.<sup>39</sup> Given the number of businesses – such as massage parlors, transportation modules, hotels<sup>40</sup> – that can fall into this category, it is essential that legal responses deter those entities from facilitating human trafficking. That is why utilizing civil law as an additional deterrent is a critical component of a comprehensive response to human trafficking. Allowing victims to sue entities who enter into ventures with human traffickers is a basic right of victims of crime. Denying them that right by providing absolute immunity to service providers simply because the business is conducted online is not sustainable or within the norms of our system of justice.

The proposed legislation also clarifies a previously undefined term in the TVPA: “participation in a venture.” Since 2000, Congress recognized the need to not only hold accountable direct sex traffickers or “pimps,” but also those who benefit from participating in a human trafficking venture.<sup>41</sup> Congress

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<sup>37</sup> Mark Latonero, Ctr. On Comm’n Leadership & Pol’y, *Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds* 8 (2011); Mary Graw Leary, *Fighting Fire with Fire: Technology in Child Sex Trafficking*, *Duke Journal of Gender, Law, and Policy*, Vol. 21, No. 2 (2014).

<sup>38</sup> *Trafficking in Persons Report*, U.S. Department of State, 416 (2017).

<sup>39</sup> 18 U.S.C. 1591, 1595.

<sup>40</sup> *Human Trafficking Hotline Statistics* (available at <https://humantraffickinghotline.org/states>).

<sup>41</sup> 18 U.S.C. 1591(a)(2).

understood many would work with traffickers to support or facilitate sex trafficking within that business model and it was essential to disrupt that business by holding such collateral actors responsible for their actions. This legislation offers prosecutors and defendants alike a clearer definition of “participation in a venture” to include knowing or reckless conduct which furthers an act of human trafficking.

The standard of knowing or reckless conduct that furthers a sex trafficking offense is a clear one. Both are commonly understood concepts in criminal law and are challenging states of mind for an attorney to prove. Recklessness, for example, requires the prosecution to prove that the defendant “consciously disregard[ed] a substantial and unjustifiable risk.”<sup>42</sup> In assessing the risk courts are guided to consider the nature and circumstances known to the defendant. Finally, the defendant’s disregard of the risk cannot be minor but must be of such a nature and degree that its disregard involves a *gross deviation* from the standard of conduct that a law-abiding person would observe in the actor’s situation.<sup>43</sup> The standard of knowing is even higher in criminal law and requires proof that the defendant be practically certain his conduct will cause a venture of human trafficking.<sup>44</sup>

These images are not ambiguous and the concern that an entity will be swept up in litigation due to innocent or ambiguous advertisements is belied by the facts. Advertisements of confirmed minor sex trafficking victims include text such as: “Hi Guys im STAR the new Hottie a Young Phat Booty/Tender Roni with very low mileage and ready to play[;]” and “If u are ready for a taste of this got young thing hit me up.”<sup>45</sup> They also include disturbing images such as a photo taken by a third party of a fifteen year old trafficking victim “with her buttocks exposed in the air,” accompanied by text describing a commercial transaction in the vernacular and referring to her as a “big booty burl with an azz to die 4.”<sup>46</sup>

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<sup>42</sup> Model Penal Code §2.02(2)(c).

<sup>43</sup> *Id.*

<sup>44</sup> Model Penal Code §2.02(2)(b).

<sup>45</sup> Amicus Curiae Brief of National Center for Missing and Exploited Children, *Doe v. Backpage.com*, 2016 WL 5543294 at \*16 (S.Ct. 2016)(No.16-276).

<sup>46</sup> Amicus Curiae Brief for Fair Girls, *J.S., D.L.,L.C. v. Village Voice Media*, 2014 WL 4808972, \*13 (Wa. 2014)(No. 90510-0).

This legislation also clarifies the right of local prosecutors – those who are most likely to come across these cases – to enforce their laws and protect their citizens. Subsequent to the CDA, Congress and now every state has passed laws making sex trafficking illegal. Moreover, Congress has been clear that states and local prosecutors are essential partners in the fight against human trafficking.

## **V. Conclusion**

The intent of Congress in the TVPA and subsequent reauthorizations is clear but has become muddled by the Courts as they struggle to reconcile the CDA in this modern ecosystem of sex trafficking. Clarification has been denied in the Courts and is needed from Congress. The bill pending before the House is a positive step toward that needed clarification.