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Keywords
United States, prosecution, demand, buyers, johns, sex trafficking, labor trafficking, human trafficking

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PROSECUTING BUYERS IN HUMAN TRAFFICKING CASES: AN ANALYSIS OF THE IMPLICATIONS OF *UNITED STATES V. JUNGERS* AND *UNITED STATES V. BONESTROO*

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ABSTRACT

This article provides a review and analysis of *United States v. Jungers* and *United States v. Bonestroo*, important court cases providing precedent for charging buyers of sex as traffickers in cases involving minors. The decisions in these court cases, and in subsequent cases, further solidify the presence of end-demand efforts in the form of prosecution. Yet, the decisions in these cases raise additional questions about their implications for state-level prosecution, the prosecution of buyers in cases involving adults who experience sex trafficking, and the buyers of trafficked labor. Drawing from an analysis of relevant cases, this article analyzes the impact of *United States v. Jungers* and *United States v. Bonestroo* on subsequent cases, and argues for the potential of such cases to impact prosecution efforts in other facets of human trafficking.

KEYWORDS

United States, human trafficking, federal, cases, prosecution, demand, buyers, johns, sex trafficking, labor trafficking

DECADES OF RESEARCH show unequal treatment of those who sell sex compared to those who buy it, with those who sell or trade sex more often arrested, fined, and incarcerated (Carmen & Moody, 1985; Fairstein, 1993; Lutnik & Cohan, 2009; Maher, 1997; Miller, 1997, 2009; Sanchez, 2001; Snyder & Mulako-Wangota, 2015). However, with the growing momentum of anti-trafficking efforts, a shift is occurring in which buyers of sex are increasingly the focus of criminal justice system responses as a means of eradicating sex trafficking.

End-demand approaches follow the premise that sex trafficking would not exist without demand for purchased sex (Ekberg, 2004; Outshoorn, 2005; MacKinnon, 2005; Madden-Dempsey, 2011; Raymond, 2004; Raymond, Hughes, & Gomez, 2001). Similarly, the purchase of trafficked labor by companies and farmers, as well as consumers' purchase of resulting products, is implicated in labor trafficking (Bales & Soodalter, 2009; Heil, 2012). As such, proponents of end-demand efforts contend that demand should be a focal point of anti-trafficking efforts. Gaining popularity in the 90s and 2000s, demand reduction initiatives within the criminal justice system generally focus on sex trafficking, and include John schools, John shaming programs, and sting operations targeting buyers

(Shively et al., 2012; Levine, 2016; Nichols, 2016). More recently, end-demand efforts also include prosecuting buyers as sex traffickers.

The court cases *United States v. Jungers* and *United States v. Bonestroo* provided case history and precedent supporting expansion of end-demand efforts through prosecution of buyers. In fact, state and federal prosecutors across the country are increasingly charging buyers as traffickers; such cases have been successfully prosecuted in federal and state courts. Federal legislation continues a trend in focusing on prosecuting buyers as traffickers, such the Justice for Victims of Trafficking Act (JVTA), which adds a provision for increased funding to law enforcement to target buyers. State level legislation also indicates momentum in end-demand approaches, such as increased accountability for buyers in various state Safe Harbor laws and California's Combat Human Trafficking Act. Yet, the outcomes of *United States v. Jungers* and *United States v. Bonestroo* hold broader implications that are little-discussed in the academic and public discourse. Specifically, the cases raise important questions about interpretations of the law and their applicability in labor trafficking cases, as well as cases involving trafficked adults.

The aim of this article is not to focus on whether end-demand efforts are effective (see Shively et al., 2012 for an overview) or their negative latent consequences (see Lutnick, 2016 and Musto, 2016 for overviews), but to explore the implications of two important precedent-setting cases on prosecution efforts. Drawing from an overview and analysis of *United States v. Jungers* and *United States v. Bonestroo*, the aim of this article is threefold: to analyze the implications of these cases for charging buyers as traffickers in 1) labor trafficking cases, 2) cases involving adults, and 3) state prosecution of sex trafficking.

Court Case Precedent

The *Jungers* and *Bonestroo* cases were the first cases that involved charging buyers as sex traffickers where the defendants challenged their classification as sex traffickers. Cases preceding *United States v. Jungers* and *United States v. Bonestroo* which charged buyers as traffickers included seven cases successfully prosecuted in the Western District of Missouri, initially uncovered through a sting operation conducted by undercover officers who posted sex-for-sale ads online.

The men who responded and attempted to purchase sex with a minor were arrested and charged with sex trafficking (Broughton, 2013; Vardaman & Raino, 2013). Another case preceded the *Jungers* and *Bonestroo* cases. *United States v. Strevell* involved an online sting operation in which Strevell believed he was communicating with a Costa Rican travel agency to make arrangements to have sex with two girls, ages 14 and 15, on a Costa Rican resort (*United States v. Strevell,* 2006*)*.

However, these cases did not adequately set precedent for the *Jungers* and *Bonestroo* cases because the charges of sex trafficking were not challenged by the defendants, as the buyers in these cases pled guilty and did not contest the charges (*United States v. Jungers,* 2013; *United States v. Bonestroo,* 2013; Vardaman & Raino, 2013). Consequently, the decisions in *United States v. Jungers* and *United States v. Bonestroo* were important, as they provided a case history which included charging buyers as sex traffickers, defendants contesting the charge, and resulting case precedent.

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Similar to the cases prosecuted in the Western District of Missouri and *United States v. Strevell,* Jungers and Bonestroo were initially arrested and convicted of sex trafficking as buyers of commercial sex involving minors as a result of a sting operation (Vardaman & Raino, 2013). The cases were distinct as, except for the cases described above, the individuals prosecuted as sex traffickers in previous cases were exclusively pimps, brothel owners, or other third-party profiteers. The officers conducting the sting operation posted an online advertisement posing as a man "offering his girlfriend's underage daughters for sex while his girlfriend was out of town" (*United States v. Jungers,* 2013*; United States v. Bonestroo,* 2013). Jungers and Bonestroo, in separate incidents, responded to the ads through email correspondence, arranging to meet with the "daughters" for sex. Jungers received an age-regressed photo of one of the undercover officers, and was informed that the "daughter" was aged eleven. Jungers made arrangements to obtain oral sex from an eleven-year-old girl for an hour. When he showed up at the house the undercover officers were using and confirmed his intent to pay for this sex act from the minor, he was arrested. Similarly, Bonestroo responded to the ad the officers posted as well. He also received an age regressed photo of the undercover officer posing as twins, and was informed that the two girls he was making the arrangement for sex with were fourteen. Bonestroo proceeded to arrange to have sex with the fourteen-year-old twins for an hour (Broughton, 2013). He showed up to the house, asked for the twins, and showed the undercover officers the payment—his arrest followed. Both Bonestroo and Jungers were charged by the U.S. Attorney's Office in the District of South Dakota with attempted commercial sex trafficking under 18 U.S.C. §§ 1591 and 1594(a).

According to the U.S. Trafficking Victims Protection Act (TVPA), a severe form of human trafficking is defined as:

- a) A commercial sex act induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery (TVPA, Section 103, 8a and 8b).

In legal terms, anyone under the age of 18 involved in a commercial sex act, or any adult involved in commercial sex who is induced by force, fraud or coercion is considered a sex trafficking victim. This definition of a trafficked person has been widely and accepted in legal contexts. Yet, the definition of a trafficker has been debated in the context of the meaning and clarity of related statutes, with *United States v. Jungers* and *United States v. Bonestroo* serving as a cornerstone of this legal debate. U.S.C § 1591(a) works to provide a definition of a human trafficker in the section Sex Trafficking of Children or by Force Fraud or Coercion:

> Whoever knowingly—
>
> (1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; 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 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).

Section 1594 makes violation of § 1591 a federal crime. In the cases of *Bonestroo* and *Jungers*, the defense revolved entirely around legal definitions, arguing that the federal sex trafficking statutes did not implicate buyers as sex traffickers, and sought an acquittal based on this argument. Separate juries found the men guilty of attempted commercial sex trafficking.

Despite the juries' guilty verdicts, later in the same year, district courts acquitted the men under the Federal Rules of Criminal Procedure, page 29 (Fed. R. Crim. P. 29), which stipulates that an acquittal is required in cases with insufficient evidence. Essentially, the decisions of the district courts in both cases revolved around definitional issues. The question was the intent of congress when defining a "sex trafficker" under the federal statutes. The district courts who acquitted the two men interpreted § 1591 to mean that Congress did not intend for a buyer to be included in the definition of a sex trafficker, with the district court in the *Jungers* case stating, "the purpose of § 1591 is to punish sex traffickers and that Congress did not intend to expand the field of those prosecuted under that statute to those who purchase sex made available by traffickers" (*United States v. Jungers,* 2013). The district court in the *Bonestroo* case indicated "[a]lthough a bare reading of at least one of these three verbs [recruits, entices, and obtains] may support a determination that § 1591 was meant to encompass purchasers of sex acts from minors, the entire language and design of the statute as a whole indicates that it is meant to punish those who are the providers or pimps of children, not the purchasers or the johns" (*United States v. Bonestroo,* 2013).

In contrast, the United States maintained the language of the statute did not exclude buyers, and sought to overturn the acquittals. The U.S. Attorney's office argued that the buyers "caused" the commercial sex act of a minor as the purchasers of sex, under the premise that without the buyer, the commercial sex acts would not take place. The language is read and interpreted by the United States as not excepting consumers, who fit with the legal criteria spelled out in § 1591. "Whoever" can be a pimp or third party, as well as a buyer. "Obtains" applies both to the trafficker who obtains a person to supply sex to others for their own profit, but also to buyers who obtain a person for the purpose of commercial sex. "Section 1591(a)(1) makes no distinction between suppliers or purchasers of commercial sex acts with children" (*United States v. Jungers,* 2013). The eighth circuit appellate court reversed the lower courts' decisions, and reinstated the convictions in both cases (U.S. Attorney's Office, Southern District of South Dakota, 2013). The 8th circuit court also ruled that all acts indicated in § 1591, including "recruits, entices, harbors, transports, provides, obtains, or maintains…," apply to purchasers of sex. Because prior convictions under § 1591 were of those who arranged the sale of sex or otherwise had a role in supplying commercialized sex, or buyers who did not contest the charge, the decision set precedent for future cases, particularly for the language of § 1591 including "whoever," "obtains," and "caused."

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Subsequent Cases

Following the rulings of *Bonestroo* and *Jungers*, the courts continued to contend with the language of human trafficking legislation, on both the state and federal levels. Specifically, both the knowledge requirement and the term "obtain" were center points of debate. For example, in the cases *North Dakota v. Rufus* (2015), *United States v. Cook* (2016), and *United States v. Wolff* (2015), the courts reexamined the interpretations highlighted in *Bonestroo* and *Jungers*, as well as the interpretations of the precedent set by the broad language used in both state and federal human trafficking legislation. In the following cases, the buyers were charged with human trafficking, and like both *Jungers* and *Bonestroo*, the defense attempted to challenge the statutory language via the appeals process.

Knowledge Requirement

In 2013, Zachary Wolff was arrested for the attempted sex trafficking of a minor in violation of 18 U.S.C. §§ 1591 and 1594. Wolff had responded to a Craigslist post advertising the availability of a 14 year old girl and 16 year old girl for sex. Unbeknownst to Wolff, the posting was part of an undercover sting operation conducted by law enforcement. Wolff negotiated a price to have sex with the 16 year old, and was indicted under the following charge:

> 'On or about November 23, 2013, in the District of North Dakota, Zachary Wolff *knowingly* attempted to recruit, entice, harbor, transport, provide, obtain, and maintain by any means, in and affecting interstate or foreign commerce, a minor female, whom he believed to be 16 years of age, *knowing* and in reckless disregard of the fact that the female minor had not attained the age of 18 years and that the female minor would be caused to engage in a commercial sex act…' (*United States v. Wolf*, 2015).

Wolff appealed his sentence arguing that because the minor did not exist, he did not meet the requirement of "knowingly," specifically, knowingly engaging in a commercial sex act with a minor who has not yet attained the age of 18.

Because of Wolff's challenge, the 8th Circuit court of appeals had to reexamine the requisite *mens rea* of "knowingly" in those situations when the actual minor did not exist. In other words, can the buyer knowingly engage in a commercial sex act with a minor if there is no minor involved? In examining the evidence, the court ruled that the knowledge requirement "'refers to the defendant's subjective intent—it is what is in the mind of the defendant'" (ibid.) Additionally, the court argued that "if 'a jury could reasonably infer that [the defendant] knowingly sought sexual activity, and knowingly sought it with a minor,' then the fact that 'he was mistaken in his knowledge is irrelevant'" (ibid.). The court referred to the binding precedent of *United States v. Jungers* and held that "§1591 applies to a purchaser of commercial sex acts who violates the statute's terms" (ibid.). Therefore, despite the lack of existence of a minor, Wolff's act, combined with his subjective intent, were sufficient for the court to find he violated the statute. The appellate court affirmed Wolff's indictment of attempted sex trafficking of a minor, using the case history and precedent provided by *United States v. Jungers*. Further, this case sets precedent in subsequent cases involving sting operations without a "real" victim present, as prior cases did not contest the charge using this defense. Such case precedent creates continued support for sting operations using decoys, undercover officers, or other means in which a real victim is not present, and resulting prosecution of buyers.

"Obtains"

In 2014, Galen Paul Rufus responded to a Craigslist post in which an undercover police officer was posing as "Chad Russo." Mr. "Russo" indicated in the advertisement that "his girlfriend would be out of town for the weekend and that her daughter wanted to make some money" (*North Dakota v. Rufus*, 2015). "Russo" told Rufus that the girl was only fourteen and that a sexual encounter would be illegal, but "indicated he would not tell anyone" (ibid.). Rufus agreed to exchange "two bags of marijuana, each worth $60, for one hour of time with the fourteen-year-old girl…" (ibid.). Upon meeting the undercover officer in person, Rufus was charged with human trafficking.

Rufus appealed the conviction that resulted from a state bench trial (meaning the judge heard the case personally without a jury and found the defendant guilty) based on the term "obtaining." Rufus argued that he "did not attempt to obtain a fourteen year-old-girl, but rather attempted to obtain sexual services from a fourteen-year old girl. As such, Rufus [argued] his conduct does not constitute 'obtaining' a person" (ibid.). The appellate court referred to *United States v. Bonestroo* and *United States v. Jungers* because of the similarity in the facts of these cases to the facts of *North Dakota v. Rufus*. Bonestroo had agreed to pay $200 to be alone in a separate room with the minors, and the jury found that this constituted an attempt to obtain the minors. Rufus sought to engage in sexual acts with a minor in a separate room from Russo, thereby the court concluded that "Rufus attempted to acquire temporary custody of a fourteen-year-old girl for the purpose of engaging in commercial sexual acts" (ibid.).

Further, because the word "obtain" is not specifically defined by the statute, the court determined that it was appropriate to look at the standard meaning derived from Merriam-Webster's Collegiate Dictionary, which defines obtain as "'to hold onto, possess' or 'to gain or attain…by planned action or effort'" (ibid). Consistent with the ruling in *United States v. Jungers*, the court concluded that the "plain meaning of 'obtain'…is broad enough to encompass acquiring temporary custody of the person for the purpose of engaging in commercial sex acts with that person" (ibid.). Rufus was found guilty of "human trafficking for attempting to obtain a fourteen-year-old girl knowing she would be subject to human trafficking" (ibid.). The case provides additional case history in interpreting the meaning of "obtains" in the statute. It establishes precedent for future cases addressing a similar issue, and also further provides a foundation for such cases by citing past precedent (e.g., *United States v. Bonestroo*). Further, this was a state case that was not bound to the 8th Circuit court rulings; rather, the courts used *United States v. Bonestroo* as persuasive precedent, showing that state prosecutors are using case precedent from federal cases although they are not legally bound to do so.

"Anything of Value"

In *United States v. Cook*, Cook was a buyer charged by the federal district court, in the Western district of Missouri, with sex trafficking. Cook was watching live-stream videos of sexual torture of a 16-year-old girl provided by Edward and Marilyn Bagley, who were also charged with sex trafficking. In addition to watching the videos filmed by the Bagleys, Cook was also conducting sexual torture of women in his residence, and similarly providing pictures, videos, and advice to the Bagleys. Cook later came repeatedly to the Bagleys' residence to engage in sexual torture of the victim. In his motion to dismiss the sex trafficking charge(s), he argued that 18

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U.S.C. § 1591 was unconstitutionally vague in regard to those who purchase sex, and should not apply to buyers, similar to the claims of both Jungers and Bonestroo. The 8th Circuit court of appeals cited binding case precedent established by *United States v. Jungers* to indicate the plain speech did not exempt buyers. "As we find section 1591(a)(2)'s plain language makes clear that Congress intended to include purchasers of commercial sex acts who violate the statute's terms, this argument fails. See Jungers, 702 F.3d at 1069" (*United States v. Cook*, 2016).

Cook further indicated that the phrase "anything of value" was vague and therefore inapplicable to his case, and only applicable to traffickers who receive payment. The courts disagreed, indicating that the sexual acts, videos, and photos were things of value and as such, the motion to dismiss the charges was denied. Ostensibly, this case potentially sets precedent to charge buyers of pornography with sex trafficking in cases involving minors or trafficked adults, as "anything of value" was interpreted to include videos and photos.

In sum, subsequent cases were impacted by the case precedent set by *United States v. Jungers* and *United States v. Bonestroo* and provide additional case precedent in contesting various aspects of legislative language, such as a "anything of value, "obtains," and "knowingly." In addition, the JVTA of 2015 added amendments to section 1591, which include the acts "solicits, advertises and patronizes" to show that Congress intended to make it unequivocally clear that buyers can be prosecuted as traffickers of minors. The outcome of *United States v. Jungers* and *United States v. Bonestroo* clearly set precedent for future cases, as indicated in the abovementioned examples, and the continued momentum in prosecuting buyers as traffickers further solidifies the role of U.S. legal systems in end-demand efforts. Yet, there are further considerations to doing so, including the implications of the case precedent for buyers in cases involving adults, labor-trafficked people, and minors on a state level. Such considerations are detailed in the following sections.

Implications for State Level Prosecution of Buyers

The implication of the decisions in *United States v. Jungers* and *United States v. Bonestroo* for prosecuting buyers of commercial sex with minors seems relatively clear. This case history precedent increases the likelihood that federal prosecutors will continue to prosecute buyers as sex traffickers. Yet, as exemplified in *North Dakota v. Rufus*, described above, the decision also holds implications for state level prosecution. As Vardaman & Raino (2013, p.1) noted:

> "These decisions [Jungers and Bonestroo] will, in turn, bring support to the enforcement of state human trafficking laws in twenty-four states that track the "obtains" language of 18 U.S.C. § 1591(a). Thus, the Eighth Circuit's ruling that interprets "whoever obtains a person knowing that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act" as including buyers of sex acts with a minor has dramatically strengthened the ability to combat demand under both federal and state law" (Vardaman & Raino, 2013, p.1).

Thus, interpretations of the language can impact state level prosecution as well, for those states whose laws hold language parallel to the federal legislation or for

state prosecutors who wish to use the cases as persuasive precedent. [1] In fact, since the decision, state prosecutions have increased from "dozens" to "hundreds," indicated somewhat ambiguously by the U.S. Department of State, although it is unclear if this is a direct result of the court decision or due to other factors, such as increased familiarity with the law, better identification due to training and awareness of local law enforcement and social service providers, or perhaps a combination of factors (U.S. Department of State Anti-Trafficking Report, 2012, 2014). The proportion of prosecuted cases in which the trafficker is the buyer is also unclear. Regardless, the outcome potentially legally legitimizes federal and state-level charges of sex trafficking for those who buy sex in interpretations of 1) "causes," as purchasing/trading, 2) "whoever" as including buyers, 3) "obtains" in making private arrangements for sex with a minor as a buyer, and 4) a "thing of value" as including photos and videos.

At the same time, state level law may hold limitations, both in the age of consent, which can be as young as 14, and in state level definitions. "Some state anti-trafficking laws fail to follow the TVPRA's definition of child sex trafficking and, instead, presume that a child consents to prostitution unless the presumption is rebutted by proof of force, fraud, or coercion" (Butler, 2014, p. 870). Thus, although holding implications for the prosecution of buyers of commercial sex with minors on a federal level and in some states, implications are limited on a state level, depending on state level law in terms of the age of consent, and the inclusion of the language of "obtains", "causes" and "whoever." Such dynamics indicate the need for legislative shifts to define all minors under the age of 18 involved in commercial sex as victims rather than criminals. In addition, uniformity of the language used in state level law with federal law would also impact the utility of case precedent. Legislative advocacy in passing Safe Harbor laws, which typically aim to decriminalize minors who experience sex trafficking and to increase punishments for buyers, is a current form of activism working to address these barriers to prosecuting buyers as sex traffickers on a state level. Although *Jungers* and *Bonestroo* hold implications for state-level prosecution of buyers of commercial sex with minors, particularly in states whose state-level statutes parallel the federal statutes, implications for cases involving sex trafficked adults remains under analyzed.

Implications for Prosecuting Buyers in Sex Trafficking Cases Involving Adults

Case precedent may hold implications for the buyers of sex trafficked adults as well as sex trafficked minors. Although the cases of *Jungers* and *Bonestroo* involve minors, and subsequent prosecutions of buyers have involved minors, the interpretation of the language of the statute does not delineate any distinction between buyers of trafficked minors compared to trafficked adults. Specifically, interpretations of "whoever," "obtains," and "causes" are not distinguished by age and are consequently applicable to cases involving sex trafficked adults. "Whoever" implicates buyers as sex traffickers in cases involving adults as well as minors. The buyer

[1] Although states will often take federal law into consideration, especially when the issues are similar, they are not required to do so save certain exceptions, thus the precedent of Jungers and Bonestroo would be persuasive rather than binding in state level prosecution. Similarly, outside of the 8th circuit court, the precedent is also persuasive rather than binding. Accordingly, the Jungers and Bonestroo decisions have binding authority in the 8th Circuit, and carry persuasive precedent beyond the federal courts in the 8th Circuit.

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"causes" the sex trafficking by purchasing sex, and "obtains" an adult by seeking temporary custody. Thus, case precedent established by the Bonestroo and Jungers cases, in interpretations of various language forms, is applicable to cases involving adults as well.

However, there are some differences in the language in the federal statute with regard to adults and minors. Specifically, the part of the statute indicating, "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)" clearly only implicates buyers of minors. Yet, the language relating to adults may implicate the prosecution of buyers as well, albeit in a different way, stating "knowing, or 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…shall be punished as provided in subsection (b)." Key terms of this portion of the statute include "knowing" and "reckless disregard." The language of intent is subject to analysis, as both "reckless" and "knowingly" are dependent upon interpretation. Reckless conduct has been outlined by the Model Penal Code[2] as:

> A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation. (§2.02).

In other words, it must be proven that the buyer consciously disregarded the substantial and unjustifiable risk that force, fraud, or coercion may be present. For example, a buyer may be conscious that there is the risk that the individual from whom they are purchasing sex may be a victim of force, fraud, or coercion, yet chooses to engage in the sex act and ignore the risk. This could be interpreted as "reckless." However, reckless disregard may be difficult to prove in a court of law, as particularly without case precedent, a defendant's prior general knowledge of sex trafficking would be challenging to prove.

The same can be said for the language of "knowingly." The Model Penal Code defines the intent of knowing as:

> A person acts knowingly with respect to a material element of an offense when: (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result (ibid.).

For the "knowing" intent, it is sufficient that the individual is aware that there is a high probability that the person from whom they are purchasing a commercial

[2] The Model Penal Code has been adopted in a few states and provisions of it have been adopted in many states, but the federal court system has not specifically adopted the Model Penal Code--although they sometimes cite or use the MPC, it is not required law. However, the terms knowingly and reckless disregard are types of legal intent; the definitions of the intents are fairly universal.

sex act is a trafficked individual. They may not have the specific intent to purchase sex from a trafficked individual, but they are aware that there is a strong possibility that the individual is a victim of trafficking, or has been compelled by force, fraud, or coercion. Similar to interpretations of "reckless," showing prior knowledge in relationship to intent may be challenging. Reckless disregard was not necessary in the *Jungers* and *Bonestroo* cases, as the language relating to minors does not include it. In terms of "knowingly," the officers had evidence that the men knew they were purchasing sex from underage girls, as the undercover officers clearly and purposefully disclosed this information to them. In cases involving adults, sting operations would need to follow this model and incorporate elements of "knowing" intent or "reckless" conduct, clearly establishing the elements of force, fraud, or coercion to the buyer in order to garner a successful prosecution. Perhaps more useful, force, fraud or coercion are elements that have been used to prosecute 3rd party traffickers (such as pimps, brothel owners, etc.) in cases involving adults, but could be used to prosecute buyers as well in cases where sufficient evidence exists of a buyer's prior knowledge that force, fraud, or coercion were involved. For example, in the case of *United States v. Cook*, described above, there was sufficient evidence of Cook's prior knowledge of force and coercion. This case involved a sixteen-year-old victim; however, in a similar case involving an adult, a buyer could also be prosecuted as a trafficker, with evidence of meeting the knowledge requirement. Like the movement to charge buyers with sex trafficking in cases involving minors, charging buyers in cases involving adults who experience force, fraud or coercion with sex trafficking is implicated by these prior cases.

There is an important case relevant to the prosecution of buyers who purchase sex from trafficked adults. In *United States v. Afyare*, the higher court challenged the decision of the district court which stated that 18 U.S.C. § 1591(a)(1) only applied to minors. The district court made this decision, citing that the title of the statute "Sex Trafficking of Children or by Force, Fraud, or Coercion," indicated only children were implicated in the statute. The district court also cited that the language in the statute did not specifically state "18 years or older", and that the punishment provision of § 1591(b) only applied to cases involving children. The district court also cited several prior cases and a law review article indicating the statute only applied to minors. In *United States v. Afyare*, the higher court found that the district court erred in its decision. First, the plain language clearly states in the title of the statute "Sex Trafficking of Children *or* by Force, Fraud, or Coercion," emphasizing the word "or." Second, as indicated previously in this article, the decision highlights use of the word "or" in the language of the statute itself, "in reckless disregard of the fact, that means of force, threats of force, fraud, coercion . . . 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…" This clearly indicates inclusion of those 18 years or older. Third, the punishment provision in § 1591(b) states "'if the offense was effected by force, fraud, or coercion' the defendant is to be sentenced to a mandatory 15-year minimum prison term" (*United States v. Afyare,* 2016). Thus, interpretation of plain language does not except cases involving adults. Fourth, the cases and the law review article cited by the district court were critiqued by the United States because: "none of those cases analyzes that issue [prosecution of buyers involving adults] directly, or even tangentially," and the law review article actually clearly indicated force, fraud, or coercion were required to be proven in cases involving adults (ibid.). Further, the TVPA clearly indicates sex

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trafficking of adults, using criteria of force, fraud, or coercion, and several subsequent cases offer the same reading (e.g., *United States v. Mack,* 2014; *United States v. Jackson*, 2015). The "plain language" of § 1591(a) indicates sex trafficking of adults by force, fraud, or coercion as well. Thus, the higher court reversed the district court's decision that § 1591 only applies to sex trafficking of children, citing the misinterpretation of plain language. Accordingly, the decision in *United States v. Afyare,* indicating that § 1591(a) applies to adults who experience force fraud or coercion, read in conjunction with the language interpretations in *United States v. Jungers* and *United States v. Bonestroo,* indicating that buyers can be traffickers, implicates prosecuting buyers as traffickers in cases involving adults. Similar to the prosecution of buyers in cases involving sex trafficked adults, the implications of *United States v. Jungers* and *United States v. Bonestroo* for charging buyers of trafficked labor is subject to interpretation as well.

Implications for Prosecuting Buyers in Labor Trafficking Cases

Based on the various interpretations of the language set forth under §1591, the question arises that if buyers are prosecuted as traffickers, what does that mean for other types of human trafficking, such as labor trafficking? 18 U.S.C. §§1589-1590 address labor trafficking. §1589 states,

> Whoever knowingly provides or obtains the labor or services of a person--(1) by threats of serious harm to, or physical restraint against, that person or another person;(2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (3) by means of the abuse or threatened abuse of law or the legal process, shall be fined under this title or imprisoned not more than 20 years, or both.

Further, 18 U.S.C. § 1590 states, "Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both."

The interpretations of 18 U.S.C. §1591 indicated in the abovementioned cases involving the language of "whoever" and "obtains" provide case history and precedent that can be applied to labor trafficking cases. If "whoever" is interpreted to include buyers of sex, then "whoever" can also be interpreted to include buyers of trafficked labor. Similarly, if "obtains" is interpreted to include "obtaining" a person for commercial sex, then "obtaining' a person to perform trafficked labor can be similarly interpreted. In *North Dakota v. Rufus*, the "plain meaning of 'obtain'…is broad enough to encompass acquiring temporary custody of the person." This interpretation provides a case history that can be utilized in labor trafficking cases as well.

Yet, in terms of "knowingly" it is much more difficult to directly connect the buyer to goods made from trafficked labor compared to the direct connection involving a buyer purchasing sex. Rather than discussing the possibility of prosecuting individuals that purchase items directly related to labor trafficking, such as produce or clothing, it makes more sense to address the demand side of labor trafficking by focusing on the corporations and farmers that benefit from trafficked and exploited labor through civil and criminal liability.

Perhaps the greatest problem in labor trafficking cases is that the corporations and farmers are generally not held accountable for what happens through the various avenues of production. As Heil noted in her research of agricultural labor trafficking, "…the problem is not being able to prosecute the actual growers due to the line of ignorance that is created between the grower, and the pit-bosses and contractors. As growers continue to deny any knowledge of what their field bosses are doing…, they claim they have no responsibility and therefore cannot be prosecuted" (2012, p. 127). Similarly, Heil & Nichols (2015) found that farmers were purchasing labor from crew leaders, who engaged in acts of fraud to provide inexpensive labor to farmers. Yet, the farmers claimed ignorance of such factors. Many corporations use third parties to recruit employees, and this "further exacerbates the problem and allows employers to function with *de facto* impunity" (USAID, 2011, p. 33). These third-party subcontractors "rely on workers' ignorance of local labor laws, wages and benefits and [in cases of undocumented workers] exploit their fear of deportation" (ibid.). They may also use force or the threat of force to maintain custody of the workers and their labor.

One avenue of addressing the use of subcontractors in labor trafficking cases is to hold corporations and farmers that benefit from labor trafficking civilly liable. For example, in 2005, Wal-Mart Stores Inc. was identified as having approximately 250 undocumented workers employed as janitorial workers in 21 stores across the United States since 1998. According to Hawke, "many of the janitors—from Mexico, Russia, Mongolia, Poland, and a host of other nations—worked seven days or nights a week without overtime pay or injury compensation…Those who worked nights were often locked in the stores until the morning" (Hawke, 2005). The retail giant worked with janitorial subcontracting companies that hired and exploited the undocumented workers. Walmart denied any wrongdoings, "claiming only to have provided insufficient oversight…Walmart and the U.S. Government agreed to $11 million settlement" (USAID, 2011, p. 34). Financial penalties such as this have motivated Walmart and other corporations worldwide (e.g. the United States Defense Departments contractor, KBR who was ordered to pay $1 million to Nepalese victims of labor trafficking) to monitor more closely "their supply chains in order to reduce the demand for trafficked labor" (ibid., p. 36).

Another way to address the lack of corporations monitoring their supply chains is by using the already existing corporate liability laws in the United States, which state:

> Criminal liability is imposed in those instances that the criminal conduct is authorized, requested, commanded, performed, or recklessly tolerated …by a high managerial official acting on behalf of the corporation within the scope of his or her office or employment (*Model Penal Code, Section 2.07*)

Although this law was written with the safety of consumers in mind, the language clearly places liability upon those who condone illegal behavior, including those who may not actually carry out the criminal activity. With the already existing language of corporate liability, along with interpretations of 18 U.S.C. §1591 in the abovementioned cases, 18 U.S.C. §§1589-1590 can easily be interpreted to include the corporations as traffickers. Currently, corporations claim that they are

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unaware of who is being hired to work through the supply chain. Yet, if the language of the corporate liability statute is read in conjunction with §1589, corporations could potentially be regarded as traffickers. The corporation may not "knowingly provide or obtain" the workers, but the trafficking is recklessly tolerated (i.e. there is awareness of the risk of trafficking but the risk is disregarded). In addition, drawing from the case history of *United States v. Jungers* and *United States v. Bonestroo,* interpretations of the language of "knowingly" may also be utilized in labor trafficking cases. Further, the corporation does benefit financially "from participation in a venture which has engaged in an act" in which a person has been provided, obtained, etc. Thus, as the definition of "trafficker" continues to legally be interpreted, hiding behind the cloak of ignorance or lack of oversight may no longer be tolerated. Perhaps if criminal liability were to be imposed on the corporations, with charges under both §1589 and the corporate liability law, they would be more likely to pay attention to who the crew leaders were hiring, as well as monitor the work and pay conditions of the laborers. Although corporations could claim ignorance, corporate liability could still be imposed. The corporations should also be considered traffickers in that they benefit financially, and they are reckless in disregarding the potential of trafficking occurring in their fields. They also may be conscious of the risk that trafficking circumstances exist, but choose to disregard them. Thus, in terms of policy, new statutes do not need to be written in order to hold corporations liable. Rather, extending the interpretation of existing statutes to address labor trafficking is called for.

Conclusion and Limitations

In conclusion, as evidenced in subsequent cases, *United States v. Jungers* and *United States v. Bonestroo* clearly show important implications for prosecuting buyers as sex traffickers involving minors on a federal and state level. At the same time, the implications of these cases for sex trafficked adults and labor trafficked people have remained marginalized in justice system responses as well as in the academic discourse. Thus, the authors recommend utilizing case history to apply to subsequent cases involving adults who experience sex trafficking, as well as labor trafficking. Specifically, the interpretations of "obtains," "whoever" and a "thing of value" in prior cases provides precedent that is applicable to labor trafficking and cases involving trafficked adults. In addition, similar to cases involving minors, knowing intent can be established in cases involving adults, but focused on the language of force, fraud and coercion rather than age. Buyers could be charged as sex traffickers in cases involving adults in which there is evidence to show prior knowledge of force, fraud, and coercion. In terms of labor trafficking, applying the relevant language interpretations under section 1591 to charges under 18 U.S.C. §§1589-1590 combined with corporate liability law may be useful in prosecuting third party buyers of trafficked labor, such as corporations and farmers buying labor through pit bosses, crew leaders, or other recruiters.

The aim of this article was to provide a case analysis to discuss implications for prosecuting buyers through state level prosecution, as well as cases involving trafficked adults and trafficked labor. The article does not support or evaluate the efficacy of end-demand approaches through prosecution. In fact, the benefits and challenges of demand reduction through justice system responses remain contentiously debated. Critiques of end-demand efforts include lack of attention to addressing the root causes of trafficking (such as poverty, homelessness, child abuse

and neglect in the home, lack of social safety nets, etc.), diversion of resource allocation away from social services and survivors of human trafficking to criminal justice system responses, lack of inclusivity of labor trafficking, and the potential for increased criminalization and risk to those in the commercial sex industry more broadly, including trafficked people (Freedom Network USA, 2015). It is the view of the authors that the goals, choices, safety and needs of survivors should always be the first priority. End-demand efforts that do not include these considerations will be limited in their utility, and may inadvertently cause harm (see Musto, 2016 and Lutnick, 2016 for an overview). Consequently, the authors caution that this article should not be viewed as support for end-demand efforts in all forms, rather, as an overview of related cases, their implications, and the ways prosecutors can use case history precedent in already established cases of human trafficking, and in cases in which survivors want to prosecute.

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