

**From:** "[REDACTED] (USANYS)" <[REDACTED]>

**To:** "[REDACTED]" <[REDACTED]>

**Subject:** RE: separate research project

**Date:** Wed, 26 Jun 2019 14:39:18 +0000

**Importance:** Normal

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[REDACTED],

The government made the claim you are referencing in its Sealed Motion to Dismiss for Lack of Subject Matter Jurisdiction, originally filed on 11/7/2011. It was unsealed and docketed on 7/5/2013 (Document 205-2). The government made these assertions to argue the plaintiffs' claims were not ripe, as plaintiffs already had access to the remedies they sought through the lawsuit, namely conferring with AUSAs to bring criminal prosecution against Epstein.

The relevant portions are summarized below:

Page 8: SDNY and the District of New Jersey share subject matter jurisdiction and venue – "Epstein is thus subject to potential prosecution for such acts in those districts"

Page 10: "that agreement does not part the United States from bringing federal charges against Epstein," quoting language from the NPA limiting it to prosecutions "in this district" in support

Page 11: The NPA "does not bar the United States from bringing federal criminal charges against Epstein for the offenses set forth in the Non-Prosecution Agreement in any other district in this nation"

Sorry if this turnaround was quicker than expected. While I don't want to overburden you looking for assignments for me, I am always happy to help whenever you need me! Additionally, if you have any upcoming court appearances, proffers, or other pre/post trial events, please let me know as I am always looking for opportunities to see high-quality lawyering in action.

Best,

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**From:** [REDACTED] (USANYS)

**Sent:** Wednesday, June 26, 2019 8:49 AM

**To:** [REDACTED] <[REDACTED]>

**Subject:** RE: separate research project

[REDACTED],

I am happy to track this down. I'll get started on some initial research and will let you know if I am encountering roadblocks and wish to discuss further in person.

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**From:** [REDACTED] <[REDACTED]>

**Sent:** Tuesday, June 25, 2019 8:58 PM

**To:** [REDACTED] (USANYS) <[REDACTED]>

**Subject:** RE: separate research project

This is great, thanks very much.

And I've got a new project for you! The background is, part of the vast scope of litigation relating to Jeffrey Epstein includes the (now somewhat famous) litigation by certain victim plaintiffs against the Southern District of Florida (SDFL), where the judge recently found that SDFL violated the Crime Victims' Rights Act.

EFTA00071797

Relevant for us, we've been told that \*somewhere\* in the Government briefs, motions, pleadings, etc., the SDFL sets forth a view that there is no impediment (by the non-prosecution agreement) to prosecution by another district. But we don't know where. Could you please read through the Government filings in 08-cv-80736 (KAM) in the Southern District of Florida and see if you can find anything like that? The filings may be extensive, so no problem to pace yourself, but it would be very helpful to know if that is in fact correct.

And as always happy to discuss.

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**From:** [REDACTED] (USANYS) <[REDACTED]>  
**Sent:** Tuesday, June 25, 2019 12:32  
**To:** [REDACTED] <[REDACTED]>  
**Cc:** [REDACTED] <[REDACTED]>  
**Subject:** RE: RE: separate research project

[REDACTED],

Here are a variety of cases where consumers were prosecuted under the pre-2015 version of USC 1591. As we discussed in your office, the key case actually analyzing the statute is *U.S. v. Jungers*, while the other cases either cite *Jungers* directly or simply assume that 1591 applies to purchasers without analyzing the law.

Additionally, there is one case, *Fierro v. Taylor*, from SDNY in 2012 which holds that 1591 does not apply to consumers. However, the judge relied on and directly cited the statutory interpretation completed by the district courts in *Jungers* and *Bonestroo*, both of which were overturned by the 8<sup>th</sup> Circuit *United States v. Jungers*. Thus, it is doubtful that *Fierro* would be seen as persuasive if referenced in a contemporary court.

Let me know if you need anything else on this front.

Best,

[REDACTED]

### **1591 DOES Apply to Customers**

*U.S. v. O'Connor*, 650 F.3d 839 (2d Cir. 2011)

- A child was sold for the purposes of child pornography. Both the seller *and the buyer* were convicted under 1591, among other charges. In order for the buyer to have been convicted it appears as if the older version 1591 was applied on the demand side as well

*Noble v. Weinstein*, 335 F.Supp.3d 504, 516, 522 (S.D.N.Y. 2018)

- The judge quoted *US v Jungers* to argue that USC 1591 should be read expansively in a civil suit stemming from a criminal violation of 1591

*United States v. Cook*, 782 F.3d 983 (8th Cir. 2015)

- Appeals court dismissed constitutional challenge that USC 1591 would be void for vagueness if applied to purchasers

*United States v. Larive*, 794 F.3d 1016, 1018 (8th Cir. 2015)

- Defendant responding to undercover police online advertisement for an underage sexual encounter properly charged with attempt to commit USC 1591 (1594)

*United States v. Jungers*, 702 F.3d 1066, 1069 (8th Cir. 2013)

- Key case clearly holding 1591 to apply to consumers, as well as suppliers
- "The sole issue raised on appeal is whether "[t]he plain and unambiguous provisions of 18 U.S.C. § 1591 apply to both suppliers and consumers of commercial sex acts." We conclude they do." 1069

- “Nothing in the text of § 1591 expressly limits its provisions to suppliers or suggests Congress intended categorically to exclude purchasers or consumers (johns) of commercial sex acts whose conduct otherwise violates § 1591.”
- “TVPA definition of “sex trafficking”—broadly defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act”—readily includes the actions of a purchaser whose sole purpose is obtaining a child for sex. 22 U.S.C. § 7102(9) (emphasis added).” 1072
- “The unambiguous text of § 1591 makes no distinction between suppliers and purchasers of commercial sex acts with children, and the defendants have failed to persuade us Congress intended a supplier-only limitation or a purchaser exception in § 1591 that Congress never stated. We hold § 1591 applies to a purchaser of commercial sex acts who violates the statute’s terms.”1075

*United States v. Mikoloyck*, No. 09-00036-01-CRWGAF, 2009 WL 4798900, at \*1 (W.D. Mo. Dec. 7, 2009)

- Defendant charged with USC 1591 after responding to a fake Craigslist ad and exchanging messages with an undercover officer to request a sexual encounter with an underage person
- The issue discussed in the opinion was related to the government’s potential entrapment behaviors in setting up the fake ad; the question of whether 1591 should apply to a mere purchaser was not raised, as it was assumed to apply

*United States v. Strevell*, 185 F. App’x 841, 843 (11th Cir. 2006)

- Defendant convicted of USC 1591 (among other charges) after attempting to purchase a fake trip (created by an undercover sting) to Costa Rica for an encounter with underage girls
- Appeal questioned whether the foreign, rather than interstate, trip met 1591’s jurisdictional requirement (it did) not whether the law could apply to johns (it was assumed that it could)

### **1591 DOES NOT Apply to Customers**

*Fierro v. Taylor*, No. 11 CIV. 8573 (BSJ), 2012 WL 13042630 (S.D.N.Y. July 2, 2012)

- Defendant successfully moved to dismiss a private right of action stemming from an alleged USC 1591 violation
- Analysis of the text and of the legislative history shows the law was not meant to apply to mere purchasers
  - “Three verbs listed in § 1591 could apply to the conduct of an individual purchaser of sex acts: “recruit”, “entice, and “obtain.” However, the Court agrees that “the entire language and design of the statute as a whole indicates that it is meant to punish those who are the providers or pimps of children, not the purchasers or the johns.” *Bonestroo*, 2012 WL 13704, at \*4 (citation omitted)” \*3
  - “The position of the phrase “will be caused” after the list of verbs supports this construction as it creates a temporal boundary that separates the targeted trafficking enterprise from the ultimate sexual activity with a john.” \*3
  - “The legislative history reveals that a principal catalyst for enacting the TVPA was the absence of federal laws that adequately punished traffickers. The existence of the several statutes that already penalized individual johns demonstrates further that the TVPA was not meant to apply to the one-time purchasers of sex from trafficking victims.” \*3

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**From:** [REDACTED] <[REDACTED]>  
**Sent:** Monday, June 24, 2019 2:23 PM  
**To:** [REDACTED] (USANYS) <[REDACTED]>  
**Cc:** [REDACTED] <[REDACTED]>  
**Subject:** RE: RE: separate research project

Absolutely, can talk anytime tomorrow after 10:30 except for between 3:30 and 4:30. What’s good for you?

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**From:** [REDACTED] (USANYS) <[REDACTED]>  
**Sent:** Monday, June 24, 2019 14:15  
**To:** [REDACTED] <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>

Subject: RE: RE: separate research project

[REDACTED],

I am happy to help out with this project. Do you have any availability tomorrow to talk in person for ~15 minutes about this assignment? That way I can do some initial research and be able to ask more focused questions. I am available any time.

Best,

[REDACTED]

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From: [REDACTED] <[REDACTED]>

Sent: Monday, June 24, 2019 2:05 PM

To: [REDACTED] (USANYS) <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>

Subject: RE: separate research project

[REDACTED],

On the Epstein investigation—separate from the police officer case you’ve been researching for—we have a research question that I think is fairly interesting, and can be a little more long term, or in the background of other projects / events that come up. In the sex trafficking statute, 18 U.S.C. 1591, there was an amendment in 2015 to more expressly include defendants who participate in the demand side of sex trafficking—that is, people who pay for sex acts with individuals who are being sex trafficked (Johns, basically). However, we think, and will want to be able to argue and show, that even before the 2015 amendment courts found that Section 1591 applied to both suppliers and consumers of commercial sex acts.

It would be helpful for us to get as many cases addressing that issue as possible, especially in the Second Circuit but honestly nationwide, for cases charged during the time period from when the statute was passed initially in 2000 through when it was amended. That sound doable? And maybe check in on it later this week, like Thursday or Friday, to touch base on what you’re finding? And as always, happy to talk about it if that’s useful too.

thanks,

[REDACTED].

p.s. Copying my colleague [REDACTED] who is also working on the case.

[REDACTED]  
Assistant U.S. Attorney  
Southern District of New York  
[REDACTED]