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October 12, 2011

Scott Nickerson, Clerk
Barnstable Superior Court
Post Office Box 425
Barnstable, Massachusetts 02630

Re: Torres et al v. Torres et al
No: BACV2011-00433

Dear Mr. Nickerson:

Enclosed please find the following documents for filing with your office relative to the above-entitled matter:

1. Defendant- Jesse Torres IV, Motion to Dismiss for Failure to State a Claim;
2. Memorandum in Support of Motion to Dismiss;
3. Plaintiff's Response and Opposition to Motion to Dismiss

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Jeremy M. Carter

JMC/jrg
Enclosures

Cc: Jesse Torres, III
Jennifer Adams
Sophie Torres

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss. SUPERIOR COURT
NO. BACV2011-00433

JESSE E. TORRES, III and)
JENNIFER J. ADAMS,)
Plaintiffs,)
)
vs)
)
SOPHIE J. TORRES,)
JESSE E. TORRES, IV,)
DEBTMERICA, LLC, and)
DONALD F.TORRES,)
Defendants.)
_____)

DEFENDANT, JESSE E. TORRES IV,
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

NOW COMES THE DEFENDANT, Jesse E. Torres, IV, and hereby moves to dismiss all of the Plaintiffs claims against him contained in their Complaint. In support of this motion, the Defendant attaches the accompanying Memorandum of Law.

Respectfully submitted,
Jesse E. Torres, IV,
By his attorney

Jeremy M. Carter
BBO #542118
Wilkins and DeYoung
270 Winter Street
Hyannis, MA 02601
(508) 771-4210

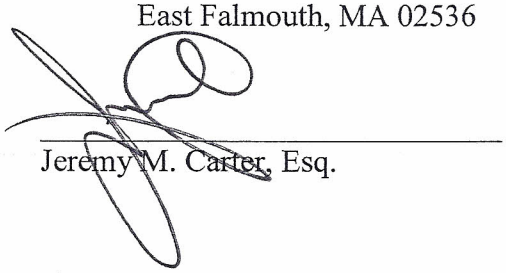
Dated: September 7, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Motion to Dismiss for Failure to State a Claim has been sent via first class mail, postage prepaid this 9 day of September, 2011 to the Plaintiffs:

Jesse E. Torres, III
562 Waquoit Highway
East Falmouth, MA 02536

Jennifer J. Adams
562 Waquoit Highway
East Falmouth, MA 02536



Jeremy M. Carter, Esq.

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT
NO. BACV2011-00433

JESSE E. TORRES, III and)
JENNIFER J. ADAMS,)
Plaintiffs,)
)
vs)
)
SOPHIE J. TORRES,)
JESSE E. TORRES, IV,)
DEBTMERICA, LLC, and)
DONALD F.TORRES,)
Defendants.)
_____)

MEMORANDUM OF LAW
IN SUPPORT OF DEFENDANT, JESSE E. TORRES, IV,
MOTION TO DISMISS

I. INTRODUCTION

The Plaintiffs, Jesse E. Torres, III and Jennifer J. Adams, brought their Complaint against multiple Defendants extensively because of an allegation that a contract was breached between the Plaintiff, Jesse E. Torres, III's mother (Defendant, Sophie Torres) and himself. Plaintiffs Complaint alleges a myriad of allegations but broken down against this Defendant, simply suggest that Jesse E. Torres, IV, used monies to interfere with the contractual relationship between the Plaintiffs and the Defendant, Sophie Torres.

The Plaintiffs bring twelve (12) counts against the Defendant, Jesse E. Torres, IV.

The counts range from Tortious Interference to Defamation, and Intentional Infliction of Emotional Harm and Conspiracy to Violate a Federal Statute.

The Defendant, Jesse Torres, IV, now moves to dismiss the Plaintiffs claims brought against him as the Plaintiffs have not established a claim for which relief can be granted.

II. FACTUAL SUMMARY

Plaintiff, Jesse Torres, III is the father of Defendant, Jesse Torres, IV, who is the grandson of Defendant, Sophie Torres. In or about April 2009, the Plaintiffs, who are unmarried, induced the Defendant, Sophie Torres (at that time age approximately eighty-eight (88)), to sign a Will which the Plaintiffs drafted. In addition to the Will, the Plaintiffs had the Defendant, Sophie Torres, sign a document entitled Addendum to the Will of Sophie June Torres, Addendum I, Permanent Transfer of Property Rights and has alleged that this is a contract. This document purports to have the Defendant, Sophie Torres, transfer all of her rights in real property to the Plaintiff, Jesse E. Torres, III[1]. The Plaintiffs go on to allege that at some point after this Will and document was signed that the Defendant, Sophie Torres, changed her Will and as a result breached a contract that the Plaintiffs allege existed. The Plaintiffs further state that it was certain actions taken by the Defendant, Jesse E. Torres, IV, that caused his grandmother (Sophie Torres) to change her Will.

III. LEGAL ARGUMENT

The subject matter of the Plaintiffs' Complaint concerns a will that the Plaintiffs drafted and had the Defendant, Sophie Torres, sign on or about April 24, 2009. Disregarding suspected circumstances under which this Will was executed and the motives of these specific Parties, the Plaintiffs required that the Defendant, Sophie Torres, sign a document alleging that it was an Addendum to the Will which obstensively prohibits her from transferring her real property outside of what is contained within this April 24, 2009 will.

The reality of the cause of action is that Massachusetts case law is clear that an enforceable contract to make a will cannot be litigated for breach of contract until such time for performance has arrived, which is at the time of death. See **Johnson v. Starr, 321 Mass. 566,**

[1] No further action was ever undertaken by any Party to effectuate this transfer.

569 (1947) citing Daniels v. Newton, 114 Mass. Vol. 30.

All of the Plaintiffs claims against the Defendant, Jesse E. Torres, IV, stem from this alleged breach of contract. If the Court determines that there is no breach of contract or that the cause of action has not arisen at this time, then the remaining counts against the other Defendants must fail.

Taking into consideration the specific counts against the Defendant, Jesse E. Torres, IV, the Plaintiffs allege in Count V a tortious interference between the Plaintiff, Jesse Torres, III and Defendant, Sophie Torres. Obstensibly, the Plaintiffs represent that since the Defendant, Jesse E. Torres, IV, gave money to his grandmother (Sophie Torres) to help support her, he influenced her in changing her Will. There are no factual statements to reflect this claim thus the allegations do not rise to the level required under this cause of actions. Specifically, the Plaintiffs must assert that the interference by the Defendant, Jesse E. Torres, IV, was unjustified in Plaintiffs existing contractual rights. The Plaintiffs must prove a contract with which the Defendant, Jesse E. Torres, IV, has interfered without justification. Since the Plaintiffs contract is unenforceable until the Defendant, Sophie Torres, dies, interference with such a contract is not actionable.

Count VI is duplicitous with Count V and should be dismissed for that particular reason.

Count VII sets forth a claim that is not recognizable as the captions indicates "malicious intent". The body of the count indicates that Defendant, Jesse E. Torres, IV, undertook "numerous wrongful acts" without specifying what wrongful acts the Defendant, Jesse E. Torres, IV, committed. The statement of a wrongful act does not give rise to a tort enforceable in a lawsuit. In sum, Count VII does not set forth a recognizable cause of action.

Count VIII allegedly states that the Defendant, Jesse E. Torres, IV, acted in concert with others to commit fraud on the Plaintiffs. There are no representations as to what the nature of the

fraud is, or how the Defendant, Jesse E. Torres, IV, committed fraud. In all averments of fraud, the Plaintiff must state with particularity the circumstances constituting fraud. See **Mass. R.Civ.P. 9 (b); Cohen v. Santoianni, 330 Mass. 187 (1953).**

Count IX and Count X basically allege similar causes of action in that Defendant, Jesse E. Torres, IV, made statements that were false and it harmed the Plaintiffs. There is no allegations contained within the Complaint as to what these statements are and how the Plaintiffs were damaged. There is no indication as to when these statements were made, where or how. In Count IX and X the Plaintiffs basically alleged the same cause of action. More importantly, the subject matter at hand is really an intra-family dispute. The Defendant, Jesse E. Torres, IV, is the grandson of the Defendant, Sophie Torres, and the son of the Plaintiff, Jesse Torres, III. A party cannot be held responsible for a statement or publication tending to disparage private character, if it is called for by the ordinary experience of social duty or is necessary and proper to enable him to protect his own interest or that of another, provided that it is made in good faith and without a willful design to defame. See **Gassett v. Gilbert, 6 Grey 94 (1856).**

It is surmised, that the Plaintiffs claims goes to the fact that the Defendant, Jesse E. Torres, IV, statements disparaging his father to his grandmother. A family relationship acts as a conditional or qualified privilege.

Count XI sets forth a claim for intentional infliction of emotional distress. The elements of the tort of infliction of emotional distress are: a) an intentional act, b) amounting to extreme and outrageous conduct, c) causing severe emotional distress to another, d) by one not privileged to do so. **Restatement, 2nd Torts**. As to the type of conduct which will give rise to a cause of action the Courts in the Commonwealth have held such conduct must be "beyond all possible bounds of decency" and "utterly intolerable in a civilized community." **See George v. Jordan**

Marsh, Co., 359 Mass. 244, 245 (1971). There are no allegations made of what type of conduct was committed by the Defendant, Jesse E. Torres, IV, to cause injury to the Plaintiffs. The cause of action for intentional infliction of emotional distress requires that the Defendants actions be without privilege. **Sullivan v. Birmingham, 11 Mass. App. Ct. 359 (1981).** Statements that were made and circumstances rendering them absolutely privileged under the law of defamation cannot form the basis of a claim for intentional infliction of emotional distress, since the privilege which protects one from liability for defamation would be of little value if the individual where subject to liability under a different tort theory. **Correllas v. Viveiros, 410 Mass. 314 (1991).** Since there are no specific statements alleged, it can only be inferred that the Plaintiffs are complaining about the Defendant, Jesse E. Torres, IV, speaking with his grandmother about the Plaintiff, Jesse E. Torres, III. Family communications are privileged and therefore no claim for emotional distress should be allowed.

The Plaintiffs in the within action, have simply set out multiple theories for the same parent cause of action. There is simply no alleged facts to warrant this cause of action, as there has been no outrageous conduct set forth.

Counts XII, XV, XVI, XVII and XVIII allege violations of Federal Law. The Plaintiffs should have filed within the United States District Court. However, if the Court concedes that it has jurisdiction pursuant to the ruling in **Tafflin v. Levitt, 493 U.S. 455 (1990)** then the Defendant, Jesse E. Torres, IV, simply asserts that the claims made under **18 U.S.C. §1962** fail to state a cause of action for which relief can be granted.

Specifically, the RICO Statute (**18 U.S.C. §1962**) sets forth that "it shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has

participated within the meaning of **§2, Title U.S. Code**, to use or invest, directly or indirectly any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in or the activities of which affect, interstate or foreign commerce". See **§18 U.S. Code A, §1962**.

In the present case, the Plaintiffs are alleging that the Defendant, Jesse E. Torres, IV, along with the Co-Defendant, Donald Torres, conspired to violate this section. There is no statement or allegations made within the Complaint indicating that Jesse E. Torres, IV, received any "income" directly or indirectly and therefore, this claim must fail. The allegation in the within Complaint is that Defendant, Jesse E. Torres, IV, has used money to influence his grandmother to breach the alleged contract she had with the Plaintiff, Jesse Torres, III.

The Defendant, Jesse E. Torres, IV, asserts that Count XII alleges a violation of **§18 U.S. Code A, §2422** entitled coercion and enticement. A review of that statute (attached hereto as Exhibit A) indicates that it is inapplicable to the within subject matter of this case. That statute talks about coercing an individual to engage in prostitution. Since this statute does not apply, this count must be dismissed.

In regards to Count XVII which alleges that the Defendant, Jesse E. Torres, IV, and Co-Defendant, Donald Torres, conspired to violate federal statute listed in the Complaint as **18 U.S. C. 19.373**. Defendant believes that this is not a valid statute as listed, and if in fact, misstated, and the Superior Court had jurisdiction over this matter, it would be duplicitous with Count XI.

Count XIX alleges that the Defendant, Jesse E. Torres, IV, conspired to violate the federal statute listed in the Complaint as **18 U.S.C. 19.373** but does not indicate who he conspired with to commit this violation. Defendant, Jesse E. Torres, IV, asserts that this Honorable Court does not have jurisdiction over Counts XVII and XIX.

IV. CONCLUSION

For the foregoing reasons, Defendant, Jesse E. Torres, IV, respectfully requests that this Honorable Court dismiss all claims against the Defendant, Jesse E. Torres, IV.

Respectfully submitted,
Jesse E. Torres, IV
By his attorney

Jeremy M. Carter
BBO #542118
Wilkins and DeYoung
270 Winter Street
Hyannis, MA 02601
(508) 771-4210

Dated: September 7, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Memorandum of Law has been sent via first class mail, postage prepaid this 14 day of September, 2011 to the Plaintiffs:

Jesse E. Torres, III
562 Waquoit Highway
East Falmouth, MA 02536

Jennifer J. Adams
562 Waquoit Highway
East Falmouth, MA 02536

Jeremy M. Carter, Esq.

Effective: July 27, 2006

United States Code Annotated Currentness
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 117. Transportation for Illegal Sexual Activity and Related Crimes (Refs & Annos)
§ 2422. Coercion and enticement

(a) Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

(b) Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 812; Nov. 7, 1986, Pub.L. 99-628, § 5(b)(1), 100 Stat. 3511; Nov. 18, 1988, Pub.L. 100-690, Title VII, § 7070, 102 Stat. 4405; Feb. 8, 1996, Pub.L. 104-104, Title V, § 508, 110 Stat. 137; Oct. 30, 1998, Pub.L. 105-314, Title I, § 102, 112 Stat. 2975; Apr. 30, 2003, Pub.L. 108-21, Title I, § 103(a)(2)(A), (B), (b)(2)(A), 117 Stat. 652, 653; July 27, 2006, Pub.L. 109-248, Title II, § 203, 120 Stat. 613.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1948 Acts. Based on Title 18, U.S.C., 1940 ed., § 399 (June 25, 1910, c. 395, § 3, 36 Stat. 825).

Words "deemed guilty of a felony" were deleted as unnecessary in view of definition of felony in § 1 of this title. (See reviser's note under § 550 of this title.)

Words "and on conviction thereof shall be" were deleted as surplusage since punishment cannot be imposed until a conviction is secured.

The references to persons causing, procuring, aiding or assisting were omitted as unnecessary as such persons are made principals by § 2 of this title.

Words "Possession of the United States" were inserted twice. (See reviser's note under § 2421 of this title.)

Minor changes were made in phraseology. 80th Congress House Report No. 304.

1986 Acts. House Report No. 99-910, see 1986 U.S. Code Cong. and Adm. News, p. 5952.

1988 Acts. For Related Reports, see 1988 U.S. Code Cong. and Adm. News, p. 5937.

1996 Acts. House Report No. 104-204 and House Conference Report No. 104-458, see 1996 U.S. Code Cong. and Adm. News, p. 10.

2003 Acts. House Conference Report No. 108-66 and Statement by President, see 2003 U.S. Code Cong. and Adm. News, p. 683.

2006 Acts. Statement by President, see 2006 U.S. Code Cong. and Adm. News, p. S35.

Amendments

2006 Amendments. Subsec. (b). Pub.L. 109-248, § 203, struck out "not less than 5 years and not more than 30 years" and inserted "not less than 10 years or for life".

2003 Amendments. Subsec. (a). Pub.L. 108-21, § 103(a)(2)(A), struck out "10" and inserted "20".

Subsec. (b). Pub.L. 108-21, § 103(a)(2)(B), struck out "15" and inserted "30".

Pub.L. 108-21, § 103(b)(2)(A)(i), struck out ", imprisoned" and inserted "and imprisoned not less than 5 years and".

Pub.L. 108-21, § 103(b)(2)(A)(ii), struck out ", or both" at end of subsec. (b).

1998 Amendments. Subsec. (a). Pub.L. 105-314, § 102(1), inserted "or attempts to do so," before "shall be fined" and struck out "five" and inserted "10".

Subsec. (b). Pub.L. 105-314, § 102(2), rewrote subsec. (b) which formerly read: "Whoever, using any facility or means of interstate or foreign commerce, including the mail, or within the special maritime and territorial jurisdiction of the United States, knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years to engage in prostitution or any sexual act for which any person may be criminally prosecuted, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both."

1996 Amendments. Subsecs. (a), (b). Pub.L. 104-104, § 508, added subsec. (b) and redesignated existing provisions as subsec. (a).

1988 Amendments. Pub.L. 100-690, § 7070, substituted "or foreign" for "of foreign".

1986 Amendments. Pub.L. 99-628 substituted "and enticement" for "or enticement of female" in section catchline and amended text generally. Prior to amendment, text read as follows: "Whoever knowingly persuades, induces, entices, or coerces any woman or girl to go from one place to another in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her

consent, and thereby knowingly causes such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce or in the District of Columbia or in any Territory or Possession of the United States, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

Canal Zone

Applicability of section to Canal Zone, see § 14 of this title.

CROSS REFERENCES

Offenses resulting in death, murder of an individual in the course of committing certain offenses, punishment by death or imprisonment for any term of years or for life, see 18 USCA § 2245.

FEDERAL SENTENCING GUIDELINES

See Federal Sentencing Guidelines §§ 2A4.1, 2G1.1, 2G1.2, 18 USCA.

LIBRARY REFERENCES

American Digest System

Commerce 82.5.

Key Number System Topic No. 83.

Prostitution 1.

Key Number System Topic No. 316.

Corpus Juris Secundum

CJS Commerce § 132, Transportation of Individuals for Immoral Purposes.
CJS Constitutional Law § 1669, Probation or Suspension of Sentence--Terms and Conditions.
CJS Infants § 121, Sexual Abuse and Molestation.
CJS Prostitution and Related Offenses § 59, Coercing or Enticing Travel for Prostitution.
CJS Prostitution and Related Offenses § 60, Coercing or Enticing Minor to Engage in Prostitution.
CJS Prostitution and Related Offenses § 63, Proof.

RESEARCH REFERENCES

ALR Library

27 ALR, Fed. 2nd Series 227, What Constitutes "Aggravated Felony" for Which Alien Can be Deported or Removed Under § 237(A)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C.A. § 1227(A)(2)(A)(iii))--Murder, Rape, or Sexual Abuse of Minor Under...

7 ALR, Fed. 2nd Series 1, Validity, Construction, and Application of Federal Enactments Proscribing Obscenity and

Child Pornography or Access Thereto on the Internet.

167 ALR. Fed. 507, Validity, Construction, and Application of 18 U.S.C.A. § 2423, Making it Criminal Offense to Transport Minor Across State Line for Sexual Purposes.

166 ALR. Fed. 1, What Constitutes Reverse Sex or Gender Discrimination Against Males Violative of Federal Constitution or Statutes--Nonemployment Cases.

164 ALR. Fed. 61, Downward Departure from United States Sentencing Guidelines (U.S.S.G. §§ 1a1.1 et seq.) Based on Aberrant Behavior.

164 ALR. Fed. 591, When Does Forfeiture of Currency, Bank Account, or Cash Equivalent Violate Excessive Fines Clause of Eighth Amendment.

145 ALR. Fed. 481, Construction and Application of United States Sentencing Guideline §§ 2G2.1 et seq., Pertaining to Child Pornography.

114 ALR. Fed. 355, What Constitutes Unusually "Vulnerable" Victim Under Sentencing Guideline § 3A1.1 Permitting Increase in Offense Level.

22 ALR. Fed. 379, Determination of Materiality of Allegedly Perjurious Testimony in Prosecution Under 18 U.S.C.A. §§ 1621, 1622.

3 ALR. Fed. 29, Accused's Right to Inspection of Minutes of Federal Grand Jury.

34 ALR 6th 253, Authentication of Electronically Stored Evidence, Including Text Messages and E-Mail.

4 ALR 6th 1, Validity of Condition of Probation, Supervised Release, or Parole Restricting Computer Use or Internet Access.

98 ALR 5th 167, Validity of State Statutes and Administrative Regulations Regulating Internet Communications Under Commerce Clause and First Amendment of Federal Constitution.

84 ALR 5th 1, Validity of Search or Seizure of Computer, Computer Disk, or Computer Peripheral Equipment.

57 ALR 5th 141, Admissibility of Evidence of Declarant's Then-Existing Mental, Emotional, or Physical Condition, Under Rule 803(3) of Uniform Rules of Evidence and Similar Formulations.

42 ALR 5th 291, Validity, Construction, and Application of State Statutes or Ordinances Regulating Sexual Performance by Child.

75 ALR 4th 91, Requirement of Jury Unanimity as to Mode of Committing Crime Under Statute Setting Forth the Various Modes by Which Offense May be Committed.

58 ALR 4th 1229, Use of Plea Bargain or Grant of Immunity as Improper Vouching for Credibility of Witness--State Cases.

24 ALR 4th 1266, Disputation of Truth of Matters Stated in Affidavit in Support of Search Warrant--Modern Cases.

89 ALR 3rd 864, Validity and Effect of Criminal Defendant's Express Waiver of Right to Appeal as Part of Negotiated Plea Agreement.

82 ALR 3rd 245, Antagonistic Defenses as Ground for Separate Trials of Codefendants in Criminal Case.

77 ALR 3rd 519, Validity and Construction of Statute or Ordinance Proscribing Solicitation for Purposes of Prostitution, Lewdness, or Assignation--Modern Cases.

33 ALR 3rd 335, Comment Note.--Length of Sentence as Violation of Constitutional Provisions Prohibiting Cruel and Unusual Punishment.

23 ALR 3rd 423, Prosecution Under White Slave Traffic Act (18 U.S.C.A. § 2421) Based on Interstate Transportation Not Involving Commercial Vice.

77 ALR 2nd 841, Admissibility, in Prosecution for Sexual Offense, of Evidence of Other Similar Offenses.

5 ALR 2nd 444, Right of Accused to Bill of Particulars.

167 ALR 565, Admissibility, in Prosecution for Sexual Offense, of Evidence of Other Similar Offenses.

161 ALR 356, White Slave Traffic Act Mann Act as Affecting Constitutionality or Application of State Statutes Dealing With Prostitution.

156 ALR 971, Construction and Application of the Word "cause" in Provision of White Slave Traffic Act Which Declares that One Who Shall Knowingly Cause a Woman or Girl to be Transported in Interstate Commerce for Purposes Of...

139 ALR 673, Constitutionality and Construction of Statute Enhancing Penalty for Second or Subsequent Offense.

131 ALR 1322, Criminal Responsibility of One Co-Operating in Offense Which He is Incapable of Committing Personally.

113 ALR 1308, Scope and Application of Rule Which Permits Judge in Criminal Case to Comment on Weight or Significance of Evidence.

84 ALR 376, Criminal Responsibility of Woman Who Connives or Consents to Her Own Transportation for Immoral Purposes.

73 ALR 868, Right of Witness to State Conclusion as to Immoral Purpose or Intent of Another.

73 ALR 873, Purpose Other Than Indulgence in Sexual Intercourse as Affecting Violation of Mann Act.

74 ALR 311, Constitutionality and Construction of Pandering Acts.

65 ALR 410, Cross-Examination as to Sexual Morality for Purpose of Affecting Credibility of Witness.

66 ALR 628, Right to Withdraw Plea of Guilty.

48 ALR 991, Plea of Privilege by the Woman Concerned in Violation of White Slave Act.

51 ALR 875, Acts in Violation of White Slave Traffic Act as Constituting Single Offense or Separate Offenses.

18 ALR 146, Entrapment to Commit Crime With View to Prosecution Therefor.

4 ALR 414, Abuse of Witness by Counsel as Ground for New Trial or Reversal.

Encyclopedias

61 Am. Jur. Proof of Facts 3d 51, Cyberporn: Transmission of Images by Computer as Obscene, Harmful to Minors or Child Pornography.

70 Am. Jur. Trials 435, The Defense of a Computer Crime Case.

Am. Jur. 2d Aliens and Citizens § 2309, Conviction of Aggravated Felony.

Am. Jur. 2d Computers and the Internet § 19, Federal Statutes.

Am. Jur. 2d Computers and the Internet § 99, Sexual Exploitation of Children; Luring Children Through Use of Computer.

Am. Jur. 2d Lewdness, Indecency, and Obscenity § 28, Overview; Child Pornography, Generally.

Am. Jur. 2d Prostitution § 26, Constitutionality.

Am. Jur. 2d Prostitution § 27, Construction and Application.

Am. Jur. 2d Prostitution § 30, Violation of Act as Constituting More Than One Offense.

Treatises and Practice Aids

Federal Procedure, Lawyers Edition § 22:250, Offenses for Which Interception May be Authorized.

Federal Procedure, Lawyers Edition § 22:1855, Rebuttable Presumptions Favoring Detention.

Federal Procedure, Lawyers Edition § 22:2009, Term of Supervised Release.

Immigration Law and Business § 6:70, Criminal-Based Grounds--Aggravated Felons.

Immigration Law and Business § 6:71, Criminal-Based Grounds--Aggravated Felons--Specific Crime Considered Aggravated Felonies.

Immigration Law and Crimes § 7:23, Definition of Aggravated Felony.

Immigration Law and Crimes § 7:26, Definition of Aggravated Felony--Murder, Rape, and Sexual Abuse of a Minor.

Immigration Law Service 2d § 13:38, Definition Under IIRAIRA.

Immigration Law Service 2d PSD INA § 101, Definitions.

Wright & Miller: Federal Prac. & Proc. § 3531.9.4, Rights of Others --Severability and Overbreadth.

NOTES OF DECISIONS

1. Constitutionality

Statute prohibiting use of a facility of interstate commerce to attempt to knowingly persuade, induce, entice, or coerce a minor to engage in unlawful sexual activity was not unconstitutionally overbroad as applied to defendant who had communicated online over a period of seven months with an undercover law enforcement officer who was posing as the mother of a minor daughter; defendant's speech, by which he attempted to arrange the sexual abuse of a child, was not constitutionally protected, and defendant could be convicted of attempted enticement through an adult intermediary, even though he never said anything sexual directly to the minor in question. U.S. v. Farley, C.A.11 (Ga.) 2010, 607 F.3d 1294, certiorari denied 131 S.Ct. 369, 178 L.Ed.2d 238. Constitutional Law 2260; Infants 12(8); Infants 13; Telecommunications 1314

Fact that defendant convicted of attempting to entice a minor to engage in a criminal sexual act was not entitled to "safety valve" sentencing provision did not violate equal protection, where defendant was not similarly situated for sentencing purposes with defendants who violated the controlled substance offenses enumerated in "safety valve" provision. U.S. v. Nagel, C.A.7 (Wis.) 2009, 559 F.3d 756. Constitutional Law 3809; Sentencing And Punishment 55

Statute pursuant to which defendant was convicted of attempting to knowingly persuade, induce, entice, or coerce a minor to engage in illegal sexual activity was not unconstitutionally vague because it did not define the terms attempt, persuade, induce, entice, or coerce; the words in question were words of common usage that had plain and ordinary meanings, and ordinary people using common sense could grasp the nature of the prohibited conduct. U.S. v. Gagliardi, C.A.2 (N.Y.) 2007, 506 F.3d 140. Constitutional Law 4509(15); Infants 12(8)

Statute prohibiting actual or attempted persuasion of a minor to engage in illicit sexual activity was not unconstitutionally vague in violation of First Amendment; although statute did not define the terms "persuade," "induce," "entice" and "coerce," they had a plain and ordinary meaning that did not need further technical explanation, and statute's scienter requirement clarified the law and excluded legitimate activity, including pure speech, from its scope. U.S. v. Tykarsky, C.A.3 (Pa.) 2006, 446 F.3d 458, appeal after new sentencing hearing 295 Fed.Appx. 498, 2008 WL 4492626, certiorari denied 129 S.Ct. 1929, 173 L.Ed.2d 1076. Constitutional Law 2247; Infants 12(8)

Government's addition of second count of using interstate commerce to attempt to persuade a minor to engage in an illegal sexual act in indictment filed after mistrial in first case, which only charged one count, was not vindictive prosecution in violation of defendant's due process rights; prosecutor stated he added charge after speaking to jury after first trial was over and jurors told him they thought defendant's online chat with first minor was more egregious of two chats. U.S. v. Thomas, C.A.10 (Wyo.) 2005, 410 F.3d 1235. Constitutional Law 4527(2); Criminal Law 37.15(2); Constitutional Law 4564

Statute criminalizing use of interstate commerce to attempt to persuade a minor to engage in an illegal sexual act was not unconstitutionally overbroad or vague; violation of statute required only intent to entice a minor, not intent to commit underlying sexual act. U.S. v. Thomas, C.A.10 (Wyo.) 2005, 410 F.3d 1235. Constitutional Law 1134; Infants 12(8); Constitutional Law 1145(1)

Mandatory minimum sentence of five years for defendant's offense of attempting to persuade minor to engage in sexual acts by using computer connected to the Internet was not so grossly disproportionate to his crime as to constitute "cruel and unusual punishment" under the Eighth Amendment. U.S. v. Munro, C.A.10 (Utah) 2005, 394 F.3d 865, certiorari denied 125 S.Ct. 1964, 544 U.S. 1009, 161 L.Ed.2d 790. Sentencing And Punishment 1504

Statute making it criminal to knowingly persuade, induce, entice, or coerce minor to engage in illegal sexual activity, or to attempt to do so, did not violate First Amendment, inasmuch as statute only applied to those who knowingly persuaded or enticed, or attempted to persuade or entice, minors, and thus affected only those with intent to target

minors, and any limited or incidental effect on speech did not infringe on constitutionally protected rights of adults. U.S. v. Bailey, C.A.6 (Tenn.) 2000, 228 F.3d 637, certiorari denied 121 S.Ct. 1737, 532 U.S. 1009, 149 L.Ed.2d 661. Constitutional Law 2247; Infants 12(8)

Statute prohibiting attempted enticement of a minor was not overbroad as applied to defendant prosecuted as a result of a government-informant sting that occurred in an internet chat forum called "I Love Older Men"; defendant believed he was interacting with a child. U.S. v. D'Amelio, S.D.N.Y.2009, 636 F.Supp.2d 234. Constitutional Law 2247; Infants 12(8); Infants 13

Any prejudice to defendant by prosecutorial misconduct based on government's intentional deterrence of defense witness from attending trial to assist defendant charged with offenses related to illicit sexual conduct in foreign places was harmless, on grounds that defendant was not deprived of due process right to fair trial, since declaration containing witness' testimony was read to jury, was not subject to cross-examination, contained inadmissible hearsay, was cumulative, and would not have exonerated defendant, and evidence against defendant was overwhelming. U.S. v. Bianchi, E.D.Pa.2009, 594 F.Supp.2d 532. Constitutional Law 4689; Criminal Law 1171.1(1)

Personal money judgment against defendant in the amount of $3,927,392.40, which was the greatest amount sought for his four convictions, did not violate the excessive fines clause of the Eighth Amendment; forfeiture was well under authorized penalty, was consonant with the harm defendant personally caused, and was not grossly disproportional to gravity of defendant's offenses of conspiracy to use interstate commerce facilities to promote prostitution, violation of Travel Act, inducement of interstate travel to engage in prostitution, and conspiracy to commit money laundering. U.S. v. Reiner, D.Me.2005, 397 F.Supp.2d 101. Fines 1.3; Forfeitures 3

In prosecution for attempting to persuade, induce, entice, or coerce a minor to engage in illegal sex acts, search of defendant's trash did not violate Fourth Amendment, as would warrant new trial and/or arrest of judgment; trash bags were not within curtilage of defendant's home when trash haulers handed them over to detective. U.S. v. Riccardi, D.Kan.2003, 258 F.Supp.2d 1212, affirmed 405 F.3d 852, rehearing denied, certiorari denied 126 S.Ct. 299, 546 U.S. 919, 163 L.Ed.2d 260, rehearing denied 126 S.Ct. 825, 546 U.S. 1083, 163 L.Ed.2d 719, post-conviction relief denied 2007 WL 852360, reconsideration denied 2007 WL 1218021, affirmed 314 Fed.Appx. 99, 2008 WL 4183921, certiorari denied 129 S.Ct. 2072, 173 L.Ed.2d 1148. Criminal Law 921; Criminal Law 968(2)

Criminal statute which prohibited using means of interstate commerce to persuade minor to engage in sexual act did not violate First Amendment; although method of persuasion involved would usually involve some form of speech, statute did not attempt to regulate content of speech, but simply criminalized conduct which incidentally involved speech. U.S. v. Kufrovich, D.Conn.1997, 997 F.Supp. 246. Constitutional Law 2247; Infants 12(8)

2. Prior law

Former § 398 of this title [now covered by this chapter] making it a felony to transport or cause to be transported in any territory a woman for immoral purposes, and former § 399 of this title making it a felony for any person to induce a woman to go from one place to another in any territory for purpose of prostitution, applied to the Territory of Hawaii, notwithstanding subsequent former § 403 of this title that the term territory as used in former §§ 397 to 404 of this title included District of Alaska, the insular possessions of the United States, and the Canal Zone, since Hawaii was a territory when former §§ 397 to 404 of this title were enacted, and former § 403 of this title merely brought within former §§ 397 to 404 of this title transportation in those places belonging to the United States which were not territories when former §§ 397 to 404 were enacted. Sun Chong Lee v. U.S., C.C.A.9 (Hawai'i) 1942, 125 F.2d 95. Territories 18

Transportation in an automobile was a violation of former § 398 of this title, in view of fact that former §§ 399 and 400 of this title only denounced transportation by a common carrier in interstate commerce. Sloan v. U.S., C.C.A.8 (Mo.)

1923, 287 F. 91.

3. Offenses under this section

District court's sentence of 60 months for defendant convicted by jury of use of interstate commerce to entice a minor to engage in illicit sex, which was the statutory minimum but 48 months below the guidelines range, based in part on district court's determination that defendant's conduct was less predatory than that of co-defendant, who pleaded guilty and received 68 month sentence, was not a proper application sentencing statute mandate that a court minimize unwarranted disparities in sentences; the lower sentence for the co-defendant was attributable to his decision to plead guilty to the offense and his cooperation with the government, which was a legally appropriate consideration. U.S. v. Pisman, C.A.7 (Ill.) 2006, 443 F.3d 912, rehearing denied, certiorari denied 127 S.Ct. 413, 549 U.S. 955, 166 L.Ed.2d 274. Sentencing And Punishment 870

Defendant carried firearm "during and in relation to" the violent felony of which he was convicted, i.e., of attempting to persuade minor to engage in sexual acts by using computer connected to the Internet, when he traveled with semiautomatic firearm in his pocket to place where he arranged to meet undercover officer posing in Internet chat room as 13-year-old girl, notwithstanding defendant's contention that his crime was complete when he logged off his computer; by traveling to prearranged meeting place, at which time he had gun in his possession, defendant took substantial step toward completion of his attempt offense. U.S. v. Munro, C.A.10 (Utah) 2005, 394 F.3d 865, certiorari denied 125 S.Ct. 1964, 544 U.S. 1009, 161 L.Ed.2d 790. Weapons 192

Defendant, who pleaded guilty to using interstate and international communication to entice a female under the age of 18 to engage in sexual activity, was not entitled to a four-level departure for a significantly reduced mental capacity based on a heart condition; psychiatrist testifying for the prosecution noted that defendant had not shown any signs of mental abnormality that might have been caused by oxygen deficiency, and defendant's crime was not the result of poor impulse control, as defendant communicated with undercover agent for more than a month and crossed the Atlantic Ocean to meet her, and advised her not to tell her mother what was going on and to delete from her computer all copies of the communications. U.S. v. Mallon, C.A.7 (Ill.) 2003, 345 F.3d 943. Sentencing And Punishment 862

Accused could not be convicted of causing transportation of women in interstate commerce for immoral purposes and of inducing women to go in interstate commerce on common carrier for immoral purposes merely because accused operated the house of prostitution to which women were accustomed to come from other states. McGuire v. U. S., C.C.A.8 (Minn.) 1945, 152 F.2d 577. Prostitution 19(4)

The offense set out in former § 399 of this title [now covered by this chapter], of inducing a woman to go in interstate commerce on a common carrier for immoral purpose might be committed where accused did not in any manner directly contribute to the transportation by a common carrier. U.S. v. Saledonis, C.C.A.2 (Conn.) 1937, 93 F.2d 302. Prostitution 19(2)

Defendant, who enticed a girl from one state to another for commercial immoral purposes, was guilty of violating former §§ 397 to 404 of this title [now covered by this chapter] though the girl did not know of the purpose for which she was intended. Prdjun v. U. S., C.C.A.6 (Mich.) 1916, 237 F. 799, 151 C.C.A. 41. Prostitution 19(4)

Former § 399 of this title [now covered by this chapter] charged two offenses, transportation for sporadic immorality or debauchery, and for habitual indulgence in such offenses, but accused, who, having invited a woman in Fargo, N.D., to dine with him, for convenience had her come to Moorhead, Minn., and then returned with her to North Dakota, where they engaged in immoral relations was not guilty of offense under such former § 399. Gillette v. U.S., C.C.A.8 (N.D.) 1916, 236 F. 215, 149 C.C.A. 405.

Defendant's offense of using interstate commerce to engage in sexual activity with a minor, and his prior Kansas conviction for sexual exploitation of a child, constituted crimes of violence, and therefore defendant was a career offender, for purposes of his sentencing for the former offense; both crimes carried an inherent risk of potential physical harm stemming from acts of sexually exploiting minors. U.S. v. Searcy, S.D.Fla.2003, 299 F.Supp.2d 1285, affirmed 418 F.3d 1193, certiorari denied 126 S.Ct. 1107, 546 U.S. 1125, 163 L.Ed.2d 918. Sentencing And Punishment 1245; Sentencing And Punishment 1285

The enhancement for unduly influencing a minor to engage in sexual activity did not apply where the "victim" was an adult undercover agent posing as a minor, in prosecution in which defendant pled guilty to using wire communications to induce or coerce an individual under the age of 18 to engage in sexual activity and attempting to transport a minor in interstate commerce with the intent to engage in sexual activity. U.S. v. Hamm, W.D.Ky.2003, 281 F.Supp.2d 929. Sentencing And Punishment 703

Government did not entrap defendant to attempt to induce minor to engage in illegal sexual activity or to distribute child pornography, even though defendant did not have criminal record, had good reputation, and did not profit from activities, and government first suggested that fictitious female minor visit him, where defendant initiated sexual discussions with minor, strongly encouraged her to come visit and then live with him, and offered to and ultimately paid for one-way bus ticket for her to come to his home, defendant had indicated that he had visited "Girls and Older Guys" Internet chat room, had chatted with other teenage girls prior to meeting minor, and had "prayed for" someone like minor all his life, and government's did not engage in repeated or persistent solicitation. U.S. v. O'Brien, C.A.9 (Cal.) 2001, 27 Fed.Appx. 882, 2001 WL 1609763, Unreported, certiorari denied 122 S.Ct. 1341, 535 U.S. 947, 152 L.Ed.2d 245. Criminal Law 37(7)

4. Elements of offense

Convictions for attempting to entice a minor to engage in criminal sexual activity and for traveling in interstate commerce for purpose of engaging in criminal sexual act with a child under the age of 12 do not require the existence of an actual minor victim; such convictions turn on the criminal intent with which the defendant acted, not on the existence of an actual child. U.S. v. Farley, C.A.11 (Ga.) 2010, 607 F.3d 1294, certiorari denied 131 S.Ct. 369, 178 L.Ed.2d 238. Infants 13

Defendant could have been convicted of attempted enticement of a minor to engage in sexual activity even though he attempted to exploit only fictitious minors; although defendant communicated only with the purported mother of two fictitious minors, the statute does not require an actual minor victim. U.S. v. Lee, C.A.11 (Ga.) 2010, 603 F.3d 904, certiorari denied 131 S.Ct. 437, 178 L.Ed.2d 339. Infants 13

Convictions for attempting to entice a minor to engage in illegal sexual activity, attempting to transfer obscene material to someone under the age of 16, and attempting to travel in interstate commerce for the purpose of engaging in illicit sexual conduct do not require proof that the intended victim is an actual minor, as long as defendant believes that the victim is a minor. U.S. v. Spurlock, C.A.8 (Mo.) 2007, 495 F.3d 1011, certiorari denied 128 S.Ct. 687, 552 U.S. 1054, 169 L.Ed.2d 537, habeas corpus dismissed 2010 WL 256673. Infants 20

A defendant may commit crime of attempting to entice a minor to engage in illegal sexual activity by communicating with an adult guardian of a minor. U.S. v. Douglas, C.A.2 (Vt.) 2010, 626 F.3d 161, certiorari denied 131 S.Ct. 1024, 178 L.Ed.2d 847, for additional opinion, see 415 Fed.Appx. 271, 2011 WL 538863. Infants 13

Defendant could be found guilty of using a facility or means of interstate commerce knowingly to attempt to persuade, induce or entice a minor to engage in a sexual act if he believed, albeit mistakenly, that the victim was a minor. U.S. v. Cote, C.A.7 (Ill.) 2007, 504 F.3d 682, rehearing en banc denied , certiorari denied 128 S.Ct. 2519, 553 U.S. 1073, 171 L.Ed.2d 800. Infants 13

Existence of actual minor victim is not required in order to convict for attempting to persuade minor to engage in criminal sexual activity; defendant's belief that minor is involved is sufficient to sustain attempt conviction. U.S. v. Root, C.A.11 (Ga.) 2002, 296 F.3d 1222, rehearing and rehearing en banc denied 48 Fed.Appx. 744, 2002 WL 31055394, certiorari denied 123 S.Ct. 1006, 537 U.S. 1176, 154 L.Ed.2d 921. Infants 20

To sustain a conviction under this section it is necessary for government to prove as essential elements of offense charged the interstate transportation of the victim and the existence, in defendant's mind at time of transportation, of the intent to have the victim enter into prostitution activities. Lerma v. U. S., C.A.8 (Minn.) 1968, 387 F.2d 187, certiorari denied 88 S.Ct. 1658, 391 U.S. 907, 20 L.Ed.2d 421. Prostitution 19(2); Prostitution 19(3)

Allegations by plaintiff that defendant used a facility or means of interstate commerce to knowingly persuade, induce or entice plaintiff, when she was under the age of 18 years, to engage in prostitution or sexual activity for which any person could be charged with a criminal offense stated claim for coercion and enticement to engage in sexual activity; however, plaintiff was required to provide more definite statement as to whether plaintiff claimed prostitution or another criminal offense. Doe v. Epstein, S.D.Fla.2009, 611 F.Supp.2d 1339. Infants 13; Infants 92

Statute prohibiting attempts to induce minors into sexual activities makes unlawful attempts to induce those believed to be minors, even if they turn out to be of-age federal agents, into sexual activities. U.S. v. Miller, N.D.Ill.2000, 102 F.Supp.2d 946. Infants 13

Statute proscribing the use of a facility and means of interstate commerce for enticement to commit child molestation prohibits an individual from arranging to have sex with a minor, even a fictitious minor, through communications with an adult intermediary, as opposed to prohibiting only direct communications with a minor. U.S. v. Bolen, C.A.11 (Ga.) 2005, 136 Fed.Appx. 325, 2005 WL 1475845, Unreported, certiorari denied 126 S.Ct. 501, 546 U.S. 970, 163 L.Ed.2d 380. Infants 13

5. Intent

Statute prohibiting actual or attempted persuasion of a minor to engage in illicit sexual activity was not unconstitutionally overbroad in violation of First Amendment right to free speech; scienter and intent requirements of the statute sufficiently limited criminal culpability to reach only conduct outside the protection of the First Amendment. U.S. v. Tykarsky, C.A.3 (Pa.) 2006, 446 F.3d 458, appeal after new sentencing hearing 295 Fed.Appx. 498, 2008 WL 4492626, certiorari denied 129 S.Ct. 1929, 173 L.Ed.2d 1076. Constitutional Law 2247; Infants 12(8)

An intention that women or girls engage in proscribed conduct must be found to exist before conclusion of interstate journey, and must be dominant motive of such interstate movement in order to establish a violation of this section. U. S. v. McConney, C.A.2 (N.Y.) 1964, 329 F.2d 467. Prostitution 19(3)

It was not an essential element of the offense of inducing a woman to go in interstate commerce on a common carrier for immoral purposes that the inducer should intend that the transportation should be by common carrier, if he knew or should have known that interstate transportation by common carrier would reasonably result and it did result. U.S. v. Saledonis, C.C.A.2 (Conn.) 1937, 93 F.2d 302. Prostitution 19(3)

Diocese, church, bishop, and another priest (diocesan defendants) did not aid and abet parish priest who sexually abused teenage parishioner in violation of Child Abuse Victims' Rights Act (CAVRA); while that priest committed multiple listed statutory offenses, diocesan defendants did not know the offenses were being committed and act with the intent to facilitate them. Doe v. Liberatore, M.D.Pa.2007, 478 F.Supp.2d 742, reconsideration denied 2007 WL 1450705. Religious Societies 30

6. Interstate travel

Jury's acquittal of defendant on underlying offense of conspiracy did not preclude defendant's conviction for use of interstate commerce to entice a minor to engage in illicit sex, based on co-conspirator's internet correspondence with minors to arrange the meetings. U.S. v. Pisman, C.A.7 (Ill.) 2006, 443 F.3d 912, rehearing denied, certiorari denied 127 S.Ct. 413, 549 U.S. 955, 166 L.Ed.2d 274. Criminal Law 878(3)

To sustain a conviction for violation of this chapter it was sufficient that a common carrier in interstate commerce would likely be and was utilized, despite claim of defendant that he did not know that an interstate carrier would be employed in trip. U. S. v. Jenkins, C.A.5 (Fla.) 1971, 442 F.2d 429. Prostitution 19(2)

Proof that defendant, charged with violation of this section, and his wife resided in New York and were later in Connecticut where wife engaged in acts of prostitution was insufficient to prove interstate transportation necessary to establish violation of this section. U. S. v. McConney, C.A.2 (N.Y.) 1964, 329 F.2d 467. Prostitution 28

Testimony that automobile owned by wife of defendant, charged with violation of this section was registered in a state other than that in which wife admittedly engaged in acts of prostitution was insufficient to establish necessary interstate transportation. U. S. v. McConney, C.A.2 (N.Y.) 1964, 329 F.2d 467. Prostitution 28

To constitute violation of this section it is essential that interstate transportation of female have for its object or be the means of effecting or facilitating proscribed activities. U. S. v. McConney, C.A.2 (N.Y.) 1964, 329 F.2d 467. Prostitution 19(3)

Under this section making it a crime to induce a woman to go from one place to another in interstate commerce for purpose of prostitution, it is inducing the transportation for immoral purposes that is the crime rather than the furnishing or procuring of the transportation as such, and it is not necessary to establish that accused paid for or provided the transportation. Nunnally v. U. S., C.A.5 (Ala.) 1961, 291 F.2d 205. Prostitution 19(1)

In a prosecution for inducing another to travel by common carrier interstate for the purpose of prostitution and for conspiracy, where proof of interstate transportation was not disputed, what happened after the victim got to her destination was immaterial and the offense was complete when there was transportation of the female in interstate commerce for immoral purposes. Bell v. U.S., C.A.8 (Minn.) 1958, 251 F.2d 490. Prostitution 19(4)

Transportation by common carrier is an essential element of offense of enticing or coercing a woman to go as passenger by common carrier in interstate commerce for immoral purposes. Politano v. U. S., C.A.10 (Colo.) 1955, 220 F.2d 217. Prostitution 19(2)

On a trial for inducing a woman to go in interstate commerce on a common carrier for immoral purposes, it was unnecessary to show control of the medium of transportation by the inducer. U.S. v. Saledonis, C.C.A.2 (Conn.) 1937, 93 F.2d 302. Prostitution 19(2)

Defendant's assigned criminal history category, in his sentencing for using interstate commerce to engage in sexual activity with a minor, did not adequately reflect the likelihood he would commit other crimes, and therefore an upward departure was appropriate, even though his prior convictions were factored into his Sentencing Guidelines computation; defendant exhibited an exceptional degree of recidivist tendencies in that his conduct represented an extreme pattern of sexual predation upon young girls that was not abated by shorter periods of incarceration. U.S. v. Searcy, S.D.Fla.2003, 299 F.Supp.2d 1285, affirmed 418 F.3d 1193, certiorari denied 126 S.Ct. 1107, 546 U.S. 1125, 163 L.Ed.2d 918. Sentencing And Punishment 841

Interstate transportation of the woman was essential to violation of former §§ 398 to 400 of this title [now covered by this chapter]. In re Squires, Vt.1945, 44 A.2d 133, 114 Vt. 285. Prostitution 19(2)

An attempted enticement of a girl completed before interstate transportation was commenced was intrastate commerce, not within purview of former §§ 397 to 404 of this title, and therefore punishable by the Donlan Act, Laws Mont.1911, c. 1. State v. Reed, Mont.1917, 163 P. 477, 53 Mont. 292, Am.Ann.Cas. 1917E,783. Commerce 82.10

7. Persuasion or inducement

Risk of physical injury involved in crime of which defendant was convicted, of attempting to persuade minor to engage in sexual acts by using computer connected to the Internet, was significant enough to render it a "crime of violence" under firearm statute; accordingly, defendant could be convicted under firearm statute, if he used or carried firearm during and in relation to this attempt offense. U.S. v. Munro, C.A.10 (Utah) 2005, 394 F.3d 865, certiorari denied 125 S.Ct. 1964, 544 U.S. 1009, 161 L.Ed.2d 790. Weapons 194(2)

It is the inducement of transportation which is prohibited under this section prohibiting inducement of a woman to be transported in interstate commerce for purposes of prostitution and not actual provision of that transportation. U. S. v. Pelton, C.A.8 (Mo.) 1978, 578 F.2d 701, certiorari denied 99 S.Ct. 451, 439 U.S. 964, 58 L.Ed.2d 422. Prostitution 19(1)

Word "induces" in this section is one of common usage and meaning and requires no explanation or definition. Batsell v. U. S., C.A.8 (Minn.) 1968, 403 F.2d 395, certiorari denied 89 S.Ct. 865, 393 U.S. 1094, 21 L.Ed.2d 785. Prostitution 19(1)

The gravamen of this section is knowingly persuading, inducing, enticing or coercing any woman to go from one place to another in interstate commerce, for purpose of prostitution or debauchery, or for any other immoral purpose, whether with or without consent of woman. Blumenfield v. U. S., C.A.8 (Minn.) 1960, 284 F.2d 46, certiorari denied 81 S.Ct. 693, 365 U.S. 812, 5 L.Ed.2d 692. Prostitution 19(1)

Under this section making it a criminal offense for any person knowingly to induce or coerce any woman or girl to go from one place to another in interstate commerce for purpose of prostitution, requisite inducement is any offer sufficient to cause woman to respond. Harms v. U.S., C.A.4 (Va.) 1959, 272 F.2d 478, certiorari denied 80 S.Ct. 590, 361 U.S. 961, 4 L.Ed.2d 543. Prostitution 19(1)

Under this section making it criminal offense for anybody knowingly to persuade, induce, entice, or coerce any woman to go from one place to another in interstate commerce for purpose of prostitution, gravamen of offense is the inducement or persuasion to travel in interstate commerce for immoral purposes, since the immoral acts or pursuits in themselves are exclusively the subject of regulation under police power of state where they are committed, and said section makes intent to transport women in interstate commerce for such immoral purposes an element of the crime, and government must present evidence showing intent of defendant in regard to interstate aspect of offense and this intent must necessarily exist prior to or concurrent with the interstate trip of victim. Harms v. U.S., C.A.4 (Va.) 1959, 272 F.2d 478, certiorari denied 80 S.Ct. 590, 361 U.S. 961, 4 L.Ed.2d 543. Prostitution 19(4)

Where person operating a house of prostitution made a phone call to a woman she had previously known to induce such woman to return to work for operator, it was not essential that government, in prosecuting operator for violation of this section, show that operator directed or knew that other woman would travel by interstate commerce, and having shown the knowing inducement or persuasion of woman to come from one state to another and her resultant trip by

interstate carrier, government covered essential elements necessary to justify conviction of operator for knowingly inducing a woman to go from one place to another in interstate commerce for purpose of prostitution. Harms v. U.S., C.A.4 (Va.) 1959, 272 F.2d 478, certiorari denied 80 S.Ct. 590, 361 U.S. 961, 4 L.Ed.2d 543. Prostitution 28

Where defendant gave prostitute $50 for her expenses in traveling from San Francisco to house of prostitution in Arizona and made arrangements for prostitute with another prostitute who was driving to the same destination, defendant persuaded and induced prostitute to make the trip for purposes of prostitution in violation of § 2421 of this title. Ege v. U. S., C.A.9 (Cal.) 1957, 242 F.2d 879. Prostitution 19(3)

Accused's expectation of resuming immoral relation with girl on her return home did not make him guilty, in the absence of any persuasion by him. Welsch v. U.S., C.C.A.4 (W.Va.) 1915, 220 F. 764, 136 C.C.A. 370. Prostitution 19(1)

Government was entitled to a personal money judgment forfeiture against defendant for $581,310 for his conviction for inducement of interstate travel to engage in prostitution, which sum represented tips that prostitute earned from sexual favors and gave to her pimp during 143-week period, and direct receipts paid to so-called "health club" from prostitute's customers; Government established beyond a reasonable doubt that defendant took custody of all club's receipts and that he aided and abetted pimp in obtaining prostitute's tips revenue. U.S. v. Reiner, D.Me.2005, 397 F.Supp.2d 101. Forfeitures 3; Forfeitures 4

Act of defendant, who is charged with violations of this section, in furnishing money used by victim in accordance with plan of defendant is sufficient to establish element of inducement. U. S. v. Austrew, D.C.Md.1962, 202 F.Supp. 816, affirmed 317 F.2d 926. Prostitution 19(1)

In prosecution under former §§ 398 and 399 of this title [now covered by this chapter] and for conspiracy to violate such former §§ 398 and 399, defendant was liable where as part of the inducement he gave the assurance of a place and the means to practice prostitution. U. S. v. Sorrentino, M.D.Pa.1948, 78 F.Supp. 425, affirmed 175 F.2d 721, certiorari denied 70 S.Ct. 143, 338 U.S. 868, 94 L.Ed. 532, rehearing denied 70 S.Ct. 238, 338 U.S. 896, 94 L.Ed. 551. Conspiracy 40.1; Prostitution 22

8. Purpose of travel

Prostitution or other criminal sexual activity needs to be one of the dominant purposes, but need not be the dominant purpose, of travel in order to convict for coercing travel or transporting a minor in interstate commerce to engage in prostitution or other criminal sexual activity. U.S. v. Miller, C.A.2 (N.Y.) 1998, 148 F.3d 207, 167 A.L.R. Fed. 809, certiorari denied 119 S.Ct. 804, 525 U.S. 1072, 142 L.Ed.2d 665. Prostitution 19(3)

To constitute an offense under this chapter there may be dual purposes and prostitution need be only one of the principal purposes for traveling in interstate commerce. U. S. v. Jenkins, C.A.5 (Fla.) 1971, 442 F.2d 429. Prostitution 19(3)

Under this section punishing one who knowingly persuades a woman to go from one place to another in interstate commerce for purpose of prostitution and as a consequence knowingly causing such woman to be carried as a passenger upon a common carrier in interstate commerce, prostitution or such immoral purpose need not be sole motive for interstate trip and it is sufficient if it is one of principal purposes. Nunnally v. U. S., C.A.5 (Ala.) 1961, 291 F.2d 205. Prostitution 19(3)

The interstate transportation which former § 399 of this title [now covered by this chapter] made penal was only such as was undertaken or initiated for the purpose of effecting, aiding or facilitating prostitution, debauchery, or other

immoral practices. U.S. v. Reginelli, C.C.A.3 (N.J.) 1943, 133 F.2d 595, certiorari denied 63 S.Ct. 856, 318 U.S. 783, 87 L.Ed. 1150, rehearing denied 63 S.Ct. 1027, 319 U.S. 780, 87 L.Ed. 1725. Prostitution 19(3); Prostitution 26

9. Age of victim

Crime of using a facility or means of interstate commerce knowingly to attempt to persuade, induce or entice a minor to engage in a sexual act requires proof of the defendant's knowledge of the age of the victim. U.S. v. Cote, C.A.7 (Ill.) 2007, 504 F.3d 682, rehearing en banc denied , certiorari denied 128 S.Ct. 2519, 553 U.S. 1073, 171 L.Ed.2d 800. Infants 13

A defendant may be convicted of attempting to violate statute prohibiting enticement of a minor to engage in sexual activity using the Internet even if the attempt is made towards someone the defendant believes is a minor but who is actually not a minor. U.S. v. Hicks, C.A.8 (Mo.) 2006, 457 F.3d 838. Infants 13; Telecommunications 1350

The crime of attempting to entice a minor to engage in illegal sexual activity does not require that the intended victim be an actual minor. U.S. v. Helder, C.A.8 (Mo.) 2006, 452 F.3d 751, rehearing and rehearing en banc denied. Infants 13

Mere fact that alleged victims were in fact not persons under age of eighteen did not preclude conviction of use of means of interstate commerce in attempting sexual contact with minors. U.S. v. Powell, N.D.Ala.1998, 1 F.Supp.2d 1419, affirmed 177 F.3d 982. Infants 13

10. Separate offenses

Offenses proscribed by this section and section 2421 of this title are separate and distinct. U. S. v. Taitano, C.A.9 (Guam) 1971, 442 F.2d 467, certiorari denied 92 S.Ct. 92, 404 U.S. 852, 30 L.Ed.2d 92. Prostitution 19(1)

Offenses prescribed by this section and § 2421 of this title, are separate and distinct. Batsell v. U. S., C.A.8 (Minn.) 1968, 403 F.2d 395, certiorari denied 89 S.Ct. 865, 393 U.S. 1094, 21 L.Ed.2d 785. Prostitution 19(1)

Offense of causing interstate transportation of a woman for immoral purposes and offense of inducing a woman to go in interstate commerce for immoral purposes are separate crimes. Nunnally v. U. S., C.A.5 (Ala.) 1961, 291 F.2d 205. Prostitution 19(1)

The offense of causing transportation of a woman in interstate commerce for immoral purposes and the offense of inducing a woman to go in interstate commerce on a common carrier for immoral purposes are separate crimes. La Page v. U. S., C.C.A.8 (Minn.) 1945, 146 F.2d 536. See, also, Hill v. U.S., C.C.A..Minn.1945, 150 F.2d 760. Prostitution 19(1)

The offense of obtaining or aiding the transportation of a woman in interstate commerce for immoral purposes condemned by former § 398 of this title [now covered by this chapter] and the offense of inducing a woman to go in interstate commerce on a common carrier for immoral purposes condemned by former § 399 of this title [now covered by this chapter] were separate and distinct, and one person might be guilty of both offenses, though they formed the same transaction. U.S. v. Saledonis, C.C.A.2 (Conn.) 1937, 93 F.2d 302. See, also, Wagner v. U.S., C.A.Ala.1949, 171 F.2d 354, certiorari denied 69 S.Ct. 1499, 337 U.S. 944, 93 L.Ed. 1747. Double Jeopardy 148; Prostitution 19(1)

Transporting woman for immoral purpose, or inducing such transportation, in either case was single offense but

transporting woman and inducing her to be transported for immoral purpose, though single transaction, constituted separate offenses. Roark v. U.S., C.C.A.8 (Colo.) 1927, 17 F.2d 570. Criminal Law 29(12)

The provisions of former §§ 398 to 400 of this title [now covered by this chapter] prohibiting the transportation of a woman in interstate commerce for immoral purposes, inducing transportation for immoral purposes, and inducing interstate transportation of a woman or girl under 18 for immoral purposes, defined separate and distinct offenses. Wilhoit v. Hiatt, M.D.Pa.1945, 60 F.Supp. 664. Prostitution 19(1)

11. Conspiracy

In prosecution for conspiracy to violate this section, a government witness who was the one concerned in the transaction was not a conspirator even though a willing object of interstate transportation for the purposes of prostitution. U. S. v. Frank, C.A.3 (Pa.) 1961, 290 F.2d 195, certiorari denied 82 S.Ct. 38, 368 U.S. 821, 7 L.Ed.2d 26. Criminal Law 507(1)

That male defendant and female defendant allegedly conspired and agreed to cause female defendant to enter interstate commerce for purpose of prostitution, and allegedly caused female defendant to be carried as a passenger upon the line of a common carrier in such commerce, did not constitute a conspiracy to violate this section or § 2421 of this title. Blassingame v. U.S., C.A.9 (Wash.) 1955, 220 F.2d 25. Conspiracy 35

12. Defenses

Government agents did not induce defendant to attempt to persuade or induce a minor to travel in interstate commerce to engage in sexual activity and using a facility of interstate commerce to do so, and therefore, an agent's posing as mother of two daughters in online conversations in which defendant told agent to bring daughters when meeting him to be trained as sex slaves was not entrapment; agent's online profile contained no sexual information but defendant initiated contact with agent without provocation by asking agent about sexually abusing the children, and defendant repeatedly affirmed that agent was to bring daughters with when meeting him, even when agent suggested not bringing daughters. U.S. v. Orr, C.A.7 (Ill.) 2010, 622 F.3d 864, certiorari denied 131 S.Ct. 2889. Criminal Law 37(6.1)

Even if induced, defendant was predisposed to violate the law, and thus the district court did not err in finding that defendant was not entrapped during his prosecution for knowingly attempting to induce a child to engage in criminal sexual activities; defendant met someone in romance chat room and quickly learned she was 14-years old, defendant engaged in sexually explicit conversation and asked about her undergarments, defendant initiated second chat and raised subject of physical meeting, defendant steered discussion toward sex, person defendant was chatting with introduced the subject of her age on a number of occasions, and without encouragement defendant sent video of himself masturbating. U.S. v. Myers, C.A.8 (Ark.) 2009, 575 F.3d 801. Criminal Law 37(7)

Involvement of an actual minor, as distinguished from a government decoy, was not a prerequisite to conviction for actual or attempted persuasion of a minor to engage in illicit sexual activity or for traveling for the purpose of engaging in illicit sexual activity; text of statutes, and the legislative purpose and histories demonstrated the unlikeliness that Congress intended the disfavored doctrine of legal impossibility to apply. U.S. v. Tykarsky, C.A.3 (Pa.) 2006, 446 F.3d 458, appeal after new sentencing hearing 295 Fed.Appx. 498, 2008 WL 4492626, certiorari denied 129 S.Ct. 1929, 173 L.Ed.2d 1076. Infants 13

The fact that the "minor" that defendant attempted to coerce and entice to engage in sexual acts was in fact two adult men who had posed as a 12-year-old when corresponding over the internet with defendant was not a defense to offense of attempting to coerce and entice a minor to engage in sexual acts. U.S. v. Sims, C.A.10 (N.M.) 2005, 428 F.3d 945. Infants 13; Telecommunications 1350

Defense of legal impossibility did not preclude conviction for attempting to persuade and entice a minor to engage in criminal sexual activity, despite fact that recipient of defendant's electronic correspondence suggesting sexual activity, who represented herself as a 14-year-old girl, was actually an adult female agent for the Federal Bureau of Investigation (FBI); defendant intended to engage in sexual acts with a 14-year-old girl, and took substantial steps by arranging to meet her. U.S. v. Farner, C.A.5 (Tex.) 2001, 251 F.3d 510. Infants 20

In prosecution for inducing girl to travel in interstate commerce for purpose of prostitution, evidence disclosed no such criminal design of inducing girl to travel across state lines originating in minds of Federal Bureau of Investigation agents and no such inducing or luring of defendants by such agents into commission of criminal act as would substantiate defense of entrapment. U.S. v. Kramer, C.A.7 (Ind.) 1956, 236 F.2d 656. Criminal Law 569

Police did not engage in flagrant misconduct, as required for suppression of evidence provided by defendant and obtained through search of his house, when arrest for using technology to lure underage child from home with intent to engage in sexual conduct was suspect because defendant had in fact been communicating with adult police officer and no minor was actually involved; question of whether there was offense under those circumstances had not yet been resolved by state high court. U.S. v. Johnson, D.Nev.2006, 445 F.Supp.2d 1181. Criminal Law 392.32(4)

13. Indictment

Indictments alleging that models involved in prostitution ring traveled in interstate commerce failed to recite essential element of the Mann Act that defendant knowingly caused woman or girl to be carried upon line or route of any common carrier, and thus, indictments were insufficient. U.S. v. Holcomb, C.A.5 (Tex.) 1986, 797 F.2d 1320. Prostitution 23

An indictment for a conspiracy to violate this section was not defective because it did not set out an agreement on the defendant's part. U. S. v. Frank, C.A.3 (Pa.) 1961, 290 F.2d 195, certiorari denied 82 S.Ct. 38, 368 U.S. 821, 7 L.Ed.2d 26. Conspiracy 43(6)

In prosecution for conspiracy to violate this section, erroneous allegation of an overt act could be disregarded where there were five overt acts charged and only one had to be proved. U. S. v. Frank, C.A.3 (Pa.) 1961, 290 F.2d 195, certiorari denied 82 S.Ct. 38, 368 U.S. 821, 7 L.Ed.2d 26. Criminal Law 1167(1)

Indictments charging defendants with violations of this section was not rendered impotent as a true bill for failure to name woman involved and trial upon the indictments did not violate U.S.C.A.Const. Amends. 5 and 6. Blumenfield v. U. S., C.A.8 (Minn.) 1960, 284 F.2d 46, certiorari denied 81 S.Ct. 693, 365 U.S. 812, 5 L.Ed.2d 692. Constitutional Law 4581; Indictment And Information 56; Prostitution 23

Indictment charging defendants with violations of this section was not invalid for failure to name the woman alleged to have been induced to travel in interstate commerce when at pretrial hearing on motions to dismiss, government attorney stated name of woman and court announced that it would require government to provide defendants with a bill of particulars upon request therefor. Blumenfield v. U. S., C.A.8 (Minn.) 1960, 284 F.2d 46, certiorari denied 81 S.Ct. 693, 365 U.S. 812, 5 L.Ed.2d 692. Prostitution 23

Indictment count, charging that defendant had induced a named female to go from one state to another with intent that she should there engage in practice of prostitution and that he had knowingly caused her to be transported as a passenger of common carrier in interstate commerce, charged offense separate from that charged in another count alleging same conduct with regard to a different female; and defendant pleading guilty to both counts could be sentenced on each count and sentences could be imposed to run consecutively. Hiller v. U.S., C.A.9 (Wash.) 1958, 252 F.2d 54,

certiorari denied 78 S.Ct. 1002, 356 U.S. 963, 2 L.Ed.2d 1070. Sentencing And Punishment 522

Where indictments charging interstate transportation of females for purposes of prostitution involved in part the transportation of the same person and second indictment concerned an event happening but 12 days after the first indictment, consolidation of indictments for trial was within sound discretion of trial judge. U.S. v. Hibbs, C.C.A.7 (Ill.) 1945, 152 F.2d 269. Criminal Law 620(1)

Where in view of demurrer record would show that violation of former § 399 of this title [now covered by this chapter] making it a felony for any person to induce a woman to go from one place to another in any territory for purpose of prostitution, was intended to be charged so that defendant could not again be convicted of the same offense, the indictment was sufficient. Sun Chong Lee v. U.S., C.C.A.9 (Hawai'i) 1942, 125 F.2d 95. Indictment And Information 71.4(12)

Under former § 399 of this title [now covered by this chapter] making it a felony for any person to induce a woman to go upon a line or route of any common carrier from one place to another in any territory for purpose of prostitution, count of indictment charging that defendant caused a woman to be transported from one place in Territory of Hawaii to another place therein as a passenger on an airline, was not defective although it failed to allege that the airline was a common carrier, where indictment informed defendant what was intended to have been charged, and what he must be prepared to meet. Sun Chong Lee v. U.S., C.C.A.9 (Hawai'i) 1942, 125 F.2d 95. Indictment And Information 110(11); Prostitution 23

Under former § 399 of this title [now covered by this chapter] making it a felony for any person to induce a woman to go upon a line or route of any common carrier from one place to another in any territory for purpose of prostitution, even if count of indictment charging that defendant caused a woman to be transported from one place in Territory of Hawaii to another place therein as a passenger on an airline was defective because of failure to allege that the airline was a common carrier, the defect was one of form where evidently the airline was proven to be a common carrier at the trial. Sun Chong Lee v. U.S., C.C.A.9 (Hawai'i) 1942, 125 F.2d 95. Indictment And Information 110(11)

Where first count of indictment charging violations of former §§ 398 and 399 of this title [now covered by this chapter], was found to be defective after 3-year limitations under former § 582 of this title, had run, reindictment on the same count during the same court term, instead of "at any time during the next succeeding term of court" as required by former § 587 of this title, was improper and ineffective to toll limitations. Hughes v. U.S., C.C.A.6 (Tenn.) 1940, 114 F.2d 285. Criminal Law 160

Where second count of indictment charging violations of former §§ 398 and 399 of this title [now covered by this chapter] was found to be defective prior to expiration of 3-year limitation period under former § 582 of this title, reindictment at any time during the same term or before the end of the next succeeding term was sufficient to toll limitations. Hughes v. U.S., C.C.A.6 (Tenn.) 1940, 114 F.2d 285. Criminal Law 160

Third count of indictment charging violations of former §§ 397 to 404 of this title [now covered by this chapter] was not defective because it failed to state facts to support allegations of inducement and coercion, and failed to specify the common carrier or the route thereof, where there was nothing to indicate surprise or that accused was not fully apprised of the charge against him. Hughes v. U.S., C.C.A.6 (Tenn.) 1940, 114 F.2d 285. Prostitution 23

District Court did not err in overruling defendant's demurrer to third count of indictment charging violations of former §§ 397 to 404 of this title [now covered by this chapter], where the count was in the language of these sections, and charged a statutory offense. Hughes v. U.S., C.C.A.6 (Tenn.) 1940, 114 F.2d 285. Indictment And Information 110(51)

Indictment charged offense under former §§ 398 and 399 of this title [now covered by this chapter] making it proper to sentence under each count. Kavalin v. White, C.C.A.10 (Kan.) 1930, 44 F.2d 49.

It was sufficient that the indictment charged the offense in the language of the statute, and set it forth with sufficient particularity to enable the defendant intelligently to prepare his defenses and it did not have to conform to a state statute. Simpson v. U.S., C.C.A.9 (Cal.) 1917, 245 F. 278, 157 C.C.A. 470, certiorari denied 38 S.Ct. 133, 245 U.S. 667, 62 L.Ed. 538.

An indictment was sufficient which set out that the woman was persuaded to go from one state to another for the purpose of engaging in illicit intercourse, cohabitation, and concubinage with the accused, as illicit cohabitation and concubinage were immoral acts analogous to prostitution, and came well within the letter of former § 399 of this title [now covered by this chapter]. U.S. v. Flaspoller, E.D.La.1913, 205 F. 1006.

Instruction telling the jury that it could convict defendant of attempted enticement of a minor if he used either the Internet or the telephone system to attempt to entice a minor constructively amended the indictment, which included a "to wit" clause that identified the Internet as the specific "facility of interstate commerce" used to commit the crime, thus violating the Fifth Amendment; there was no way to know whether a grand jury asked to vote on a more generally worded indictment would have concluded that the telephone calls at issue were sufficiently "enticing" to be prima facie criminal. U.S. v. D'Amelio, S.D.N.Y.2009, 636 F.Supp.2d 234. Indictment And Information 159(2)

Indictment for use of interstate commerce to attempt sexual conduct with minors, which tracked language of statute that unambiguously set forth all elements of offense, and in addition specified dates of defendant's alleged criminal activity, facility and means of interstate commerce allegedly used, and aliases of persons defendant allegedly contacted, was sufficient. U.S. v. Powell, N.D.Ala.1998, 1 F.Supp.2d 1419, affirmed 177 F.3d 982. Indictment And Information 86(2); Indictment And Information 87(2); Indictment And Information 110(48)

Joinder of defendants in one indictment was proper under Federal Criminal Rule 8(b), where both defendants were charged in count 1 with having participated in the same act or transaction, or in the same series of acts or transactions, of transporting a woman in interstate commerce from Ohio to Tennessee. U.S. v. Simmons, M.D.Tenn.1984, 610 F.Supp. 295, affirmed 756 F.2d 453. Indictment And Information 124(1)

Indictment charging that defendant, "using a facility and means of interstate commerce, that is a computer connected to the Internet, attempted knowingly to persuade, induce, entice, and coerce an individual who had not attained the age of 18 years to engage in prohibited sexual conduct, that is child molestation," sufficiently alleged each element of the offense, even though defendant never communicated with a minor or an undercover officer posing as a minor. U.S. v. Bolen, C.A.11 (Ga.) 2005, 136 Fed.Appx. 325, 2005 WL 1475845, Unreported, certiorari denied 126 S.Ct. 501, 546 U.S. 970, 163 L.Ed.2d 380. Infants 20

14. Variance

Variance between allegation and proof as to the common carrier on which defendant knowingly caused a woman to be transported as a passenger in interstate commerce for purpose of prostitution was slight at the most and did not constitute reversible error. Nunnally v. U. S., C.A.5 (Ala.) 1961, 291 F.2d 205. Criminal Law 1167(1)

Convictions for conspiracy to violate former § 397 et seq. of this title [now covered by this chapter] could not be sustained on theory that defendants conspired to violate former § 399 of this title [now covered by this section] dealing with the offense of inducing transportation of a woman by common carrier for immoral purposes, where indictment did not allege that defendant conspired to cause anyone to be transported on the line or route of any common carrier, and record showed that cases were tried and jury was instructed only with reference to former § 398 of this title [now covered by § 2421 of this title] dealing with the transportation of a woman for immoral purposes. Graham v. U.S.,

App.D.C.1946, 154 F.2d 325, 81 U.S.App.D.C. 49. Conspiracy 28(3)

15. Plea of guilty

Two-level departure for defendant, who pleaded guilty to using interstate and international communication to entice a female under the age of 18 to engage in sexual activity, on the grounds of a combination factors, including defendant's national origin and health, was not warranted. U.S. v. Mallon, C.A.7 (Ill.) 2003, 345 F.3d 943. Sentencing And Punishment 870

Where one of three defendants charged with violation of this chapter and conspiracy to violate said chapter moved for permission to withdraw his plea of guilty, making by court of statement in presence of prospective jurors that such defendant could withdraw his plea of guilty and change it to one of not guilty, did not constitute error, since it was incumbent upon that defendant to secure a timely ruling, before trial, on the merits of the motion, and not to wait until the beginning of trial. Cwach v. U.S., C.A.8 (Minn.) 1954, 212 F.2d 520. Criminal Law 655(1)

Refusing to permit defendants to withdraw their plea of guilty to charge of violating former § 399 of this title [now covered by this chapter] was not an abuse of discretion where evidence before the court clearly established defendants' guilt, and defendants offered no evidence to establish their innocence. Cantwell v. U.S., C.C.A.4 (W.Va.) 1947, 163 F.2d 782. Internal Revenue 5309

Accused's admissions during plea inquiry supported his guilty plea to attempting to entice a minor to engage in illegal sexual activity, in prosecution based on accused's online conversations in an Internet chat room with undercover police officer posing as a 14-year-old girl; accused admitted that his communications were designed to induce the girl to engage in sexual activity, and that those actions constituted more than mere preparatory steps. U.S. v. Garner, U.S. Armed Forces 2010, 69 M.J. 31. Military Justice 987

Defendant, who pleaded guilty to using facilities and means of interstate commerce to persuade, induce, entice, and coerce a minor to engage in prostitution and other sexual activity for which a person could have been charged with a criminal offense, agreed as part of plea bargain to waive right to appeal any determination made by district court at sentencing as to his career offender status, as required for enforcement of waiver of right to appeal; defendant responded to comments respecting waiver made by government and court by indicating that he understood, and his counsel noted that career offender ruling would not be grounds to withdraw guilty plea. U.S. v. Williams, C.A.10 (Okla.) 2007, 220 Fed.Appx. 851, 2007 WL 915088, Unreported. Criminal Law 1026.10(4)

16. Admissibility of evidence

District court did not commit plain error by admitting transcript of internet chats, which were cut and pasted into word processing files, during prosecution for knowingly attempting to induce a child to engage in criminal sexual activities; police chief testified that transcripts were accurate and defendant used many favorable portions of transcripts in his own defense. U.S. v. Myers, C.A.8 (Ark.) 2009, 575 F.3d 801. Criminal Law 1036.1(6)

Testimony of the witness who, posing as a 14-year-old girl, carried out online chats with defendant, that the transcripts fairly and fully reproduced the chats, sufficiently authenticated the chat log presented at trial in prosecution for, inter alia, attempting to persuade or entice a person defendant believed to be a minor to engage in sexual activity; as the other participant in the year-long "relationship," witness had direct knowledge of the chats. U.S. v. Barlow, C.A.5 (Miss.) 2009, 568 F.3d 215. Criminal Law 444.20

Defendant charged with traveling in interstate commerce for purpose of engaging in illicit sexual conduct with minor was entitled to show that he had never viewed photographs on internet member group depicting girls under age 18 that

prosecution had introduced to rebut defendant's testimony that group "had predominately pictures of 19- to 20-year-old girls," where defendant had testified that he stopped visiting site when it "started to change." U.S. v. Joseph, C.A.2 (N.Y.) 2008, 542 F.3d 13. Infants 20

In prosecution for attempting to knowingly persuade, induce, entice, or coerce a minor to engage in illegal sexual activity, district court did not abuse its discretion in ruling that e-mails and transcripts of instant-message chats between defendant and FBI agent and an informant who were posing as 13-year-old girls in an Internet chat room were sufficiently authenticated to be admissible; both informant and agent testified that the exhibits were in fact accurate records of defendant's conversations with them. U.S. v. Gagliardi, C.A.2 (N.Y.) 2007, 506 F.3d 140. Criminal Law 444.20

Evidence that, prior to transporting minor across state lines to Louisiana hotel, where one defendant allegedly held minor down while the other engaged in anal intercourse with him, defendants had engaged in similar activity with another minor, whom one of the defendants had held down while the other engaged in such intercourse, was admissible in Mann Act prosecution as evidence of defendants' modus operandi, to show that interstate travel was effected for illicit purpose of engaging in sexual activity with minor. U.S. v. Hitt, C.A.5 (La.) 2006, 473 F.3d 146, certiorari denied 127 S.Ct. 2083, 549 U.S. 1360, 167 L.Ed.2d 802, certiorari denied 127 S.Ct. 2893, 550 U.S. 969, 167 L.Ed.2d 1154. Criminal Law 373.15

District court did not abuse its discretion in admitting evidence that defendant traveled to meet alleged 13-year-old girl as relevant and not more prejudicial than probative in defendant's prosecution for using interstate commerce to attempt to persuade a minor to engage in an illegal sexual act; evidence helped demonstrate defendant's intent since he would not have been in supposed meeting place had he not intended to entice minor to meet him there to engage in oral sex. U.S. v. Thomas, C.A.10 (Wyo.) 2005, 410 F.3d 1235. Criminal Law 338(7); Infants 20

District court acted within its discretion in excluding as irrelevant, in Mann Act prosecution based on defendant's interstate transportation of women in the course of her operating a Vermont-New York prostitution ring, the indictment, plea agreement, and judgment from case against a New York-based pimp who was also running a Vermont-New York operation and for whom some of defendant's prostitutes also worked, which evidence defendant proffered to show that the women who testified against her were lying to protect the pimp; the proffered evidence would have added nothing to defendant's efforts to discredit the women's testimony. U.S. v. Holland, C.A.2 (Vt.) 2004, 381 F.3d 80, certiorari denied 125 S.Ct. 921, 543 U.S. 1075, 160 L.Ed.2d 814. Witnesses 374(1)

In prosecution for violating this section, testimony that defendant had employed prostitutes on prior occasions was relevant to his intent in employing prostitutes in the instant case, where the prior acts were similar in kind and, according to testimony, close in time to conduct at issue; thus such testimony was admissible. U. S. v. Drury, C.A.8 (S.D.) 1978, 582 F.2d 1181. Criminal Law 371.49

Notebook discovered incident to defendant's lawful arrest and containing the hand-entered telephone number of co-defendant was an instrumentality of crime of conspiracy to engage in interstate prostitution activities and admission of the notebook into evidence did not violate defendant's right against self-incrimination. U. S. v. Muckenstrum, C.A.5 (Fla.) 1975, 515 F.2d 568, certiorari denied 96 S.Ct. 564, 423 U.S. 1032, 46 L.Ed.2d 406. Criminal Law 393(1)

In prosecution for causing woman to be transported by common carrier in interstate commerce for purposes of prostitution, prosecutrix was properly allowed to testify about physical abuse she suffered at the hands of defendant, as such was part of the entire story. U. S. v. Kelly, C.A.9 (Wash.) 1972, 459 F.2d 10. Criminal Law 368.94

Admission of undercover police officer's testimony that almost a month after defendant's arrest and after occurrence of event charged in counts under this section the officer went to defendant's residence and found there a woman to whom he paid $100 for prostitution services was prejudicial error. Courtney v. U. S., C.A.9 (Cal.) 1968, 390 F.2d 521, cer-

tiorari denied 89 S.Ct. 98, 393 U.S. 857, 21 L.Ed.2d 126, rehearing denied 89 S.Ct. 440, 393 U.S. 992, 21 L.Ed.2d 457. Criminal Law 368.63; Criminal Law 1169.11; Criminal Law 373.22

Testimony of witness that he had been induced by victim, named in count of complaint charging defendant with transportation of victim in interstate commerce for purpose of prostitution, to go to defendant's apartment where he was struck on head by victim and relieved of his money which was later paid back after he had reported incident to police was admissible as having a bearing on defendant's method of operation and his relationship with his employees including victim. Lerma v. U. S., C.A.8 (Minn.) 1968, 387 F.2d 187, certiorari denied 88 S.Ct. 1658, 391 U.S. 907, 20 L.Ed.2d 421. Prostitution 27

In prosecution for conspiracy to violate this section, testimony that in presence of witness and in her hearing in co-defendant's apartment, a "person to person" call was made by codefendant to defendant and that as a result of conversation, arrangements were made for witness to travel to another point and there serve as a prostitute in defendant's hotel and that she made trip and did so serve was admissible. U. S. v. Frank, C.A.3 (Pa.) 1961, 290 F.2d 195, certiorari denied 82 S.Ct. 38, 368 U.S. 821, 7 L.Ed.2d 26. Criminal Law 386

In prosecution for violation of this section and for conspiring to violate this section, wherein there was evidence that the conspiracy was in existence at time that woman involved talked to one of defendants, and such woman was permitted to testify as to her conversation with defendant in connection with her appearance before grand jury and court first ruled that testimony would be binding only upon such defendant but thereafter woman implicated other defendant, court did not err in permitting admission of testimony as to both defendants. Blumenfield v. U. S., C.A.8 (Minn.) 1960, 284 F.2d 46, certiorari denied 81 S.Ct. 693, 365 U.S. 812, 5 L.Ed.2d 692. Criminal Law 422(1)

In prosecution charging defendants with violations of this section and conspiring to violate this section, wherein defense in attempting to discretion testimony of woman involved introduced evidence regarding her affairs in two other cities with other men and her conduct while being held as a material witness, court did not abuse its discretion in excluding further evidence along such lines. Blumenfield v. U. S., C.A.8 (Minn.) 1960, 284 F.2d 46, certiorari denied 81 S.Ct. 693, 365 U.S. 812, 5 L.Ed.2d 692. Criminal Law 675

In prosecution for violation of this section, admission of exhibits which were merely cumulative to testimony of defendant's wife concerning her prostitution in particular places was not prejudicial. Stevens v. U. S., C.A.9 (Idaho) 1958, 256 F.2d 619. Criminal Law 1169.2(7)

Evidence sustained conviction of violation of this section by enticing defendant's wife into prostitution, without the aid of FBI agent's notes which had been introduced in evidence, and hence alleged error in admitting them into evidence without proper limitation to purpose of impeachment was not ground for reversal. Stevens v. U. S., C.A.9 (Idaho) 1958, 256 F.2d 619. Criminal Law 1169.2(7); Prostitution 28

In prosecutions for unlawfully enticing a woman to travel in interstate commerce for purpose of prostitution, testimony of a witness as to a conversation she had with defendant, then her husband, with reference to hiring of a prostitute in connection with his business, such conversation allegedly taking place in the presence and hearing of defendant's partner, was admissible as against husband-wife privilege, in view of fact there was substantial evidence to show a third party was present at such conversation and in view of fact such conversation was not, from its nature, intended to be confidential. Picciurro v. U.S., C.A.8 (Minn.) 1958, 250 F.2d 585. Privileged Communications And Confidentiality 81

In prosecution for violations of provisions of § 2421 of this title and this section, relating to transportation and coercion or enticement of female, defendant's constitutional right to be confronted by witnesses against him was not violated by admission of picture of man whom the witness identified as the collection agent of her employer in prostitution business in Illinois and the picture of fellow prostitute the witness knew in Minnesota and met at place where

she was employed in Illinois. Kreinbring v. U.S., C.A.8 (Minn.) 1954, 216 F.2d 671. Criminal Law 662.40

In prosecution for violations of provisions of this section and § 2421 of this title, relating to transportation and coercion or enticement of female, admission of photographs purporting to be picture of man whom witness identified as collection agent of her employer in prostitution business in Illinois and the fellow prostitute whom the witness knew in Minnesota and met at place where she was employed in Chicago, if error, was harmless. Kreinbring v. U.S., C.A.8 (Minn.) 1954, 216 F.2d 671. Criminal Law 1186.4(5)

In prostitution prosecution, allowing government to prove relations between prosecuting witnesses and accused's codefendants, who were not on trial, and concerning conversations between prosecuting witnesses and such codefendants, was not prejudicial error, though there was no evidence showing that accused had any contact or agreement with codefendants prior to commission of crimes of which she was convicted. McGuire v. U. S., C.C.A.8 (Minn.) 1945, 152 F.2d 577. Criminal Law 1169.1(2.1)

Admitting testimony concerning interstate telephone communication unlawfully intercepted by witness was error, but was harmless where participants in conversation both testified to the same effect. U.S. v. Reed, C.C.A.2 (N.Y.) 1938, 96 F.2d 785, certiorari denied 59 S.Ct. 71, 305 U.S. 612, 83 L.Ed. 399. Criminal Law 392.21; Criminal Law 1169.2(5)

Admission of evidence concerning intercepted telephone communications that might have been interstate communications and were not specifically shown to be intrastate was error but not reversible, where other evidence established defendant's guilt so clearly that no impartial jury could have found otherwise. U.S. v. Reed, C.C.A.2 (N.Y.) 1938, 96 F.2d 785, certiorari denied 59 S.Ct. 71, 305 U.S. 612, 83 L.Ed. 399. Criminal Law 1169.1(8)

Telegraph company's records of telegrams sent by defendant were material, and receipt of secondary evidence of telegrams was not reversible error, where latter was stricken out because government was unable to make preliminary proofs. Simpson v. U.S., C.C.A.9 (Cal.) 1917, 245 F. 278, 157 C.C.A. 470, certiorari denied 38 S.Ct. 133, 245 U.S. 667, 62 L.Ed. 538. Criminal Law 1169.5(4)

Refusal of court to compel witness for government, in prosecution for violating former §§ 397 to 404 of this title [now covered by this chapter], to state source of complaints that accused was running disorderly house, was not error, witness admitting on cross-examination that his testimony to that fact was based on such complaint. Prdjun v. U. S., C.C.A.6 (Mich.) 1916, 237 F. 799, 151 C.C.A. 41. Criminal Law 1170.5(5)

Undercover police officer's submission of on-line Internet chatroom conversations between himself, posing as 14 year-old girl, and defendant, offered in lieu of missing electronic original of conversations, were inadmissible in his trial for knowing inducement of minor to engage in sexual activity; while officer claimed to have saved conversations by clicking and dragging complete text, and then transferring conversations to word processing document, there were superior methods of saving conversations not used, inconsistencies in conversation suggested that portions were left off, and there was no mention in transcript of conversations of defendant's main contention, that he was trying to arrange meeting between alleged victim and defendant's similarly aged grandniece. U.S. v. Jackson, D.Neb.2007, 488 F.Supp.2d 866. Criminal Law 436(6)

Photographs depicting minors in non-sexually explicit poses were relevant in prosecution for possession of child pornography and attempting to persuade, induce, entice, or coerce a minor to engage in illegal sex acts; quantity of photos seized, and manner in which it was organized, was probative of defendant's knowledge that child pornography was located within his residence, and photos were also relevant to the identity of the models. U.S. v. Riccardi, D.Kan.2003, 258 F.Supp.2d 1212, affirmed 405 F.3d 852, rehearing denied, certiorari denied 126 S.Ct. 299, 546 U.S. 919, 163 L.Ed.2d 260, rehearing denied 126 S.Ct. 825, 546 U.S. 1083, 163 L.Ed.2d 719, post-conviction relief denied 2007 WL 852360, reconsideration denied 2007 WL 1218021, affirmed 314 Fed.Appx. 99, 2008 WL 4183921, certi-

orari denied 129 S.Ct. 2072, 173 L.Ed.2d 1148. Criminal Law 371.72

17. Competency of witnesses

In prosecution of a husband for knowingly persuading his wife to go from one state to another with intent that she should practice prostitution in violation of former § 399 of this title [now covered by this chapter], such offense was in the nature of a "personal injury" to her person so as to entitle her to testify against her husband. U S v. Rispoli, E.D.Pa.1911, 189 F. 271.

Under common law, interpreted in light of modern experience, reason, and in furtherance of justice, a woman might testify against her husband over his objection when he had transported her in interstate commerce for purposes of prostitution in violation of former § 398 or 399 of this title [now covered by this chapter], regardless of whether transportation occurred during or prior to coverture. U.S. v. Williams, D.C.Minn.1944, 55 F.Supp. 375. Witnesses 52(7)

The rule that wife could not testify against husband over husband's objection as to personal violence which had been committed against wife prior to marriage, on theory that there was some sort of forgiveness of wrong to wife which might be assumed by the marriage, did not prevent wife from testifying against husband in prosecution for violation of former § 398 or 399 of this title [now covered by this chapter], which occurred before marriage in view of provision making woman's consent to illegal transportation immaterial. U.S. v. Williams, D.C.Minn.1944, 55 F.Supp. 375. Witnesses 52(7)

Under provision of former § 399 of this title [now covered by this chapter] making consent of woman to transportation irrelevant to existence of offense, fact that wife may have consented to transportation at the time was of no significance in determining her competency to testify against husband in prosecution for violation of such former § 398 or 399 of this title. U.S. v. Williams, D.C.Minn.1944, 55 F.Supp. 375. Witnesses 52(7)

18. Examination of witnesses

Even if defendant established government inducement, for purposes of entrapment defense, the evidence was sufficient to establish that defendant was predisposed to commit the charged offense, as required to support his conviction for attempting to knowingly persuade, induce, entice, or coerce a minor to engage in illegal sexual activity; defendant chose to enter an Internet chat room conspicuously labeled, "I Love Older Men," he contacted informant posing as 13-year-old girl without solicitation after discovering from her online profile that she was 13, he offered to pay informant to have sex with him after just one conversation, he vividly described sexual acts he wished to perform with her, and he attempted on numerous occasions to set up a meeting with her. U.S. v. Gagliardi, C.A.2 (N.Y.) 2007, 506 F.3d 140. Criminal Law 569

District court did not abuse its discretion, in prosecution of defendants for violating the Mann Act by transporting 14-year-old child across state lines for alleged purpose of sexually abusing him, in deciding to admit expert testimony both as to behavior typically exhibited by child molesters in "grooming" child for the molestation by, inter alia, isolating him/her from guardians, and as to behavior sometimes exhibited by abuse victims in returning to their abusers. U.S. v. Hitt, C.A.5 (La.) 2006, 473 F.3d 146, certiorari denied 127 S.Ct. 2083, 549 U.S. 1360, 167 L.Ed.2d 802, certiorari denied 127 S.Ct. 2893, 550 U.S. 969, 167 L.Ed.2d 1154. Criminal Law 474.4(4); Criminal Law 474.4(5)

In prosecution under this section against defendant who never answered question whether he married his wife so as to preclude her from being called as government witness, it was prejudicial error for government on rebuttal to elicit testimony of witness that defendant had said that he was going to marry wife to keep her from testifying against him, and prejudice was not cured by court's belated admonition to disregard rebuttal testimony. Courtney v. U. S., C.A.9

(Cal.) 1968, 390 F.2d 521, certiorari denied 89 S.Ct. 98, 393 U.S. 857, 21 L.Ed.2d 126, rehearing denied 89 S.Ct. 440, 393 U.S. 992, 21 L.Ed.2d 457. Criminal Law 683(1); Criminal Law 1169.5(5)

Government's cross-examination of defendant revealing that defendant had not filed income tax return or paid income tax was irrelevant, nonimpeaching and prejudicial, and prejudice was not cured by trial court's admonition that testimony could be considered only for impeachment purposes. Courtney v. U. S., C.A.9 (Cal.) 1968, 390 F.2d 521, certiorari denied 89 S.Ct. 98, 393 U.S. 857, 21 L.Ed.2d 126, rehearing denied 89 S.Ct. 440, 393 U.S. 992, 21 L.Ed.2d 457. Criminal Law 338(7); Criminal Law 1169.5(3)

There was no abuse of discretion by trial court in permitting witness, named as a victim in particular count of indictment charging the interstate transportation of such victim by defendant for purposes of prostitution to be treated as a hostile witness by government and to use her grand jury testimony in an attempt to refresh her recollection and as a foundation for impeachment after testimony given at trial by her had been in sharp conflict with that given before grand jury, where there was no definite indication that prosecution knew that she was going to change her story. Lerma v. U. S., C.A.8 (Minn.) 1968, 387 F.2d 187, certiorari denied 88 S.Ct. 1658, 391 U.S. 907, 20 L.Ed.2d 421. Witnesses 380(5.1)

In prosecution for transporting a woman by common carrier for the purpose of prostitution, and conspiring to commit the offense, defendant should not have been asked about his wife being arrested for prostitution, since an arrest was not evidence that the wife committed the offense. Davis v. U.S., C.A.8 (Minn.) 1956, 229 F.2d 181, certiorari denied 76 S.Ct. 706, 351 U.S. 904, 100 L.Ed. 1441. Conspiracy 45; Prostitution 27

In prosecution for violation of former § 399 of this title [now covered by this chapter], cross-examination of defendant to show that defendants operated a house of prostitution, as indicating purpose for which prostitute was induced to be transported, was relevant. U.S. v. Reed, C.C.A.2 (N.Y.) 1938, 96 F.2d 785, certiorari denied 59 S.Ct. 71, 305 U.S. 612, 83 L.Ed. 399. Prostitution 27

19. Self incrimination

Permitting government to put on witness, who elected to use his privilege against self-incrimination selectively and testified to numerous nonprivileged facts which tended to corroborate government's case in prosecution under this section, did not constitute reversible error where there was no flagrant effort by prosecution to build a case on unfavorable inferences which might inure from claim of privilege and inference did not add critical weight to government's case in a form not subject to cross-examination. U. S. v. Jenkins, C.A.5 (Fla.) 1971, 442 F.2d 429. Criminal Law 1171.8(1)

20. Circumstantial evidence

Under this section punishing one who knowingly induces a woman to go from one place to another in interstate commerce for purpose of prostitution and as a consequence knowingly causing such woman to be carried as a passenger upon any common carrier in interstate commerce, that defendant had knowingly caused woman to be transported as a passenger by a common carrier in interstate commerce may be established by circumstantial as well as direct evidence. Nunnally v. U. S., C.A.5 (Ala.) 1961, 291 F.2d 205. Prostitution 28

Elements of crime of knowingly inducing a woman to go from one place to another in interstate commerce for purpose of prostitution and knowingly causing such woman to be carried as a passenger upon any common carrier in interstate commerce may be established by facts and circumstances without direct evidence. Nunnally v. U. S., C.A.5 (Ala.) 1961, 291 F.2d 205. Prostitution 28

21. Inferences

The purpose of effecting, aiding, or facilitating prostitution, debauchery, or other immoral practices might be inferred from the conduct of the parties within a reasonable time before and after the transportation. U.S. v. Reginelli, C.C.A.3 (N.J.) 1943, 133 F.2d 595, certiorari denied 63 S.Ct. 856, 318 U.S. 783, 87 L.Ed. 1150, rehearing denied 63 S.Ct. 1027, 319 U.S. 780, 87 L.Ed. 1725.

22. Questions for jury

In prosecution for knowingly inducing a woman to go from Georgia to Alabama for purpose of prostitution and thereby knowingly causing such woman to be carried as passenger upon common carrier in interstate commerce, wherein defendant claimed that trip was to obtain employment as a strip dancer, motive of transportation was for jury. Nunnally v. U. S., C.A.5 (Ala.) 1961, 291 F.2d 205. Prostitution 31

In prosecution for violating former § 399 of this title [now covered by this chapter] by inducing women to go in interstate commerce on common carrier for immoral purposes, conflict in testimony resulting from defendant's categorical denial of testimony of prosecuting witnesses made issue for jury, and jury was entitled to believe testimony of prosecuting witnesses in preference to that of defendant. McGuire v. U. S., C.C.A.8 (Minn.) 1945, 152 F.2d 577. Prostitution 31

Whether defendant owner of house of prostitution, by urging prosecuting witnesses to make trips from Minneapolis to Fargo, which they admittedly made for purposes of prostitution, effectually induced or aided in inducing prosecuting witnesses to make such trips, was for jury. McGuire v. U. S., C.C.A.8 (Minn.) 1945, 152 F.2d 577. Prostitution 31

In prosecution for violating and conspiring to violate former § 399 of this title [now covered by this chapter], evidence made defendants' guilt a jury question. U.S. v. Reed, C.C.A.2 (N.Y.) 1938, 96 F.2d 785, certiorari denied 59 S.Ct. 71, 305 U.S. 612, 83 L.Ed. 399. Prostitution 31

23. Comments of counsel

Prosecutor's misstatement of Minnesota's age of consent law during closing argument in defendant's use of an instrumentality of interstate commerce to attempt to persuade a minor to engage in illegal sexual activity, did not deprive defendant of right to a fair trial, where the district court promptly gave curative instruction to jury correcting prosecutor's misstatement of Minnesota law, and defendant did not object to curative instruction or move for mistrial. U.S. v. Patten, C.A.8 (N.D.) 2005, 397 F.3d 1100. Criminal Law 2197

In prosecution for violation of this section, where defendant complained of prejudicial error because proof did not sustain prosecutor's opening declarations, defense counsel's statement that prosecutor had been fair constituted admission that declarations had been made by prosecutor in good faith, and under the circumstances in could not be said that such declarations amounted to misconduct and constituted reversible error. U.S. v. Smith, C.A.7 (Ill.) 1958, 253 F.2d 95, certiorari denied 78 S.Ct. 1360, 357 U.S. 919, 2 L.Ed.2d 1364. Criminal Law 1171.2

In prosecution for violations of provisions of this section and § 2421 of this title, relating to transportation and coercion or enticement of females, any error in reference made in government counsel's argument to incident involving hotel registration of defendant and witness and incident involving witness' sexual relations with inmates at workhouse guarded by defendant, both of which incidents were admitted and apologized for fully in argument of defendant's counsel, was not prejudicial. Kreinbring v. U.S., C.A.8 (Minn.) 1954, 216 F.2d 671. Criminal Law 1171.3

24. Comments of court

In prosecution for transporting a woman for prostitution, and conspiracy to commit the offense, remarks of the trial court, which were not intended or calculated to prejudice the defendant in any way, were not prejudicial. Davis v. U.S., C.A.8 (Minn.) 1956, 229 F.2d 181, certiorari denied 76 S.Ct. 706, 351 U.S. 904, 100 L.Ed. 1441. Criminal Law 1166.22(1)

25. Instructions

Instruction permitting jury to convict defendant of using facility of interstate commerce for purpose of engaging in illicit sexual conduct with minor if it found that he had "made the possibility of a sexual act with him more appealing" improperly permitted conviction even if defendant did not intend to entice minor into engaging in sexual act with him, and thus warranted vacation of defendant's conviction, where defendant contended at trial that he was only engaging in cybersex conversation, agreed to meet purported minor to see if she was adult engaging in role-playing, and had no intention of enticing her to engage in sexual conduct with him if she actually was minor. U.S. v. Joseph, C.A.2 (N.Y.) 2008, 542 F.3d 13. Criminal Law 1172.1(3); Infants 20

Given a complementary instruction focused on defendant's state of mind, failure to state that defendant must have had "immoral purpose" in inducing girls to cross state lines did not render erroneous instruction in case under this section, to effect that, to establish that interstate transportation or travel was for "immoral purposes," evidence need not show that prostitution was only purpose of transportation and that proof of immoral purpose is sufficient if evidence establishes beyond reasonable doubt that, at time woman or girl designated in indictment crossed state lines, prostitution was one of dominant purposes of such interstate travel. U. S. v. Drury, C.A.8 (S.D.) 1978, 582 F.2d 1181. Prostitution 32

Trial court's refusal, in prosecution for having persuaded, induced, enticed and caused woman to go in interstate commerce for immoral purposes, to respond to jury's request for further definition of word "induces", other than to state that words were to be given their common usage, was not error. Batsell v. U. S., C.A.8 (Minn.) 1968, 403 F.2d 395, certiorari denied 89 S.Ct. 865, 393 U.S. 1094, 21 L.Ed.2d 785. Criminal Law 863(2)

In prosecutions for unlawfully enticing a woman to travel in interstate commerce for purpose of prostitution, instructions wherein court summarized government's case did not unduly emphasize government's case, in view of fact court specifically charged that jury was to rely on its own recollections of understandings of the evidence. Picciurro v. U.S., C.A.8 (Minn.) 1958, 250 F.2d 585. Criminal Law 811(1)

Failure to charge jury not to consider evidence relating to relations existing between prosecuting witnesses in prostitution prosecution and conversations between prosecuting witnesses and accused's codefendants, because of failure to show by government that accused had some contact with codefendants or acted in concert with them, was not prejudicial error because, insofar as such evidence tended to establish codefendants' guilt and show that they alone were responsible for offenses charged, it tended to relieve accused of charges against her. McGuire v. U. S., C.C.A.8 (Minn.) 1945, 152 F.2d 577. Criminal Law 1173.5

On a trial for inducing a woman to go in interstate commerce on a common carrier for immoral purposes, an instruction that it is not necessary to prove by direct evidence that a bus company is a common carrier, but that it is sufficient if the government proves beyond a reasonable doubt facts which, if believed, reasonably establish the conclusion that it held itself out to the public as an organization carrying and serving all who apply, is correct and not open to the criticism that it authorizes a conviction on a mere probability that the mode of transportation was that of a common carrier. U.S. v. Saledonis, C.C.A.2 (Conn.) 1937, 93 F.2d 302. Criminal Law 789(4); Prostitution 32

On trial for persuading girl to go from one state to another for immoral purposes, instruction was misleading as to

whether secret intention to profit by the girl's return home, without persuasion, would render accused guilty. Welsch v. U.S., C.C.A.4 (W.Va.) 1915, 220 F. 764, 136 C.C.A. 370. Prostitution 32

The Alabama statute defining the offense of second-degree rape as an individual 16 years old or older engaging in sexual intercourse with a member of the opposite sex "less than 16 and more than 12 years old" encompassed offenses in which the victim was 12 years old, and thus, in the prosecution of the defendant for enticing a minor to engage in sexual activity for which any person could be charged with a criminal offense, the district court's jury instruction that the Alabama second-degree rape statute prohibited sexual intercourse with a child who was 12 years old did not constitute a constructive amendment to the indictment. U.S. v. Nelson, C.A.11 (Ala.) 2009, 334 Fed.Appx. 209, 2009 WL 1636812, Unreported, certiorari denied 130 S.Ct. 305, 175 L.Ed.2d 203. Indictment And Information 159(2); Rape 13

26. Weight and sufficiency of evidence--Generally

There was sufficient evidence that defendant acted with intent to entice a person he believed to be a ten- or eleven-year-old girl into sexual activity, in communicating with "Stephanie," the child's purported mother, to support his conviction for attempting to entice a minor to engage in criminal sexual activity; although, during his online chats with "Stephanie," who was actually an undercover law enforcement officer, defendant sometimes talked about things other than sex with children, what he did say to her on the subject of sex with her daughter was more than enough to show his criminal intent, as he spent months instructing her to show her prepubescent daughter pornographic videos and to teach her to masturbate and touch her sexually, all in preparation for his own violation of the child, defendant described in detail what he intended to do to the child, and defendant repeatedly acknowledged his awareness that what he planned to do was highly illegal. U.S. v. Farley, C.A.11 (Ga.) 2010, 607 F.3d 1294, certiorari denied 131 S.Ct. 369, 178 L.Ed.2d 238. Infants 13

Conviction for attempted enticement of a minor to engage in sexual activity was supported by evidence that defendant, in communicating online for several months with postal inspector posing as mother of two minor daughters, intended to cause mother's fictitious daughters to assent to sexual contact with him, that defendant was interested in daughters, not mother, that defendant was concerned about involvement of law enforcement, that defendant sought to have daughters assent to future sexual encounter by encouraging mother to share photograph of his penis with them, by promising to buy gifts for them, and by assuring mother that he would not harm girls during intercourse, and that defendant took substantial step toward causing girls to assent to sexual contact with him by requesting assistance from their mother, who had influence and control over them, by "grooming" girls for sexual encounter, and by repeatedly discussing when, and, in graphic detail, how he wanted to complete the act. U.S. v. Lee, C.A.11 (Ga.) 2010, 603 F.3d 904, certiorari denied 131 S.Ct. 437, 178 L.Ed.2d 339. Infants 13

Evidence was sufficient to support conviction for attempting to knowingly persuade, induce, entice, or coerce a minor to engage in illegal sexual activity; defendant initiated contact with informant posing as 13-year-old girl in Internet chat room labeled, "I Love Older Men," he asked informant and FBI agent posing as another 13-year-old to send him their pictures, he steered the conversation toward sexual activities and described acts that he would engage in with them, he tried to set up a meeting with them, and he appeared for a meeting with them with condoms in his car. U.S. v. Gagliardi, C.A.2 (N.Y.) 2007, 506 F.3d 140. Infants 13

Evidence in prosecution for violation of this chapter arising from abduction and holding of woman by members of motorcycle gang supported verdict that defendant knowingly joined conspiracy to transport victim for prostitution and debauchery, where defendant took victim to a motel where he sexually assaulted her, and he told her that he or others could set her up as a prostitute. U.S. v. Hattaway, C.A.7 (Ill.) 1984, 740 F.2d 1419, certiorari denied 105 S.Ct. 448, 469 U.S. 1028, 83 L.Ed.2d 373, certiorari denied 105 S.Ct. 599, 469 U.S. 1089, 83 L.Ed.2d 708, post-conviction relief denied , post-conviction relief denied 929 F.2d 703. Conspiracy 47(3.1)

Evidence warranted conviction for knowingly transporting and for knowingly persuading and coercing woman to go into interstate commerce for prostitution, debauchery and other immoral purposes and for corruptly endeavoring to obstruct justice by impeding and influencing federal grand jury witness. Courtney v. U. S., C.A.9 (Cal.) 1968, 390 F.2d 521, certiorari denied 89 S.Ct. 98, 393 U.S. 857, 21 L.Ed.2d 126, rehearing denied 89 S.Ct. 440, 393 U.S. 992, 21 L.Ed.2d 457. Obstructing Justice 16; Prostitution 28

Evidence in prosecution for violation of this section was insufficient to show the interstate transportation of female by defendant for proscribed activities and did not sustain conviction. U. S. v. McConney, C.A.2 (N.Y.) 1964, 329 F.2d 467. Prostitution 28

In prosecution for inducing a woman to go from Georgia to Alabama for purpose of prostitution, evidence was sufficient to show that defendant knowingly caused such woman to be transported as passenger by common carrier in interstate commerce. Nunnally v. U. S., C.A.5 (Ala.) 1961, 291 F.2d 205. Prostitution 28

Evidence was insufficient to sustain conviction of operator of house of prostitution for violation of § 2421 et seq. of this title where operator, not knowing either of the women involved prior to their time of arrival, agreed to allow such women to come to work at operator's house after such women had telephoned operator who was not shown to have known that call came from out of state. Harms v. U.S., C.A.4 (Va.) 1959, 272 F.2d 478, certiorari denied 80 S.Ct. 590, 361 U.S. 961, 4 L.Ed.2d 543. Prostitution 28

Evidence sustained conviction of violation of this section where testimony showed that defendant induced woman to go out of the state for purpose of prostitution and furnished money therefor even though he remained within the state. U.S. v. Smith, C.A.7 (Ill.) 1958, 253 F.2d 95, certiorari denied 78 S.Ct. 1360, 357 U.S. 919, 2 L.Ed.2d 1364. Prostitution 19(1)

In prosecution for inducing another to travel by common carrier interstate for the purpose of prostitution, substantial evidence supported finding that the defendant offered the victim profitable employment as a prostitute in Missouri and that the defendant induced the victim to make the trip to such place for such purpose. Bell v. U.S., C.A.8 (Minn.) 1958, 251 F.2d 490. Prostitution 28

In prosecution of three defendants, one of whom was a woman, for violating this chapter and conspiracy to violate said chapter evidence was sufficient to warrant finding that the female defendant induced, enticed, or persuaded the girl to serve as a prostitute to come from another state to house of prostitution run by the female defendant. Cwach v. U.S., C.A.8 (Minn.) 1954, 212 F.2d 520. Conspiracy 47(3.1); Prostitution 28

Evidence that, after prosecuting witness made her first trip from another state, accused recommended hotel owned by her as place where prostitutes could make large earnings, urged prostitutes witness to return from other state, and gave her instructions as to railroad route to be followed in returning and concerning method of code communication by telephone to escape detection by Federal Bureau of Investigation, which instructions prosecuting witness followed, sustained conviction for inducing a woman to go from one state to another as passenger on common carrier for immoral purposes. McGuire v. U. S., C.C.A.8 (Minn.) 1945, 152 F.2d 577. Prostitution 28

Where it was practice of prostitute to entertain customers selected for her by, and to divide her earnings with, defendant charged with inducing prostitute to go from one place to another in interstate commerce for purposes of prostitution, proof that both prostitute and defendant accepted customer's invitation to go with him to California sustained conviction, though prostitute denied that defendant had induced her to go. U.S. v. Barton, C.C.A.2 (N.Y.) 1943, 134 F.2d 484. Prostitution 28

Evidence was insufficient to sustain a conviction under a count of an indictment charging the defendant with having

induced a woman to go from one state to another for the purpose of having unlawful sexual intercourse with him. Williams v. U.S., C.C.A.4 (S.C.) 1922, 282 F. 481.

Evidence, including prior relation immediately resumed, on prosecution for persuading and enticing a woman to go in interstate commerce for the purposes prohibited by former § 399 of this title [now covered by this chapter], was sufficient to go to jury on the questions of intent and purpose, as well as of inducement. Blackstock v. U.S., C.C.A.8 (Okla.) 1919, 261 F. 150, certiorari denied 41 S.Ct. 8, 254 U.S. 634, 65 L.Ed. 449. Prostitution 31

Defendant, who induced woman to travel from California to Mexico to manage house of prostitution, was guilty under former § 399 of this title [now covered by this chapter]. Simpson v. U.S., C.C.A.9 (Cal.) 1917, 245 F. 278, 157 C.C.A. 470, certiorari denied 38 S.Ct. 133, 245 U.S. 667, 62 L.Ed. 538. Prostitution 19(3)

Evidence showed lack of intent respecting resumption of immoral relations and lack of anticipation of act of sexual intercourse. Welsch v. U.S., C.C.A.4 (W.Va.) 1915, 220 F. 764, 136 C.C.A. 370. Prostitution 28

Evidence that codefendant was a pimp at pertinent times and directly violated the Mann Act, and that defendant associated himself with his codefendant's venture, participating in it as something he wished to bring about and seeking by some action of his to make it succeed, supported conviction for transporting a woman in interstate commerce for the purpose of prostitution. U.S. v. Simmons, M.D.Tenn.1984, 610 F.Supp. 295, affirmed 756 F.2d 453. Prostitution 28

Evidence warranted conviction of defendant charged with inducing girls to go in interstate commerce for purpose of engaging in immoral practices. U. S. v. Austrew, D.C.Md.1962, 202 F.Supp. 816, affirmed 317 F.2d 926. See, also, Batsell v. U.S., C.A.Minn.1968, 403 F.2d 395, certiorari denied 89 S.Ct. 865, 393 U.S. 1094, 21 L.Ed.2d 785; U.S. v. Crumble, C.A.Wis.1964, 331 F.2d 228; Blumenfield v. U.S., C.A.Minn.1960, 284 F.2d 46, certiorari denied 81 S.Ct. 693, 365 U.S. 812, 5 L.Ed.2d 692; Harms v. U.S., C.A.Va.1959, 272 F.2d 478, certiorari denied 80 S.Ct. 590, 361 U.S. 961, 4 L.Ed.2d 543; Bell v. U.S., C.A.Minn.1958, 251 F.2d 490; Berg v. U.S., C.A.Wash.1957, 239 F.2d 805; U.S. v. Kramer, C.A.Ind.1956, 236 F.2d 656; Simpson v. U.S., Cal.1917, 245 F. 278, 157 C.C.A. 470, certiorari denied 38 S.Ct. 133, 245 U.S. 667, 62 L.Ed. 538; U.S. v. Sorrentino, D.C.Pa.1948, 78 F.Supp. 425, affirmed 175 F.2d 721, certiorari denied 70 S.Ct. 143, 338 U.S. 868, 94 L.Ed. 532, rehearing denied 70 S.Ct. 238, 338 U.S. 896, 94 L.Ed. 551. Prostitution 28

27. ---- Interstate travel, weight and sufficiency of evidence

Conviction for knowingly crossing a state line with the intent to engage in a sexual act with a person under the age of 12 was supported by evidence that defendant communicated online over a period of seven months with "Stephanie," an undercover law enforcement officer who was posing as the mother of a minor daughter, that defendant made efforts to ensure that Stephanie and her daughter Sydney were "for real" by asking them to pose in a picture holding a sign with his name on it, that defendant traveled from Texas to Atlanta to meet Stephanie and Sydney with the intent to sexually assault the child, and that defendant brought with him a computer printout of directions to the restaurant where they planned to meet. U.S. v. Farley, C.A.11 (Ga.) 2010, 607 F.3d 1294, certiorari denied 131 S.Ct. 369, 178 L.Ed.2d 238. Infants 13

Evidence was sufficient to support conviction for using a facility of interstate commerce to entice a minor to engage in illicit sexual activity; defendant made contact with adults posing as 13-year-old girls in Internet chat room entitled "I Love Older Men," he engaged in sexually explicit Internet and telephone communications with chat room poster who was undercover agent posing as 13-year-old, he asked poster for her picture, asked her out on a date, and said he wanted her to be his girlfriend, and, when poster broached topic of sexual activity with defendant, he responded with offers to engage in sexual contact, planned meeting with poster, and went to arranged meeting place. U.S. v. Brand, C.A.2 (N.Y.) 2006, 467 F.3d 179, certiorari denied 127 S.Ct. 2150, 550 U.S. 926, 167 L.Ed.2d 878. Commerce

82.10; Infants 13; Telecommunications 1012; Telecommunications 1350

Sufficient evidence established that defendant took substantial steps towards crime of using interstate commerce to persuade a minor to engage in illegal sexual act, as required to support his conviction of using interstate commerce to attempt to persuade a minor to engage in an illegal sexual act; defendant initiated sexual conversation over internet by asking in crude terms to engage in oral sex moments after responder to contestation confirmed that she was a 12-year-old girl living near him, defendant insisted that they have oral sex and to do it "now," and defendant suggested they meet at park. U.S. v. Thomas, C.A.10 (Wyo.) 2005, 410 F.3d 1235. Commerce 82.10; Infants 13

Where government offered no evidence that defendant transported women across state lines, and it could not be inferred from his status as a mere taxi driver that he used any facility in interstate commerce to promote, manage, establish, carry on or facilitate the promotion, management, establishment or carrying on of house of prostitution, defendant could not be convicted of violating section 1952 of this title. U.S. v. Truglio, C.A.4 (W.Va.) 1984, 731 F.2d 1123, certiorari denied 105 S.Ct. 197, 469 U.S. 862, 83 L.Ed.2d 130. Prostitution 28

In prosecution for knowingly persuading, inducing, enticing and coercing a woman to go as passenger by common carrier in interstate commerce for immoral purposes, evidence whether woman had traveled as a passenger by common carrier was sufficient to sustain conviction. Politano v. U. S., C.A.10 (Colo.) 1955, 220 F.2d 217. Prostitution 28

28. ---- Persuasion or inducement, weight and sufficiency of evidence

Evidence was sufficient to support a finding that defendant, who made arrangements to meet police officer posing on Internet as a young teen and even traveled to the meeting place, took a substantial step with the requisite intent to persuade, induce, or entice someone whom he believed was a minor to engage in illegal sexual activity. U.S. v. Berg, C.A.7 (Ill.) 2011, 640 F.3d 239. Infants 20

Government produced sufficient evidence to prove that defendant took a substantial step toward enticement of a minor under the age of eighteen to engage in sexual activity; defendant spoke to minor in sexually explicit terms, e-mailed her adult and child pornography, discussed sexual activities with her and instructed her on how to arouse herself, told her that he had sexual intercourse for years with his ex-girlfriend's 14-year-old daughter, and otherwise attempted to prepare her for a sexual encounter with him by discussing in graphic detail how the act would occur, defendant and minor repeatedly discussed specific plans to meet, and defendant obtained minor's home address, examined maps of her neighborhood, inquired about motels within walking distance of her home, invited minor to travel at his expense to meet him where he lived in Illinois, and formulated a plan to meet minor on a train in or near minor's hometown in Ohio so that he could have sex with her on the train. U.S. v. Chambers, C.A.7 (Ill.) 2011, 642 F.3d 588. Infants 13

Defendant was predisposed to attempt to persuade or induce a minor to travel in interstate commerce to engage in sexual activity and using a facility of interstate commerce to do so, and therefore, a government's agent posing as a mother of two daughters in an online conversation was not entrapment; defendant was first to suggest training agent's daughters to be sex slaves and encouraged agent to acclimate girls to sexual acts, defendant repeatedly stated he wanted agent to bring daughters to meet him, and defendant boasted about training his stepdaughter since she was four years old, as well as two other girls. U.S. v. Orr, C.A.7 (Ill.) 2010, 622 F.3d 864, certiorari denied 131 S.Ct. 2889. Criminal Law 37(7)

The evidence that the defendant intended to violate the statute and took a substantial step in completing the violation was sufficient to support a conviction for attempting to persuade, induce, entice, or coerce a minor to engage in unlawful sexual activity; the defendant sent letters to a ten-year-old boy he had met when he and the boy were staying as guests in the same home, he made advances of a sexual nature to the boy in the letters, flattered him, described sex acts he wanted to perform on the boy, encouraged the boy to return to the home where they had met, which was in another

state from the boy's residence, and promised him a motorcycle if he returned. U.S. v. Goetzke, C.A.9 (Mont.) 2007, 494 F.3d 1231. Infants 20

Defendant's conversations with undercover officer, who defendant believed was the adult mother of two young girls, were sufficient to support conviction for attempt to entice minor victims to engage in unlawful sexual activity; defendant described to the "mother" his desire to perform sex acts on her "daughters", he asked her to tell her daughters about his wishes, and to instruct the girls not to tell anyone, and he made plans with the mother to meet at a motel to have sex with the daughters. U.S. v. Spurlock, C.A.8 (Mo.) 2007, 495 F.3d 1011, certiorari denied 128 S.Ct. 687, 552 U.S. 1054, 169 L.Ed.2d 537, habeas corpus dismissed 2010 WL 256673. Infants 20

Sufficient evidence established that defendant attempted to entice a minor to engage in criminal sexual activity, as required to support his conviction for enticing a minor to engage in criminal sexual activity; defendant knew he was in romance chat room and believed he was communicating with 14-year-old girl, within minutes defendant asked if she had a boyfriend and what type of underwear she was wearing, defendant talked about cuddling and assured that "age shouldn't be a factor," defendant suggested picking girl up from school and encouraged her to evade her mother to engage in sexual liaison, and defendant drove two hours to meet girl. U.S. v. Myers, C.A.8 (Ark.) 2009, 575 F.3d 801. Infants 13; Telecommunications 1350

Evidence was sufficient to support defendant's conviction for attempting to persuade, induce, entice, or coerce a child to engage in illegal sexual activity; although there was no evidence that defendant had contact with an actual child or someone he believed to be a child, evidence of his interactions over Internet and telephone with police officer and FBI agent who were posing as a stepfather willing to arrange a meeting between defendant and stepfather's underage stepson showed that defendant was determined to meet and have sex with a child, and that he took a substantial step toward that end by posting Internet advertisement seeking sexual contact with children, interacting by e-mail and telephone with a man who responded to his ad, and arranging a meeting for the sexual encounter. U.S. v. Nestor, C.A.3 (Pa.) 2009, 574 F.3d 159, certiorari denied 130 S.Ct. 1537, 176 L.Ed.2d 133, post-conviction relief denied 2010 WL 4879200. Prostitution 28

That defendant used the internet and e-mail in his communications with a person he believed to be a 14-year-old girl was sufficient to establish the requisite interstate nexus in prosecution for attempting to persuade or entice a person defendant believed to be a minor to engage in sexual activity and sending obscene material to a person he believed to be younger than 16 years old. U.S. v. Barlow, C.A.5 (Miss.) 2009, 568 F.3d 215. Commerce 59; Commerce 82.10; Infants 13; Telecommunications 1350

Ample evidence supported conclusion, in prosecution for, inter alia, attempting to persuade or entice a person defendant believed to be a minor to engage in sexual activity, that defendant took the required substantial step toward commission of the offense; defendant spent nearly a year pursuing a victim he believed to be 14 years old, by attempting to persuade her to send him explicit photographs, promising her a modeling career, and suggesting meetings and phone calls, before setting up a meeting in a state park, driving there, and waiting for her arrival. U.S. v. Barlow, C.A.5 (Miss.) 2009, 568 F.3d 215. Infants 13

Evidence was sufficient to support defendant's conviction for attempted persuasion of a minor to engage in illicit sexual activity; instant messages and the statements that defendant made to FBI agents upon his arrest established defendant's subjective intent, his appearance at hotel according to the plan established with government decoy over the instant messages provided the requisite measure of objective evidence corroborating his intent, and the instant messages also provided sufficient evidence that he took substantial steps towards "persuading, inducing, enticing or coercing" a minor to engage in sexual activity. U.S. v. Tykarsky, C.A.3 (Pa.) 2006, 446 F.3d 458, appeal after new sentencing hearing 295 Fed.Appx. 498, 2008 WL 4492626, certiorari denied 129 S.Ct. 1929, 173 L.Ed.2d 1076. Infants 20

Sufficient evidence established that defendant knew that person with whom he had internet conversation with was 12-year-old, as required to support conviction of using interstate commerce to attempt to persuade a minor to engage in an illegal sexual act; screen name indicated that person with whom he was conversing was 12-year-old, defendant was twice informed that e-mail responder was 12-year-old, and physical description given was that responder was four feet, nine inches tall and 77 pounds, the size of a typical preteen girl. U.S. v. Thomas, C.A.10 (Wyo.) 2005, 410 F.3d 1235. Infants 13

Sufficient evidence established that defendant attempted to persuade a minor to engage in an unlawful sexual act in North Dakota under North Dakota law; defendant, who was twenty-six years old, initiated online chat with person who identified herself as a sixteen year old girl living in North Dakota, defendant asked person in graphic detail about her sexual preferences, defendant asked if person would like to "hook up," when person indicated that she did not have a car defendant said he would come to North Dakota to meet her, defendant was arrested in North Dakota at arranged meeting place, and under North Dakota law, a sixteen-year old could not consent to sexual contact. U.S. v. Patten, C.A.8 (N.D.) 2005, 397 F.3d 1100. Commerce 82.10; Infants 13

Defendant's conviction of attempting to persuade minor to engage in sexual acts by using computer connected to the Internet was sufficiently supported by evidence, including transcript of online chat between defendant and undercover officer posing as 13-year-old girl, in which defendant attempted to persuade "girl" to have sex with him by indicating his desire to perform oral sex upon her and attempting to impress her with his possessions, and evidence that defendant took substantial step towards completion of offense by actually going to prearranged meeting place. U.S. v. Munro, C.A.10 (Utah) 2005, 394 F.3d 865, certiorari denied 125 S.Ct. 1964, 544 U.S. 1009, 161 L.Ed.2d 790. Infants 13

Evidence that defendant made inducement sufficient to persuade woman to travel to Nevada to engage in prostitution was sufficient to sustain defendant's conviction of violating this chapter by persuading, inducing and enticing woman to go in interstate commerce for purposes of prostitution, notwithstanding assertion that woman was willing to go to Nevada to work as prostitute. U. S. v. Pelton, C.A.8 (Mo.) 1978, 578 F.2d 701, certiorari denied 99 S.Ct. 451, 439 U.S. 964, 58 L.Ed.2d 422. Prostitution 28

Evidence sustained implied finding that defendant, who maintained house of prostitution in Alabama, induced a woman to come from Georgia to Alabama and did thereby knowingly cause such woman to be transported upon a motor carrier in interstate commerce. Nunnally v. U. S., C.A.5 (Ala.) 1961, 291 F.2d 205. Prostitution 28

Proof that woman made trip in interstate commerce on common carrier following telephone call by defendant requesting woman to return to defendant's house of prostitution, though it might have supported conviction of offense of "inducing" woman to go in interstate commerce on a common carrier for immoral purposes, was not sufficient to support conviction of offense of "causing" woman to be transported in interstate commerce for immoral purposes. La Page v. U. S., C.C.A.8 (Minn.) 1945, 146 F.2d 536. Prostitution 28

Evidence authorized finding that defendants "caused" or "induced" prostitute to be transported in interstate commerce for immoral purposes, notwithstanding prostitute's testimony that she paid her own transportation and expenses and had always wanted to go where she went. U.S. v. Reed, C.C.A.2 (N.Y.) 1938, 96 F.2d 785, certiorari denied 59 S.Ct. 71, 305 U.S. 612, 83 L.Ed. 399. Prostitution 28

Evidence was insufficient to show that interstate transportation of girl, with whom accused sustained immoral relations, was due to any persuasion by him. Welsch v. U.S., C.C.A.4 (W.Va.) 1915, 220 F. 764, 136 C.C.A. 370. Prostitution 28

Defendant was properly convicted under federal statute criminalizing conduct coercing or enticing sexual activity for which any person could be charged with a criminal offense, based upon an attempt to persuade, induce, entice, and coerce a minor to engage in the prohibited sexual conduct of child molestation under Florida law, even though there

was no allegation that any sexual activity occurred, as required for a conviction under Florida's child molestation statute; while Florida's statute required sexual contact, federal statute only required that if sexual contact had occurred, the defendant could have been charged with a criminal offense under the Florida statute. U.S. v. Lanzon, S.D.Fla.2009, 613 F.Supp.2d 1348. Infants 13

Evidence established beyond a reasonable doubt all elements of an attempt to violate the statute prohibiting the use of a facility of interstate commerce to coerce and entice minors to engage in sexual activity; defendant admitted that he communicated using email and Internet instant messaging, a chat log established that he persuaded, enticed, and induced his correspondent to engage in a sexual act, and evidence, including chat room logs and a videotape of the defendant when he was confronted at a location where he went to meet the correspondent, showed that he believed the correspondent to be a 13-year-old boy, despite his claim that he believed he was going to meet a young adult for a homosexual encounter. U.S. v. Kaye, E.D.Va.2006, 451 F.Supp.2d 775, affirmed 243 Fed.Appx. 763, 2007 WL 1978226. Commerce 82.10; Infants 13; Telecommunications 1351

Accused's conviction of attempting to persuade an individual under age of 18 to engage in criminal sexual act was sufficiently supported by evidence that accused, believing that adult with whom he was communicating over the Internet had eight-year-old sister, had indicated his desire to have sexual contact with sister and had traveled to prearranged meeting place with gifts for child, notwithstanding accused's testimony that he had traveled to meeting place solely to determine whether his Internet conversations were part of prank by his friends and that he had no intention of going through with sexual encounter had he learned that conversations were not a prank. U.S. v. Brooks, U.S. Armed Forces 2005, 60 M.J. 495. Military Justice 793

29. ---- Purpose of travel, weight and sufficiency of evidence

Finding that defendants' illicit sexual activity with minor in Louisiana hotel was not just spontaneous event that happened to occur after they had transported him across state lines for purpose of taking him to football bowl game, but was an efficient and compelling reason for this interstate travel, was sufficiently supported by evidence presented in Mann Act prosecution, including expert testimony that persons who sexually abuse children engage in "grooming process" designed to reduce resistance to their sexual advances by, inter alia, gift-giving and isolating minors from their guardians. U.S. v. Hitt, C.A.5 (La.) 2006, 473 F.3d 146, certiorari denied 127 S.Ct. 2083, 549 U.S. 1360, 167 L.Ed.2d 802, certiorari denied 127 S.Ct. 2893, 550 U.S. 969, 167 L.Ed.2d 1154. Prostitution 28

Evidence, which established that defendant offered the services of the victim in prostitution over a C.B. radio while driving a truck containing commercial freight across several state lines, and which established frequent sexual intercourse with the victim, was sufficient to establish that the purpose of the interstate transportation was prostitution, debauchery or other immoral purpose as required by statute prohibiting the interstate transportation and coercion or enticement of a female. U.S. v. Wesson, C.A.9 (Ariz.) 1986, 779 F.2d 1443. Prostitution 28

30. Verdict

That jury returned verdict of not guilty under this section and guilty under § 2421 of this title, did not indicate that jury, which had unsuccessfully requested further definition of words "inducement" or "induces", was confused as to the meaning of these terms in second section. Batsell v. U. S., C.A.8 (Minn.) 1968, 403 F.2d 395, certiorari denied 89 S.Ct. 865, 393 U.S. 1094, 21 L.Ed.2d 785. Criminal Law 1173.3

Jury could properly return verdict of not guilty under § 2421 of this title, and guilty under this section even though evidence would have justified finding of guilty under both sections. Batsell v. U. S., C.A.8 (Minn.) 1968, 403 F.2d 395, certiorari denied 89 S.Ct. 865, 393 U.S. 1094, 21 L.Ed.2d 785. Prostitution 30

A jury's verdict, convicting defendant of immoral conduct with female under 18 years old on count of indictment

erroneously described to jury by trial judge as charging offense of knowingly persuading a 15 year old girl to go to certain points in different states with intent to engage in immoral practices, instead of knowingly persuading a girl, without allegation as to her age, to be transported between such points for purpose of immoral practices, as such count actually charged, did not afford sound basis for valid judgment, as it did not show beyond reasonable doubt precise charges which jury had in mind in announcing its conclusions, and no verdict responsive to allegation of such count was found, so that court's sentence of defendant to imprisonment was invalid. Shelton v. U.S., C.A.4 (N.C.) 1956, 235 F.2d 951. Criminal Law 881(2)

A verdict of guilty against the defendant on one count only of an indictment, which count charged him with persuading, inducing, enticing and coercing a woman to go from one state to another for the purpose of having unlawful sexual intercourse with him, was in effect an acquittal of the offenses charged in two other counts of the indictment, namely procuring and aiding in procuring, and furnishing transportation for the woman in interstate commerce. Williams v. U.S., C.C.A.4 (S.C.) 1922, 282 F. 481. Criminal Law 878(3); Prostitution 30

31. Acquittal or conviction

In prosecution under four indictments charging defendants with violation of this section and under one indictment charging them with conspiracy to violate this section, acquittal of one of defendants on the four substantive charges did not require an acquittal on the conspiracy charge under the doctrine of res judicata. Blumenfield v. U. S., C.A.8 (Minn.) 1960, 284 F.2d 46, certiorari denied 81 S.Ct. 693, 365 U.S. 812, 5 L.Ed.2d 692. Judgment 751

In prosecution for causing transportation of women in interstate commerce for immoral purposes and for inducing women to go in interstate commerce on common carrier for such purposes, accused was not entitled to acquittal because women she urged to travel in interstate commerce for such purposes were also prostitutes subject to orders of accused's codefendants. McGuire v. U. S., C.C.A.8 (Minn.) 1945, 152 F.2d 577. Prostitution 21

For purposes of federal prosecution for attempting to persuade, induce, entice, or coerce a minor to engage in illegal sex acts, underlying Kansas statute, which criminalized sexual exploitation of a child through promotion of a performance, was not limited to public presentations, and therefore defendant was not entitled to judgment of acquittal on basis that he only attempted to have minors engage in private presentations. U.S. v. Riccardi, D.Kan.2003, 258 F.Supp.2d 1212, affirmed 405 F.3d 852, rehearing denied, certiorari denied 126 S.Ct. 299, 546 U.S. 919, 163 L.Ed.2d 260, rehearing denied 126 S.Ct. 825, 546 U.S. 1083, 163 L.Ed.2d 719, post-conviction relief denied 2007 WL 852360, reconsideration denied 2007 WL 1218021, affirmed 314 Fed.Appx. 99, 2008 WL 4183921, certiorari denied 129 S.Ct. 2072, 173 L.Ed.2d 1148. Infants 13

32. New trial

In prosecution for violation of this section there was no abuse of discretion by trial court in refusing new trial which was based in part upon affidavit of witness recanting testimony given on trial. U.S. v. Smith, C.A.7 (Ill.) 1958, 253 F.2d 95, certiorari denied 78 S.Ct. 1360, 357 U.S. 919, 2 L.Ed.2d 1364. Criminal Law 942(2)

In prosecution for violations of provisions of this section and § 2421 of this title, relating to transportation and coercion or enticement of females, overruling new trial motion for newly discovered evidence consisting of letters written by witness postmarked in Minnesota during period other evidence showed witness was engaged in prostitution in Illinois was not abuse of discretion in view of affidavits of witness and another stating that letters were written in advanced and were sent to friends for mailing in Minnesota. Kreinbring v. U.S., C.A.8 (Minn.) 1954, 216 F.2d 671. Criminal Law 958(1)

33. Harmless or prejudicial error

Trial court's failure to respond to jury's request for further definition of word "induces" in this section was not plain error. Batsell v. U. S., C.A.8 (Minn.) 1968, 403 F.2d 395, certiorari denied 89 S.Ct. 865, 393 U.S. 1094, 21 L.Ed.2d 785. Criminal Law 1039

33a. Sentence

In imposing a below-Guidelines sentence of 124 months' imprisonment for attempting to entice a minor to engage in sexual activity, court did what it could to account for unwarranted sentencing disparities, while not dipping below the mandatory minimum; nothing more was required to satisfy the obligation to consider sentencing disparities. U.S. v. Berg, C.A.7 (Ill.) 2011, 640 F.3d 239. Infants 20; Sentencing And Punishment 55

Defendant convicted of multiple violations of federal child exploitation statutes was not entitled to sentencing reduction for acceptance of responsibility; defendant did not plead guilty, he did not indicate that his defense at trial would be purely legal, he did not demonstrate contrition, and although he stipulated to a few basic facts, mostly relating to the foundation of prosecution exhibits, he did not stipulate to the content of the exhibits, or to the factual elements of guilt. U.S. v. Spurlock, C.A.8 (Mo.) 2007, 495 F.3d 1011, certiorari denied 128 S.Ct. 687, 552 U.S. 1054, 169 L.Ed.2d 537, habeas corpus dismissed 2010 WL 256673. Sentencing And Punishment 765

Ten-year mandatory minimum sentence provision is not grossly disproportionate to the crime of attempting to entice a minor to engage in a criminal sexual act and therefore does not violate the Eighth Amendment's prohibition of cruel and unusual punishment. U.S. v. Nagel, C.A.7 (Wis.) 2009, 559 F.3d 756. Infants 20; Sentencing And Punishment 1496

District court did not procedurally err by comparing and contrasting defendant's crime of knowingly and willingly enticing an adult female to travel in interstate commerce for purposes of prostitution and the Guidelines range for that offense to other types of offenses; nothing indicated that district court mistakenly conflated defendant's offense with a child pornography offense or any other offense, and court also noted sentences typically imposed for credit card identity theft cases and crack cocaine offenses. U.S. v. Hill, C.A.8 (Mo.) 2009, 552 F.3d 686. Sentencing And Punishment 66

Two-level upward sentencing modification to base level of defendant's possession of child pornography offense for vulnerable victim and four-level upward modification for sadistic or masochistic conduct portrayed in images was not improper double counting for extreme pain that necessarily would have been experienced by very young child depicted in pornography as being sexually penetrated, since sadistic conduct modification accounted for pleasure necessarily experienced by perpetrator while vulnerable victim enhancement accounted for inability of victim to resist sexual abuse. U.S. v. Holt, C.A.9 (Mont.) 2007, 510 F.3d 1007. Sentencing And Punishment 906

Sentencing court's failure to address defendant's claim that imposition of 144-month sentence for offense of using telephone and computer to persuade minor to engage in illegal sexual activity, which was more than double the top end of the advisory range, represented an unwarranted disparity with sentences imposed in two other cases involving sexual offenses with minors rendered the sentence unreasonable; sentencing court gave no indication of why defendant's circumstances presented an atypical case. U.S. v. Ausburn, C.A.3 (Pa.) 2007, 502 F.3d 313, certiorari denied 129 S.Ct. 32, 172 L.Ed.2d 46, appeal after new sentencing hearing 362 Fed.Appx. 259, 2010 WL 286534, certiorari denied 131 S.Ct. 177, 178 L.Ed.2d 107. Sentencing And Punishment 373

Sentencing defendant to the mandatory minimum prescribed by the PROTECT Act (Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act) for violation of statute prohibiting actual or attempted persuasion of a minor to engage in illicit sexual activity constituted plain error where there was at least a possibility that the jury convicted defendant based solely on pre-PROTECT Act conduct, thus resulting in an ex post facto vi-

olation; district court's failure to require a special verdict requiring jury to find date of the violation affected defendant's substantial rights and tainted the integrity and reputation of the judicial process. U.S. v. Tykarsky, C.A.3 (Pa.) 2006, 446 F.3d 458, appeal after new sentencing hearing 295 Fed.Appx. 498, 2008 WL 4492626, certiorari denied 129 S.Ct. 1929, 173 L.Ed.2d 1076. Criminal Law 1042.3(1)

Sentence of 210 months' imprisonment for conviction by guilty plea to online enticement of a child was substantively reasonable; defendant's non-violent criminal history did not necessarily remove him from the heartland of circumstances targeted by the guidelines, sexual conduct with a child was considered particularly heinous, and district court requested that defendant be placed in a facility that was able to treat his infirmity. U.S. v. Huff, C.A.10 (Wyo.) 2007, 232 Fed.Appx. 832, 2007 WL 2269449, Unreported, certiorari denied 128 S.Ct. 816, 552 U.S. 1081, 169 L.Ed.2d 615. Infants 20; Sentencing And Punishment 66; Sentencing And Punishment 863; Telecommunications 1351

District court's departure from sentencing guidelines without giving defendant notice that it contemplated doing so necessitated remand for resentencing on conviction by guilty plea to use of mail or facility of interstate or foreign commerce for coercion and enticement of minor for sexual activity; district court calculated sentencing level by expressly departing from guidelines range, and thus, the method could not have been characterized as a variance requiring no notice. U.S. v. Garcia, C.A.3 (Pa.) 2007, 225 Fed.Appx. 47, 2007 WL 986874, Unreported, appeal after new sentencing hearing 362 Fed.Appx. 293, 2010 WL 286529, certiorari denied 131 S.Ct. 169, 178 L.Ed.2d 100. Criminal Law 1181.5(8)

34. Review

Court's examination of record in prosecution in which defendant was found guilty of transporting women in interstate commerce for purposes of prostitution satisfied court that no conduct on part of prosecutor had reached level of plain or prejudicial error as claimed by defendant whose asserted error and prejudicial conduct set out only generalities and conclusions. Lerma v. U. S., C.A.8 (Minn.) 1968, 387 F.2d 187, certiorari denied 88 S.Ct. 1658, 391 U.S. 907, 20 L.Ed.2d 421. Criminal Law 1171.1(1)

In prosecution for violation of this section, trial court had wide discretion as to materiality and relevancy of evidence of prostitution from six months to a year previous to acts charged in indictment, and reviewing court would not disturb its decision. Stevens v. U. S., C.A.9 (Idaho) 1958, 256 F.2d 619. Criminal Law 1153.5; Criminal Law 368.37

In prosecution for transporting a woman by common carrier for prostitution and conspiring to commit the offense, cross-examination of defendant about the convictions of his wife which had a tendency to show what kind of a place it was probable that defendant and his wife were maintaining did not require a reversal of conviction, where the government counsel acted in good faith, and in view that the cross-examination elicited from defendant little, if any, evidence of a damaging character, and that the trial court struck out all such evidence and instructed the jury to disregard it. Davis v. U.S., C.A.8 (Minn.) 1956, 229 F.2d 181, certiorari denied 76 S.Ct. 706, 351 U.S. 904, 100 L.Ed. 1441. Criminal Law 1170.5(6)

Where a prosecution for persuading, inducing, and enticing a woman to go from one state to another for the purpose of debauchery was before the jury on controverted questions of fact, if there was evidence from which the required intent could be fairly and reasonably found, the judgment will be affirmed. Talbot v. U.S., C.C.A.7 (Ind.) 1922, 286 F. 21, certiorari denied 43 S.Ct. 518, 261 U.S. 623, 67 L.Ed. 832. Criminal Law 1159.2(10); Criminal Law 1159.5

Conviction was affirmed on a record abundantly showing that the purpose of the transportation was that of illicit sexual intercourse, even if this did not, under the record, amount to debauchery or prostitution within contemplation of former §§ 397 to 404 of this title [now covered by this chapter]. Griffith v. U.S., C.C.A.7 (Wis.) 1919, 261 F. 159,

certiorari denied 40 S.Ct. 344, 252 U.S. 577, 64 L.Ed. 725.

Defendant's offense of using interstate commerce to engage in sexual activity with a minor did not demonstrate aggravating circumstances that were absent in typical cases involving the same offense, and therefore offense did not fall outside the Sentencing Guidelines' heartland, such that upward departure at sentencing, on such basis, was not warranted. U.S. v. Searcy, S.D.Fla.2003, 299 F.Supp.2d 1285, affirmed 418 F.3d 1193, certiorari denied 126 S.Ct. 1107, 546 U.S. 1125, 163 L.Ed.2d 918. Sentencing And Punishment 820

18 U.S.C.A. § 2422, **18 USCA § 2422**

Current through P.L. 112-28 approved 8-12-11

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COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS. SUPERIOR COURT

JESSE E. TORRES III JENNIFER J. ADAMS Plaintiffs vs. SOPHIE J. TORRES JESSE E. TORRES IV DEBTMERICA, LLC. DONALD F. TORRES Defendants	Civil Docket # BACV2011-00433

PLAINTIFFS' RESPONSE AND OPPOSITION TO "DEFENDANT, JESSE E. TORRES IV, MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM"; REQUEST FOR HEARING

The Plaintiffs, Jesse E. Torres III and Jennifer J. Adams, in the above-entitled matter, hereby oppose the Defendant Jesse E. Torres IV's Motion to Dismiss for Failure to State a Claim, dated September 7, 2011 with Certificate of Service Dated September 14, 2011, and requests a hearing on this matter.

This opposition is the third such opposition of similar motions to dismiss brought by the Defendants' Counsel to delay answering the Plaintiffs' Production of Documents and Interrogatories served on the Defendants which will clearly further support the Plaintiffs' claims.

In support of this opposition, the Plaintiffs reallege and reassert paragraphs 1 through 134 of their Complaint, which are incorporated herein by reference and all attachments to said complaint as if specifically attached hereto.

I. INTRODUCTION

The Plaintiffs, after receiving no response to the Notices of Default sent to the Defendants, did after over ten years of terror, file the above-captioned lawsuit (Lawsuit) against the four (4) Defendants, who are represented together by three separate law firms in this matter. The lawsuit contains well documented criminal acts in two (2) countries and three states, by the Defendants' criminal organization, or family, to extort funds from, and do harm to the Plaintiff Jesse E. Torres III (Jesse III). Jesse III was in Mexico, as a guest of the Mexican government, who had solicited him to open an office in Mexico for his new corporation, formed to develop the new technology he had created. Prior to the *"dot-com bust"*, it was nearly impossible to hire programmers in the United States and as such it was necessary to look elsewhere. Both Mexican and U.S. Corporations were formed by, or in association with, the then partners of said corporations, Bingham and Dana, who, along with numerous of their attorneys, were the main (other than Jesse III and his Bankers) shareholders in these corporations. Within a year after moving to Mexico, the extortion attempts by the Defendant Donald F. Torres and his deceased son and convicted drug felon, James Kimberly Torres, began. The actions have been well documented by the criminal agencies from two (2) countries and included death threats against the Plaintiffs, which were to be executed by Hells Angles, the known associates of the Defendants.

Even though the Mexican Government issued the equivalent of a warrant in this matter for James Kimberly Torres, the Plaintiffs were advised by officers of the California DEA that they could not protect them in Mexico and that they should return to the United States. The Plaintiffs were forced to abandon their five-hundred-thousand ($500,000) dollar home and flee Mexico and return to the only home available to them, in the mountains of California. The altitude caused the Heart Failure of Jesse III and it will statistically shorten his life by twenty

(20) or more years, and did cause him to incur approximately eighty-thousand ($80,000) dollars in medical bills.

The Plaintiffs returned to Massachusetts approximately four years ago to a) be under the care of Jesse III's long time Doctor, b) withdraw the approximately one-hundred-fifty-thousand ($150,000) dollars in funds left in the care of his father who, at that time, had just passed away, and c) to help his mother, the Defendant Sophie J. Torres (Mrs. Torres) whose properties were in major disrepair after the previous five years, of which her late husband, Jesse E. Torres Jr. (Dad) suffered from Alzheimer's.

When Mrs. Torres was approached by Jesse III to go with him to the Rockland Trust to withdraw the monies that belonged to Jesse III in the amount of one-hundred-fifty-thousand-dollars ($150,000) more or less, Mrs. Torres stated to her son that she had transferred the money from Rockland Trust to Sovereign Bank and that only "around" thirty-thousand dollars ($30,000) remained. This was devastating to the Plaintiffs as they now needed this money to live on, and to pay the large hospital bills they had incurred due to the Defendants' direct actions.

This more than one-hundred-twenty-thousand ($120,000+) dollars used by Mrs. Torres was just a small amount when compared to the hundreds of thousands of dollars loaned to Mrs. Torres and her late husband by Jesse III after their numerous bad business ventures. These bad business ventures included an AMC Dealership with their then partner Kevin Mann, who disappeared without a trace. Shortly after this, Dad had a near-death accident which caused him stay in Falmouth Hospital for three and one half (3 1/2) months, two and a half (2 1/2) months of which were in intensive care. This left him unable to work for many years, and deeply in debt. This debt was paid for the most part, by his son, Jesse III. Jesse III and his mother, Mrs. Torres, did, in 2009, over numerous weeks, discuss the hundreds of

thousands of dollars that had been loaned to her, Dad and their numerous failed businesses, by Jesse III. It was also discussed that Dad had promised that he would repay his son, Jesse III, by selling and/or leaving him his entire estate, an estate that Dad had mainly inherited from his side of the family. These inherited properties were appraised at approximately two-million-dollars ($2,000,000). Mrs. Torres and her son Jesse III, did agree that the money was owed to Jesse III and that the property in Mrs. Torres' and Dad's existing Will was to go to Jesse III, but that she would like to leave two lots in Florida to her adopted daughter, Mary C. Torres. The goal, at least on the part of Jesse III, was to provide a solution where all parties could benefit from the equity of the real-estate and avoid litigation. However the real estate was in major disrepair with one home literally falling down. Plaintiff Jennifer J. Adams has a masters degree in mechanical engineering and agreed to provide those services in the repair and restoration of the properties as required, as long as the Plaintiffs had a contract on the verbal agreement between Mrs. Torres and her son, Jesse III.

Mrs. Torres asked the Plaintiffs for their help in the financing, maintaining and restoring of the properties. With a copy of Quicken Will Maker, in early April 2009, the papers were generated in the exact way requested by Mrs. Torres, and she was given, as she requested, advanced copies of her Will, Health Care Proxy and Contract transferring all property rights to her son, Jesse III. She was advised to have them reviewed, by her attorney, Katheryn Wilson, and was given significant time to review the documents before their signing on April 24, 2009.

Every chance he gets, the Counsel for the Defendants touts the *"suspect circumstances"* under which these documents were signed. The attached affidavit, Exhibit "II", is from the neighbors of many years of Mrs. Torres and her late husband, Jesse E. Torres Jr. (Dad). The neighbors, retired Falmouth Police Officer Drew Framson and his wife Gail, were there during the entire signing process as witnesses and, contrary to *"suspect*

circumstances", in their sworn affidavit, they state in part:

> *"...The documents which we refer to, were Last Will and Testament of Sophie J. Torres, Health Care Proxy of Sophie Torres, and Transfer of Property Rights Document. Present were Sophie J. Torres, her son Jesse Jr. [III] Jennifer Adams and ourselves. We distinctly recall that Jesse Torres Jr [III] took painstaking and methodical care to slowly read each document word for word for Sophie Torres. Sophie Torres was continuously asked by Jesse Torres Jr. [III] if she understood what was being read aloud. We further recall that Sophie Torres was given a copy to read along with. This took place at Sophie Torres kitchen table, and she asked questions and was answered by her son. Sophie neither objected to anything presented to her, and was in fact, jovial, lucid and happy throughout.*
>
> *...The Notary also signed and placed a seal on the documents. Again, Sophie Torres was in our opinion fully aware what she had signed, quite happy what she had done, and had complete understanding. There is no doubt in our minds that she did this freely."*

While the Torres family home of many generations was under construction, funds were falling short to make the mortgage payments since Mrs. Torres had refused to get a standard mortgage of one-hundred-fifty-thousand-dollars ($150,000) as she had agreed to, and instead insisted on getting a smaller and much more restrictive construction mortgage of only eighty-seven-thousand-dollars ($87,000). Jesse III had loaned his son, the Defendant Jesse E. Torres IV (Jesse IV), eleven-thousand-dollars ($11,000) to start Lending Point Mortgage many years previously. This loan had never been repaid to him, as had been agreed. On May 26, 2011, Jesse III emailed his son, see Exhibit "E", requesting him to pay the money he owed his father directly to his Grandmother, Sophie J. Torres, to assist her in making mortgage payments. In an email to his father, Defendant Jesse IV, who has since become a millionaire, denied that he owed the money. With this lie along with the past ten (10) years' actions and abuse by Jesse IV, his father, Plaintiff Jesse III did disavow him.

The very next day, Mrs. Torres, who clearly affirmed that she was under the direction of Defendants Donald F. Torres and Jesse IV, did change her Will, and therefore did breach the

contract by and between Jesse III and Mrs. Torres of April 24, 2009. Defendants Mrs Torres, Debtmerica and Jesse IV were all given notice of these breaches and time to cure, which they did not. They have instead, through three (3) law-firms, spent huge amounts of monies for the sole purpose of doing harm to the Plaintiffs by denying them the monies to which they are contractually and ethically entitled. This harm to the Plaintiffs was a promise kept by the Defendant Donald F. Torres, through Jesse IV and Defendant Debtmerica LLC, (Debtmerica), due to the Plaintiffs not submitting to his and his late son's extortion attempts. Further, the Plaintiffs now believe that the Defendants blame the Plaintiffs for the death of Defendant Donald F. Torres' son, James Kimberly Torres, since it was the direct result of the Plaintiffs' reporting him to the authorities.

II. HISTORY AND FACTS

As the Defendants through Counsel have filed three (3) separate Motions to Dismiss, and the facts and history are virtually the same in all three of the Plaintiffs' Response in Oppositions, the Plaintiffs, in the interest of Judicial Economy, and in support of this Response and Opposition, have attached the Common History and Facts of these matters in their sworn Affidavit enclosed herewith.

Of specific note is that the Plaintiffs believe that they should provide such a detailed affidavit since the Defendants, through Counsel, have continually made statements that are not based on any fact and have never been supported by a sworn affidavit as required by M.S.C.R. 9(A) a, 4. Further, the Plaintiffs argue that the Defendants through Counsel have made these statements solely to prejudice this Honorable Court.

REPUDIATION OF DEFENDANTS' "FACTUAL SUMMARY"

As is now expected from the Defendants' Counsel, he once again attempts to include prejudicial and non-factual statements into his pleadings that have no sworn affidavit attached, and as such is ripe for dismissal under M.S.C.R. 9(A) a, 4. His statements are true up to and including his continual reference to the Plaintiffs' being unmarried. He uses the terms "induced" and "suspect circumstances" to state the conditions under which the Defendant Sophie J. Torres signed her Will, yet the facts as stated in the affidavit of her long term neighbors and witnesses to the documents, retired Falmouth Police Officer Drew Framson and his wife Gail, clearly repudiate this claim. While we would like to own the copyright on Intuit's Quicken Will Maker, we don't. It was the Defendant Sophie J. Torres that answered the questions in the Quicken Will Maker "Interview" and who was also left with a copy of the resulting Will, presumably to be reviewed by her attorney Kathryn Wilson. This Will was further reviewed by the parties in detail on August 24, 2009, prior to its signing, and in *"painstaking detail"*, as is stated in the before-named witnesses' sworn affidavit.

IV. STANDARDS FOR CONSIDERING A RULE 12(B)(6) MOTION TO DISMISS

The Defendant Jesse E. Torres IV's Motion to Dismiss fails to meet the rigorous standards required by Rule 12(b)(6): "A court may grant the radical relief of dismissal only if the plaintiff can set forth no set of facts which would entitle [them] to relief." Coraccio, 415 Mass. at 147. It is well established that "[t]he rules of pleading in Massachusetts are generous. A cause may not be dismissed for failure to state a claim upon which relief could be granted 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Spence v. Boston Edison Company, 390 Mass. 604, 615 (1983) (citations omitted).

These "generous and indulgent criteria" reduce "a plaintiff's obstacle in surmounting a rule 12(b)(6) motion to dismiss for failure to state a claim to a minimal hurdle," and mean that a "plaintiff is to be given the benefit of any doubt . . . and must prevail over the motion unless it appears with certainty that he is entitled to no relief under any combination of facts that could be proved in support of his claims." Brum v. Town of Dartmouth, 44 Mass. App. Ct. 318, 321-22 (1998) (citations omitted, emphasis in original).

The sufficiency of the claims raised in the plaintiff's complaint is examined by accepting the allegations, and such reasonable inferences as may be drawn therefrom, as true. See Eyal v. Helen Broadcasting Corp., 411 Mass. 426 , 429 (1991)

Further, the Court may also look to materials outside of the pleadings to satisfy itself that it has subject matter jurisdiction without converting the motion for summary judgment. See Flynn v. Ohio Bldg. Restoration, Inc., 260 F. Supp. 2Nd 156, 161 (D.D.C. 2003). (This paragraph hereafter referenced as Ohio Bldg. Restoration, Inc.)

The Defendant Jesse E. Torres IV has not come close to meeting this high burden.

ARGUMENT

While the Defendant through Counsel argues that the Contract is the only material matter in the Plaintiffs' complaint, they attempt to dismiss the numerous counts, which include RICO counts, contained in the Plaintiffs' Complaint for the acts of the Defendants which caused the loss of their $500,000 home resulting in the Heart Failure of the Plaintiff which will statistically shorten his life by 20 years. These bad acts included, among many others, extortion and conspiracy claims.

As to the Contract by and between Plaintiff Jesse E. Torres III and Defendant Sophie J.

Torres, dated April 24, 2009, the Defendants through Counsel rely solely and wrongfully on Johnson v. Starr, 321 Mass 566, 569 (1947) citing Daniels v. Newton, 114 Mass. Vol 30, (**Count I**) as the basis to dismiss all of the Plaintiffs' counts against the Defendant Jesse IV arguing that there has been no breach of contract as Mrs. Torres has not died and therefore the time of performance is not yet arisen.

This is upside down logic as there was no contract in Johnson v. Starr Id., nor one that had specific penalties spelled out in clear and concise language as does the Contract between Mrs. Torres and Jesse III. Nor, in Johnson v. Starr Id., was there a "Permanent and Persistent Transfer of Property Rights" as there is in the Contract between Jesse III and Mrs. Torres. The only matter applicable from Johnson v. Starr Id. was in Count II, not Count I, where the court ruled that the Plaintiff was entitled to payment for the services provided, as are the Plaintiffs in this action for the well over two-thousand of hours of services provided to Mrs. Torres in reliance on the contract.

Realleged and Reinserted Argument

The Plaintiffs have clearly repudiated the Defendant's argument based on Johnson v. Starr, Count I Id. in their Opposition to the Defendant Sophie J. Torres' Motion to Dismiss. The Plaintiffs are herein forced to restate this same argument in this Opposition as the Defendants brought three (3) separate motions to dismiss rather than a single combined motion. In the interest of Judicial Economy, the language that follows is that same argument made by the Plaintiffs in their opposition to the motion to dismiss brought by the Defendant Sophie J. Torres, and as such, it has been inserted using a different typeface to allow His or Her Honor to do as they deem fit, if they have already read these arguments:

The Defendant and Plaintiffs agree that there was a persistent and irrevocable transfer of property rights from the Defendant Sophie J. Torres to her natural son, Plaintiff Jesse E. Torres

III through a contract entitled "PERMANENT TRANSFER OF PROPERTY RIGHTS" (hereafter referenced as "Contract") that was attached to the Will of the Defendant Sophie J. Torres.

The Defendant through Counsel appears to be arguing without basis in fact or law that the *Contract attached to the Will was dependent on the Will, which is simply not factual, nor was it* ever the intent of the Contract or the Parties thereof. It is the original Will that was in fact dependent on the terms and conditions of the Contract, as the Contract transferred permanently and persistently the property rights to properties that were the main assets of the Will.

The Will of the Defendant Sophie J. Torres is simply the trigger whereby the final transfer of the properties would be completed, and full title and deed transferred to the Plaintiff Jesse E. Torres III, upon which conveyance, and only with this conveyance, the amounts owed by the Defendant Sophie J. Torres to her natural son, Plaintiff Jesse Torres III would be considered "paid in full", or if the Will was materially altered, the amounts owed to the Plaintiff Jesse E. Torres III in the agreed to amount of one-million-six-hundred-forty-thousand dollars. ($1,640,000) would become, and is now, fully due and payable.

The terms and penalties for the Plaintiffs' claimed breach of contract were clearly set forth in the Contract. Further, the Court has historically held that "notice that a party will not perform his contract has the same effect as a breach" See Johnson v. Starr 321 Mass. 570 (1947) in its ruling on Count II. It is without argument by the Defendant Sophie J. Torres through Counsel, that the Defendant Sophie J. Torres did in fact breach her contract with the Plaintiff Jesse E. Torres III, by changing in material part, her Will.

The Plaintiffs set forth that only the trier of fact can determine the specific meaning of *"The Permanent and Persistent Transfer of Property Rights"* which the Plaintiffs aver set up a joint use and tenantship of the properties by both the Plaintiffs and the Defendant Sophie J. Torres. Therefore, if certain actions by the Defendant Sophie J. Torres, whereby the Defendant did threaten the Plaintiffs that if they brought this action, she was going to to evict the Plaintiffs from these properties and change the locks on buildings being used exclusively by the Plaintiffs, this would clearly constitute a violation of said joint use and tenantship of the properties by the Defendant Sophie J. Torres. In fact, the Defendant Sophie J. Torres has made good on her threats to the Plaintiffs including but not limited to, serving on the Plaintiffs a Notice to Quit to evict them from properties in which the Plaintiffs have a tenantship interest. In addition, the Defendant Sophie J. Torres has changed the locks on buildings where the Plaintiffs have their personal property stored. The Plaintiffs assert that these acts by the Defendant Sophie J. Torres, constitute specific breaches of contract which can ultimately only be determined by the trier of fact. Therefore the Plaintiffs aver that the Defendant Sophie J. Torres' above-named motion cannot be allowed as there are numerous issues that are not a matter of law but rather a matter of fact at issue and in dispute, and therefore the Defendant's motion is not yet ripe to be

determined by this Court. The Plaintiffs have met the burden to allege facts sufficient "to raise a right to relief above the speculative level on the assumption that all of the allegations in the complaint are true (even if doubtful in fact)." Bell Atlantic Corp.v. Twombly, 127 S. Ct. 1955, 1964-65(2007).

Even if we were to assume that the Plaintiffs' Complaint, in its prayers to the Court specific to the Defendant Sophie J. Torres, "a) adjudicate that the existing Will of the Defendant, dated April 24, 2009, be declared as the only true Will of the Defendant Sophie J. Torres..." could somehow be loosely applied to Johnson v. Starr 321 Mass. 566, 569 (Count I) as the Defendant Sophie J. Torres through Counsel claims, it is of no consequence since the contractual obligation of the Defendant Sophie J. Torres, is in the repayment of the amount agreed, of one-million-six-hundred-forty-thousand dollars ($1,640,000) now due the Plaintiff Jesse E. Torres III, as is demanded under the Plaintiff's prayers 'b)' through 'e)' for relief from the Defendant Sophie J. Torres.

The amount now due the Plaintiff Jesse E. Torres III is well in excess of the current value of the properties as set forth in the Contract. The Plaintiffs argue that these properties provide the only means whereby the Defendant Sophie J. Torres can pay her contractual obligations to the Plaintiff Jesse E. Torres III. The evidence is weighted so heavily in favor of the Plaintiffs, that the Court, we assert, will most assuredly rule in favor of the Plaintiffs, and will therefore allow the Plaintiffs to file liens against these properties eventually leading to their sale; and said sale will most likely occur before the time of the Defendant Sophie J. Torres' death, and if not, the Defendant's argument would be moot, as the time for performance would have arrived. Therefore the Defendant's through Counsel's argument is of no consequence as there is no additional benefit or loss to the Defendant Sophie J. Torres. See: Walker v. Cronin, Supra at 565 (1871).

The Defendant Sophie J. Torres through Counsel attempts to make, and appears to base as the foundation of their motion, claims and arguments that the permanent transfer of property rights was not registered at the Barnstable County Registry of Deeds. The Defendant's argument is flawed and without judicial merit as, while it is necessary to register and record evidence of ownership of property within Massachusetts, the Plaintiff has not claimed that the property rights as defined in the Contract were a form of specific ownership, nor does the Plaintiffs' Complaint make claims against the properties other than that they were the primary asset securing the monies owed to the Plaintiff and as such were to be maintained. The Plaintiffs' claims against the Defendant Sophie J. Torres are for breach of contract, whereby all monies in the agreed to amount of one-million-six-hundred-forty-thousand dollars. ($1,640,000) are now due and payable to the Plaintiff Jesse E. Torres III.

There was and is no statutory requirement that the Plaintiff Jesse E. Torres III register these permanent transfer of property rights, to maintain the status of his contract, nor to receive the benefit thereof.

The Defendant's through Counsel's argument is flawed as they rely on Count I in Johnson v. Starr for which the Plaintiffs have made no similar claims. In Johnson v. Starr Count I, the plaintiff made claim against the properties that were not due the plaintiff until the time of the death of the defendant. In the Contract by and between Defendant Sophie J. Torres and her natural son, Plaintiff Jesse E. Torres III, it included, but was not limited to, the permanent transfer of property rights, which included the right to live on, farm, store equipment on, use certain buildings and use for recreation, the properties. These benefits have been enjoyed by the Plaintiffs since the signing of the Contract and were not, and are not, contingent on the death of the Defendant Sophie J. Torres.

In Johnson v. Starr Count II, the Court clearly stated that the defendant's actions of changing the deed to properties promised the plaintiff was a breach of contract and as such all monies owed for services quantum meruit to the plaintiff upon said breach of contract, were owed to the plaintiff.

The Plaintiffs' claim is for breach of contract triggered, among other things, by the specific act of materially changing the Will, specific penalties that all monies owed the Plaintiff Jesse E. Torres III by the Defendant Sophie J. Torres, monies that predate the Will, would and did become fully due and payable.This was defined in the clear and concise language within the Contract :

> "If any of these provisions are violated, any monies and interest (at a rate not to exceed that of a normal bank loan during the same time frames and considerations) will become fully due and payable."

Further in Johnson v. Starr 570 (Count II) the Court specifically held that the defendant, by her actions of changing the deed to the properties of that matter, had in fact breached their contract and that the defendant was ordered to pay for all of the services provided by the Plaintiff.

The Plaintiffs are owed monies for their services quantum meruit and the Plaintiff Jesse E. Torres III is owed the agreed amounts that were owed to him at the time the Contract was signed and prior to the execution of the Will of the Defendant Sophie J. Torres.

The Plaintiffs intend to amend, with leave of Court, their complaint specific to the Defendant Sophie J. Torres to include demand for payment for their services quantum meruit, which total several thousand hours of their labors, more or less, and as such the Defendant Sophie J. Torres' above-named motion cannot be considered at this time for dismissal. See Sherman v. Hallauer (1972, CAS Fla) 455 F2d 1236.

The Defendant Sophie J. Torres through Counsel, failed to consider certain language in the Contract and appears therefore unable or unwilling to recognize that had the Plaintiff Jesse E. Torres III, for the sake of argument, legally registered said property rights, this would have considerably affected or, more likely than not, eliminated the ability to finance the properties by the Defendant Sophie J. Torres, which was one of the limited rights allowed her by the Contract.

> "This is a binding and durable provision except as follows: a) Sophie J. Torres is free to sell or finance the PROPERTIES while she is living if said sale or financing is required to benefit her happiness, well being or health. b) any proceeds received either directly or indirectly from the sales or financing of these properties not used by SJT will become the property of JET upon upon her death."

The Defendant Sophie J. Torres did in fact, with the assistance of the Plaintiffs, obtain much needed financing and did obtain a Reverse Mortgage on the property known as "Uncle Fred's House" on or about May 13, 2009, and did obtain a construction mortgage on the property known as "Grandma's House" on or about December 13, 2010. The Plaintiffs assert that without this financing the PROPERTIES were in jeopardy of being lost due to the financial obligations of the Defendant Sophie J. Torres, and in the case of "Grandma's House", of literally falling down through disrepair, had said financing not been obtained.

The agreed to goal of the Defendant Sophie J. Torres and her natural son, Jesse E. Torres III (hereafter referred to as "Parties") as to the properties of the Contract, was to restore them, and then to; a) sell them at the highest market value available, or b) use the property in the most expeditious way to generate the greatest financial return for the Parties. If the financing was not obtained, this would have been an unprocurable goal, a goal that both the Plaintiff and the Defendant Sophie J. Torres had wanted. In fact, the Parties had agreed to a division of profits based based on ownership of stock in a new corporation that would in fact have title to the Properties, and did contractually agree in writing, through a letter of intent, to set up the "Torres Farm Trust, Inc." upon completion of the restoration. Said agreement outlined the terms and conditions of ownership as well as specific stock obligations and was signed by the Defendant Sophie J. Torres and her natural son, Plaintiff Jesse E. Torres III on August 06, 2009. See Exhibit "EE" hereto attached. (see: Ohio Bldg. Restoration, Inc. Id.)

The above-referenced action clearly and contractually demonstrates the intentions of the Parties in respect to the Contract, to transfer title prior to the death of the Defendant Sophie J. Torres, and therefore would have made the Will inconsequential. As such, the Defendant Sophie J. Torres' argument based on Johnson v. Starr, Mass. 566, 569 (1947), (hereafter referenced as "Johnson v. Starr Count I") where in that contract the performance under said contract was based on the death of the defendant, has no application to this matter, as the Death of the Defendant Sophie J. Torres was not a consideration of the transfer of the properties to a corporation of which the Plaintiff Jesse E. Torres III would have been the majority shareholder.

Specific claims against the Defendant Jesse E. Torres IV

Count V and VI. The Defendant through Counsel argues that the Defendant Jesse IV "only gave money to his Grandmother to help support her" and that there were no factual statements to reflect the Plaintiffs' claim. Apparently, Counsel for Jesse IV failed to acknowledge the section in the Plaintiffs' Complaint, of which Count V makes specific reference to paragraphs 1 through 134. The fact is, although there are many other bad acts by the Defendant Jesse IV, it was the threat of withholding the support payments that the Plaintiffs claimed in their complaint, that caused the Defendant Mrs. Torres to Breach her contract with her son, and that bad act certainly arises to the level of Tortious and Deliberate Interference. Additionally, the Defendant Jesse IV was sent a Notice to Cease and Desist which also outlined specific bad acts by the Defendant Jesse IV. This case, through its lawful discovery, will uncover many additional facts about the Defendant Jesse IV that have already been related by the Defendant Sophie J. Torres to the Plaintiffs. Facts such as Defendant Jesse IV's statement that he was going to *"teach his father a lesson"*.

Count VII. The Defendant through Counsel argues that the *caption of this count ("Malicious Intent")* doesn't say what it clearly states. To begin with, this count, as with all counts in the Plaintiffs' Complaint, reallege and reinsert paragraphs 1 through 134 of the Complaint. The Plaintiffs' Complaint clearly states numerous wrongful acts that harmed the Plaintiffs, including but not limited to, conspiring to cause, and the coercion of, the Defendant Sophie J. Torres, to breach her Contract with the Plaintiffs and therefore deprive them of one-million-six-hundred-forty-thousand-dollars ($1,640,000) to which they are clearly entitled. The Plaintiffs argue, this is a specific wrongful act and has

caused them harm. The entire case would be viewed by any reasonable person, that it was and is the intent of the Defendant Jesse E. Torres IV to do harm to his father, the Plaintiff Jesse E. Torres III. Why else would he spend what is arguably reaching $100,000 in legal fees, if not to do harm to the Plaintiffs? Additionally, if the Defendant is arguing the meaning of a "wrongful act", this is an issue of fact that can only be determined by the trier-of-fact and therefore, on its own merit and as a matter of law, the Court should dismiss the Defendant's motion.

Count VIII. Herein the Defendant's Counsel argues that Count VIII is for *"Fraud"*, instead of the actual claim of Count VIII which is *"Conspiracy to Commit Fraud"* which has a completely different standard and as such, any reliance on Mass. R.C.P. 9(b); Cohen v. Santoianni, 330 Mass. 187 (1953), is moot. The Plaintiffs argue that the standard that must be applied is that for what was claimed in Count VIII: *"Conspiracy to Commit Fraud"*, and as in all suits involving conspiracy, agreement is rarely out in the open, and proof of conscious complicity may depend upon the careful marshaling of circumstantial evidence and the opportunity to cross-examine hostile witnesses and therefore is not proper for a motion to dismiss, See Ferguson v. Omnimedia, Inc., 469 F.2d 194, 198 (1st Cir. 1972) and Hub Assoc. v. Goode, quoting Nat. Bank & Trust Co. of Chicago, 529 1257, 1261 (7th Cir. 1876).

Counts IX, X and XI. Herein, the Defendant's Counsel is apparently claiming "Grandma Grandson Privilege" and that this particular Count, which could cause the Plaintiffs to lose over one-million-four-hundred-ten-thousand-dollars ($1,640,000), twenty-years of life, $80,000 in medical bills and a $500,000 home is a simple "intra-family dispute", as if the Defendant Jesse E. Torres IV's slanderous statements that defamed the character of his father Jesse E. Torres III and the Plaintiff Jennifer J. Adams, were a simple family argument,

such as what to watch on television. Yet the Defendant's Counsel cites no case, nor were the Plaintiffs able to find a case where there is any such "intra-family privilege". The facts are that Defendant Jesse IV's statements made to his grandmother, brother and aunt by adoption, were designed and made solely to attain his goal: that of having his grandmother breach her contract with the Plaintiffs thereby causing them grave harm. As such, Jesse IV's statements are clear and actionable for all of the herein referenced Counts.

Even if we were to assume for the sake of this argument, that there was an "intra-family privilege" between Jesse III, Jesse IV, and his Grandmother Mrs. Torres, the claims in these Counts were made by both of the Plaintiffs. The statement that the Plaintiff Jennifer J. Adams is not married to the Plaintiff Jesse E. Torres III, repeatedly made by Counsel for the Defendants, clearly states the fact that she is not a family member. Therefore, as the Defendant through Counsel has made no claim of separation for each of the Plaintiffs claims, he dismisses any and all of his claims to dismiss Counts IX, X, IX.

Counts IX, X and XI in the Plaintiffs' Complaint make specific reference to realleging and reinserting paragraphs 1 through 134 of said Complaint, which includes numerous references to slanderous statements that defamed the Plaintiffs' character made by the Defendant which could only be determined, by any reasonable person, to have caused them Emotional Distress.

Counts IX and X. The Defendant through Counsel argues that any statements that were made by Jesse IV were made without a willful intent to defame, relying on Gassett v. Gilbert, 6 Grey 94 (1856). Statements such as, *"I'm going to teach him a lesson"*, *"it's time he stands on his own two feet like a man"*, *"my father is just plain no-good"* are just a few of the many slanderous statements made with malice by the Defendant Jesse IV in order to facilitate his goal of causing harm to his father, the Plaintiff Jesse III and the Plaintiff Jennifer J. Adams.

Counsel for the Defendant relies on Gassett v. Gillbert Id. to argue the fact that Jesse IV was protecting his interest when making these statements, and yet he had no interest in any of the properties of this action.

Count XI. Herein, the Defendant's Counsel appears to be claiming that denying the Plaintiffs their retirement monies owed by the Defendant Sophie J. Torres in the amount of one-million-six-hundred-forty-thousand dollars ($1,640, 000) and evicting them from the properties for which they have received the permanent and persistent property rights, and to deny them the monies and benefits of the thousands of hours of their services provided to the Defendant Sophie. J. Torres, the loss of the Plaintiffs' home due to death threats, the statistically significant loss of life of twenty (20) years from the Plaintiffs Jesse E. Torres III, nor the loss of the Plaintiffs family home, did not cause the Plaintiffs any "distress". And these are just a few of those actions named in the Plaintiffs' Complaint. There is no privilege when the acts of a party are illegal and/or are solely designed to do harm to another. While we could not find the page quoted by the Defendant's Counsel at the official Massachusetts Cases website, published by the Massachusetts Courts, we believe they are relying on Sullivan v. Birmingham, 11 Mass. Ct. 359 (1981) to claim that the statements by the Defendant Jesse E. Torres IV were privileged. In Sullivan v. Birmingham, Id. the privilege was upheld as the claim was against the statements made in a Complaint in an action before the Court. The Statements made by the Defendant Jesse IV were not made in any pleadings, but rather for the sole purpose of inflicting harm on the Plaintiffs, and as such, their argument based on Sullivan v. Birmingham, Id. is not even loosely applicable, and it should not be considered by this Court.

The Defendant through Counsel then moves on to claim that we have moved on

to a different claim, again based on non-existent privilege, and that in Correllas v. Viveiros, 410 Mass. 314 (1991), where privilege was upheld when the party gave testimony to the Police with his attorney present. As there was no claim in the Defendant through Counsel's argument of any attorney being present during the statements made by the Defendant Jesse E. Torres IV, any and all arguments made based on said case should not be allowed.

Counts XII, XV, XVI, XVII and XVIII. This Court clearly has jurisdiction over the claimed violations of Federal Law pursuant to Tafflin v. Levitt, 493 U.S. 455 (1990).

Counsel once again argues as if these counts did not reallege and reassert paragraphs 1 through 134, 34+ pages of single spaced specific and actionable bad acts by the Defendants.

U.S. Code 1962. Counsel for the Defendant bases his argument on U.S. Code 1962 (a) and fails to recognize the clear language of U.S. Code 1962 (b), (c) and (d) as follows:

> (b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.
>
> (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.
>
> (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

Although unclear, Counsel for the Defendant appears to be arguing that he missed the numerous claims against his client in the Plaintiffs' Complaint including distributing drugs from Mexico throughout the United States, to name just one of the many stated in the Plaintiffs' Complaint.

18 U.S. Code A. 2422. The Plaintiffs do agree that the law stated was not correct but assert that their claims Coercion against the Plaintiff Jesse E. Torres IV are well documented in their complaint and pray the Court will allow them to amend their complaint to contain the proper claim for what was the Coercion of Sophie J. Torres by the Defendants Jesse E. Torres IV, Debtmerica and Donald F. Torres.

18 U.S. Code C. 19.373. The Plaintiffs clearly stated in Count XVII that the Defendant Jesse E. Torres IV did conspire with Donald F. Torres and his deceased son James Kimberly Torres. In Count XIX of the Plaintiffs' Complaint, the Plaintiffs did make an easily correctable error as this Count should have been filed against the Defendants Jesse E. Torres IV and Sophie J. Torres, who was his co-conspirator in this act. We pray the Court will let us amend our Complaint to correct this error.

CLOSING

There are numerous facts in dispute as stated above that will only be clarified during the discovery process or by the adjudication by the trier of fact. It is far too early during this case and its discovery to determine the facts of this case. A Rule 12(b)(6) motion must be based only on an analysis of the facts in the complaint, facts from which the Court must draw all possible inferences favorable to the plaintiffs. See Coraccio, 415 Mass. At 147. Based only on a consideration of those facts and all favorable inferences to be drawn from them, the Plaintiffs have shown that the Defendant Jesse E. Torres IV's Motion to Dismiss should be denied.

Specific notices by the Plaintiffs, which include Production of Documents and Interrogatories, have been served on Defendants Sophie J. Torres, Debtmerica and Jesse IV, and will prove or deny many of their claims against the Defendant Jesse E. Torres IV.

The Plaintiffs Complaint contains numerous claims of conspiracy and as in all suits involving conspiracy, agreement is rarely out in the open, and proof of conscious complicity may depend upon the careful marshaling of circumstantial evidence and the opportunity to cross-examine hostile

witnesses and therefore is not proper for a motion to dismiss, See Ferguson v. Omnimedia, Inc., 469 F.2d 194, 198 (1st Cir. 1972) and Hub Assoc. v. Goode, quoting Nat. Bank & Trust Co. of Chicago, 529 1257, 1261 (7th Cir. 1876).

CONCLUSION

For all of the reasons stated above, this Court should deny the Defendant Jesse E. Torres IV's Motion to Dismiss for Failure to State a Claim. Alternatively, if the Court is inclined to grant Defendant Jesse E. Torres IV's motion on the basis of failure to state a claim, the Plaintiffs then respectfully request leave to amend their claim to plead additional facts and more detailed allegations in support thereof.

Respectfully submitted,

Jennifer J. Adams, Pro Se
562 Waquoit Highway
East Falmouth, MA 02536
(617) 840-7880
jadams@isfil.com

Respectfully submitted,

Jesse E. Torres III, Pro Se
562 Waquoit Highway
East Falmouth, MA 02536
(617) 291-0862
jtorres@isfil.com

Dated September 26, 2011

CERTIFICATE OF SERVICE

I, Jesse E. Torres III, hereby certify that on September 26 2011, I have served the Defendants Sophie J. Torres and Debtmerica, LLC, through their attorney of record, and Jesse E. Torres IV at their address on record with this Court, a true copy of this document by postage prepaid U.S. Mail.

Jesse E. Torres III

EXHIBIT "II"

DREW M. FRAMSON
GAIL L. FRAMSON
64 FAIRFIELD STREET
REHOBOTH, MA 02769

AFFIDAVIT

Under the Pains and Penalties of Perjury we do hearby state the following:

We are husband and wife, and formerly owned and resided at #5 Carriage Shop Road, Waquoit, MA 02536. We lived next to our next door neighbors Jesse and Sophie Torres for over 10 years. We consider the Torres Family to be good friends, and are also very good friends with Jesse Torres Jr. their son and his companion Jennifer Adams. Jesse Torres Sr. passed away in 2007, leaving his widow Sophie Torres living alone.

Upon Jesse Sr, passing away, The Torres's son Jesse Jr aka "Jet" and Jennifer Adams both moved from their Mexico home to live with Sophie Torres. Although elderly, Sophie Torres is extremely vibrant, active and of complete sound mind. This was especially true in April of 2009. On April 24, 2009, we were both asked to come next door, at 562 Waquoit Highway, Waquoit Ma, the Torres household, to witness several legal transactions between Jesse Torres Jr. and his mother Sophie.

The documents which we refer to, were Last Will and Testement of Sophie Torres, Health Care Proxy of Sophie Torres, and Transfer of Property Rights Document. Present were Sophie Torres, her son Jesse Jr, Jennifer Adams and ourselves. We distinctly recall that Jesse Torres Jr. took painstaking and methodical care to slowly read each document word for word for Sophie Torres. Sophie Torres was continously asked by Jesse Torres Jr. if she understood what was being read aloud. We further recall that Sophie Torres was given a copy to read along with. This took place at Sophie Torres kitchen table, and she asked questions and was answered by her son. Sophie neither objected to anything presented to her, and was in fact, jovial, lucid and happy throughout.

At the completion of Jesse Torres and Sophie Torres review of the paperwork, we recall all driving together to United Parcel Service Store (UPS) on East Falmouth Highway, Falmouth for Notary Service and signing of the documents. At the UPS Store, a Notary Public was on duty, and in addition to Jesse Torres Jr and Sophie Torres signing, we signed as witness to the transactions. The Notary also signed and placed a seal on the documents. Again, Sophie Torres was in our opinion fully aware what she had signed, quite happy what she had done, and had complete understanding. There is no doubt in our minds that she did this freely.

Signed Under The Pains and Penalties of Perjury, This 19th Day of September 2011

Drew M. Framson

Drew M. Framson

Gail L. Framson

Gail L. Framson

EXHIBIT "II"

Kathleen E. Vieira

Notary

My Commission Expires:

3/16/2012

KATHLEEN E. VIEIRA
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires March 16, 2012

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS. SUPERIOR COURT

JESSE E. TORRES III JENNIFER J. ADAMS Plaintiffs vs. SOPHIE J. TORRES JESSE E. TORRES IV DEBTMERICA, LLC. DONALD F. TORRES Defendants	Civil Docket # BACV2011-00433

AFFIDAVIT IN SUPPORT OF PLAINTIFFS' RESPONSE AND OPPOSITION TO "DEFENDANT, JESSE E. TORRES IV, MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM"; REQUEST FOR HEARING

COMMON HISTORY AND FACTS

The Defendants, through Counsel, have filed three separate motions to dismiss, all of which contain statements, without any sworn affidavit, that are contrary to the well documented facts of the above-entitled action. In the interest of judicial economy, the Plaintiffs have provided this sworn affidavit of the true facts and history of the above-entitled action, common to the Plaintiffs' Response and Opposition to the Defendants' three (3) motions.

I. INTRODUCTION

The causes of the complaint of the above-entitled action began eleven (11) years ago when Plaintiff Jesse E. Torres III (Jesse III) was touring numerous Mexican Universities and Science Centers as the guest of the Mexican Government. Many of the Universities offered to make the new technology created by Jesse III part of their curriculum. The Mexican

Government solicited, and was successful, in getting Jesse III to agree to bring the support and development arm of a new corporation to Mexico. This new corporation was owned primarily by Jesse III and his then law firm, Bingham and Dana, and many of the attorneys therein. This move to Mexico was undertaken because, prior to the "dot com bust", it was nearly impossible to hire qualified programmers and support staff in the United States.

> Of note: Jesse III has twin sons, the Defendant Jesse E. Torres IV (Jesse IV) and his twin brother Joseph J. Torres, who that same year graduated from two Ivy League schools (Wharton and Cornell). Jesse III gave them a graduation party at his new home in Mexico, with over one-hundred and fifty people in attendance and each of his two sons were given five percent (5%) ownership in these new companies as their graduation gift.

Through no fault of the Plaintiff Jesse III, the "dot com bust" occurred destroying all hopes of a receiving an anticipated billion ($1,000,000,000) dollar valuation for said companies and instead, left these companies unable to get needed financing for a public offering. Shortly thereafter, Jesse III was solicited by, and did agree to become a senior Computer Scientist for Proximation LLC., a Think Tank in Santa Fe, New Mexico (Proximation), founded by the eleventh employee of Microsoft, Billionaire Greg Whitten. As Mr. Whitten had hired many of the physicists away from Los Alamos, Proximation was contractually responsible to implement the Parallel Processing Operating System and languages for what was about to be the world's largest super computer, being built for the United States Government at Los Alamos. This new Super Computer was, in primary part, being built to simulate nuclear explosions, thereby eliminating the need to test nuclear weapons while guaranteeing their effectiveness.

After an almost year long obligation, Jesse III did return to Mexico to complete his life's work, a second generation Internet. It was at this time that the Defendant Donald F. Torres and his now deceased son, James Kimberly Torres, did add conspiracy and extortion to their

long list of criminal activities. These criminal activities included drug sales and distribution from Mexico throughout the United States and the distribution of Counterfeit Monies (Pesos) in Mexico as well as ties to prostitution in Mexico.

These extortion attempts came with death threats if the Plaintiffs did not comply, to be carried out by known associates of the Defendant Donald F. Torres' family, Hells Angles. Upon the recommendation of the California DEA, who stated that they could not protect the Plaintiffs in Mexico, the Plaintiffs were forced to abandon their five-hundred-thousand-dollar ($500,000) home in Mexico and move to the only home available to them, in the mountains of California. This move to high altitude was caused solely by the Defendants and led to the Heart Failure of the Plaintiff Jesse III which will statistically shorten his life by twenty years or more, as well as incurring an amount of approximately eighty-thousand-dollars ($80,000) in medical bills.

The Plaintiffs have paid a heavy price for refusing to submit to the extortion attempts by the Defendants. But so did the Defendant, James Kimberly Torres, who we believe, in order to avoid a third strike while under investigation by the California State Police and DEA, did put a gun to his head and commit suicide. The Plaintiffs, after much thought, believe the current actions of the Defendants are, in part, being driven by the fact that the Defendants believe the suicide of James Kimberly Torres was the fault of the Plaintiffs, since it was the Plaintiffs who reported his criminal actions to the authorities.

Now the Defendants Donald F. Torres, Jesse IV, Sophie J. Torres (Mrs. Torres), financed and facilitated by Debtmerica, attempt to keep the Plaintiffs from receiving one-million-six-hundred-forty-thousand ($1,640,000) to which they are contractually and ethically entitled.

II. THE DEFENDANTS' CLAIM OF "SUSPECT CIRCUMSTANCES"

A common theme expressed both in open Court and in the Pleadings by the Defendants' Counsel, is that the main part of this case was based on the contract by and between the Defendant Sophie J. Torres and her son, the Plaintiff Jesse E. Torres III, dated April 24, 2009 (Contract), and that these documents were signed under *"suspect circumstances"*. These claims are continually made without benefit of any sworn affidavit by any of the Defendants or their Counsel, as is required by M.S.C.R. 9(A) a, 4. These statements can be taken in no other way than was their intention: to prejudice this Honorable Court.

While the Contract is certainly not the only subject of the Plaintiffs' Complaint, here are the true facts, sworn to by the witnesses of the signing of said documents. Using a copy of Quicken Will Maker, in early April 2009, the Will and Health Care Proxy were generated in the exact way requested by Mrs. Torres, who was there for the entire "interview process" of Quicken Will Maker as well as the preparation of the contract transferring all property rights to her son Jesse III (Contract). She was given, as she requested, advanced copies of her Will, Health Care Proxy and Contract for monies she agreed were owed to her son. She was advised to have them reviewed by her attorney, Katheryn Wilson, and was given significant time to review the documents before their signing on April 24, 2009.

Every chance he gets, the Counsel for the Defendants touts the *"suspect circumstances"* under which these documents were signed. The attached affidavit, Exhibit "II", is from the neighbors of many years of Mrs. Torres and her late husband, Jesse E. Torres Jr. (Dad). The neighbors, retired Falmouth Police Officer Drew Framson and his wife Gail, were there during the entire signing process as witnesses and, contrary to *"suspect circumstances"*, in their sworn affidavit, they state in part:

"...The documents which we refer to, were Last Will and Testament of Sophie J. Torres, Health Care Proxy of Sophie Torres, and Transfer of Property Rights Document. Present were Sophie J. Torres, her son Jesse Jr. [III] Jennifer Adams and ourselves. We distinctly recall that Jesse Torres Jr [III] took painstaking and methodical care to slowly read each document word for word for Sophie Torres. Sophie Torres was continuously asked by Jesse Torres Jr. [III] if she understood what was being read aloud. We further recall that Sophie Torres was given a copy to read along with. This took place at Sophie Torres kitchen table, and she asked questions and was answered by her son. Sophie neither objected to anything presented to her, and was in fact, jovial, lucid and happy throughout.

...The Notary also signed and placed a seal on the documents. Again, Sophie Torres was in our opinion fully aware what she had signed, quite happy what she had done, and had complete understanding. There is no doubt in our minds that she did this freely."

II. RICO CONSPIRACY COUNTS

We assert that Counsel for the Defendant has made prejudicial statements in open Court, not pertaining to issues before the Court, in an attempt to make light of the RICO charges and death threats in the Complaint of this matter. He appears to want the Court to ignore the attached documentation from the Baja Mexico Attorney Generals office, including the equivalent of a warrant issued, as well as the prison sentences served by named family members, the California DEA investigation, which included stake outs and surveillance, the California State Police investigation and the fact that one of the parties of the investigation put a gun to his head and committed suicide while under investigation. All of the above is well documented, including the known associations with Hells Angles and the extortion attempts and death threats against the Plaintiffs that led to the loss of their five-hundred-thousand-dollar ($500,000) home and the Heart Failure of the Plaintiff Jesse III, which will statistically shorten his life. This heart failure also caused him to incur an amount of eighty-thousand-dollars ($80,000), more or less, in medical bills. With all this evidence before the Court, the Defendants, through Counsel, egregiously attempt to dismiss these facts as the ramblings of

a Pro Se Plaintiff, and now, again attempt to delay these proceedings with frivolous motions, as it appears to be the only tactic they have.

It is a fact that the Defendant Jesse IV and his Great Uncle, Defendant Donald F. Torres, do spend many days annually at the home of Defendant Donald F. Torres in Baja California North, Mexico. It is a fact that Defendants Donald F. Torres and Jesse IV have traveled to Vietnam and that Defendant Jesse IV visits former Eastern Block countries on a regular basis. It is a fact that the deceased, James Kimberly Torres, did serve drug related prison sentences in California. It is a fact that James Kimberly Torres did keep many illegal firearms including a fifty (50) caliber Desert Eagle Pistol, rifles, shot guns and automatic weapons at his former home in Descanso, California. It is a fact that Donald F. Torres keeps numerous illegal weapons in his home bedroom closet in Baja California, Mexico. It is a fact that Defendant Donald F. Torres was at all times present and was aware of, the extortion threats made by his son, which included death threats directed by him, against the Plaintiffs. It is a fact that Defendant Donald F. Torres "bragged" to Plaintiff Jesse III about how he was imprisoned in Mexico for passing counterfeit Pesos. It is a fact that the day after the Plaintiff Jesse III disavowed his son, the Defendant Jesse IV, that Mrs. Torres did breach her contract with Plaintiff Jesse III and put in motion the eviction of the Plaintiffs from the properties to whom the property rights had been permanently transferred. This was orchestrated directly by the Defendants Jesse IV and Donald F. Torres with the intermingled support of the Defendant Debtmerica.

III. CONTRACT RELATED FACTS

On or about April 24, 2009, the Plaintiff Jesse E. Torres III and his mother Defendant Sophie J. Torres did enter into a contract to ethically resolve the monies owed to the Plaintiff

Jesse E. Torres III by the estate of Jesse E. Torres Jr. and the Defendant Sophie J. Torres, and further, to refinance and develop the properties referenced in said contract to their full financial potential.

The defined PROPERTIES (herein also referenced to as "PROPERTIES") named in the Contract were "Grandma's House" located at 345 Carriage Shop Road, "Horse Property" located across the street from Grandma's House, consisting of 5+ acres of land, Town of Falmouth Map 29, Sec 01, Parcel 009, Lot 000, Book 01121, Page 0060, and "Uncle Fred's House" located at 562 Waquoit Highway. All properties are located in East Falmouth, Barnstable County, Massachusetts.

The appraised values of these properties were assessed by licensed appraisers and were valued, more or less, in the following amounts: Grandma's House four-hundred-forty-thousand-dollars ($440,000), Horse Property nine-hundred-sixty-thousand-dollars ($960,000) and Uncle Fred's House two-hundred-forty-thousand-dollars ($240,000) for an amount totaling one-million-six-hundred-forty-thousand dollars. ($1,640,000).

To facilitate the objectives and intent of the above-stated goals of the Defendant Sophie J. Torres and Plaintiff Jesse E. Torres III and for the purpose of enabling Plaintiff Jesse E. Torres III to finance and develop the PROPERTIES, said Plaintiff was appointed by the Defendant Sophie J. Torres as her Attorney in Fact on April 24, 2009. The Power of Attorney was registered with the Barnstable Registry of Deeds on June 1, 2009 @ 12:05 pm; Bk. 23757 Pg. 88 #30498.

On May 8, 2009, in order to preserve the standing of the Will, Power of Attorney, Health Care Proxy and the above-referenced contract, all executed on April 24, 2009, two separate packages were sealed and mailed to the then CPA of the Defendant Sophie J. Torres and

Plaintiff Jesse E. Torres III, Mr. Jeffery S. Cooper. The first package contained all but the Contract between said parties entitled PERMANENT TRANSFER OF PROPERTY RIGHTS (hereafter referred to as "Contract"), the second package contained only the Contract itself with specific written instructions on the envelope, demanded by the Defendant Sophie J. Torres that the separate Contract was "only to be opened if her Will was contested". Hereto attached and marked as Exhibits "FF" and "GG". (see: Ohio Bldg. Restoration, Inc. Id.)

On August 6, 2009, in order to advance the mutual goals and obtain the mutual benefits thereof, the Defendant Sophie J. Torres and the Plaintiff Jesse E. Torres did execute a Letter of Intent to place the Properties into a corporate trust, ("Torres Farm Trust, Inc."), hereto attached and marked as Exhibit "EE", (see: Ohio Bldg. Restoration, Inc. Id.) whereby the parties agreed that the Plaintiff Jesse E. Torres III would receive fifty-one percent of the outstanding stock and the Defendant Sophie J. Torres would receive forty-nine percent of the outstanding stock. Therefore, each of the parties were to receive this percentage of monies from the PROPERTIES by their sale, or any other incomes as became available.

The Torres Farm Trust, Inc. was to have been created upon the completion of the construction and restoration of the property known as Grandma's House.

On or about May 28, 2011 the Plaintiff Jesse E. Torres III after many years of abuse, did by email disavow his son, the Defendant Jesse E. Torres IV. Within 24 hours after this act, the Defendant Sophie J. Torres did notify the Plaintiff Jesse E. Torres III that she was going to breach her contract with the Plaintiff Jesse E. Torres III by changing her will and would also evict the Plaintiffs from the properties of which they had received at minimum a Tenancy interest.

On or about July 11, 2011 the Plaintiffs did send by certified mail, return receipt

requested, a "Notice of Breach of Contract" to the Defendant Sophie J. Torres and her then attorney Kathryn Wilson of Mackey and Foster, P.A.

On or about July 12, 2011 the Plaintiffs did send by certified mail, return receipt requested, a "Notice to Cease and Desist, Intent to Bring Actions" to Defendants Jesse E. Torres IV and Debtmerica, LLC.

None of the above-named Defendants cured, or attempted to cure, the defaults as stated in their above-captioned notices, and as such the Plaintiffs did, on July 21, 2011, file the above-named action with this Court to protect their interests.

The Complaint contains four counts against the Defendant Sophie J. Torres. In summary, Count I is brought for specific breach of contract for violating specific conditions as set forth in the Contract. While the remaining Counts all contain breach of contract claims, Count II is for not completing the construction, nor maintaining the property known as "Grandma's House". Counts III and IV are primarily for failure to maintain the properties. Counts II through IV are brought in part for Breach of Fiduciary Responsibility and as in these counts, the Defendant Sophie J. Torres is causing severe devaluation of the PROPERTIES where the Plaintiffs have a financial interest directly or as the sole asset available to the Defendant that can facilitate the payment of those monies owed by the Defendant Sophie J. Torres to the Plaintiff Jesse E. Torres III.

IV. FINANCIAL HISTORY

Through the years, the Plaintiff Jesse E. Torres III provided services and loaned monies to his parents, Jesse E. Torres Jr. (hereafter referred to as "Dad") and the Defendant Sophie J. Torres, to cover their numerous and considerable business losses. On or about 1983, Dad had a life altering accident where he spent three and one-half (3 1/2) months in

Falmouth Hospital, two and one-half (2 1/2) of which were in intensive care.

This accident came within a few months of a demoralizing and financially devastating partnership in an AMC Dealership in Falmouth, with a Mr. Kevin Mann (hereafter referred to as "Partner"), who subsequently disappeared and left the state with no known forwarding address. The Dealership, Dad, and the Defendant Sophie J. Torres found themselves in financial chaos as their former Partner had left them not only deeply in debt, but had also left the business checking accounts severely overdrawn with uncollected checks to many of their and the Dealership's vendors. These actions also left loans provided by the Plaintiff Jesse E. Torres III to Dad, the Defendant Sophie J. Torres, or the business owned jointly by them, in the amount of one-hundred-twenty-one-thousand-dollars ($121,000) more or less, unpaid to their son, but also left various of Dad's and the Defendant Sophie J. Torres' personal real estate properties at risk, as they were, to the best of memory, fourteen-months (14) behind on their mortgage payments. See: Jesse E. Torres III Et. Al. v. Falmouth National Bank, Barnstable Superior Court (1988).

Compounding the disastrous situation was the fact that Dad did not have specific health insurance coverage, nor was he able to work for many years after the accident.

The Plaintiff Jesse E. Torres III did, for the direct benefit of Dad and Defendant Sophie J. Torres, bring all mortgages up to date and/or did purchase and develop said properties, did provide weekly and/or monthly checks to Dad and the Defendant Sophie J. Torres, did make arrangements to pay all of Dad's Hospital bills, and did provide the funding to get Dad and the Defendant re-started in a new business when Dad was able, and did provide other monies to Dad and the Defendant for several years thereafter.

On or about 1996, Dad was falling deep into debt with his new automobile repair business. Once again the Plaintiff Jesse E. Torres III did pay the overdue bills for this failed

business, as well as those that were personally owed and/or guaranteed by Dad and the Defendant Sophie J. Torres, in the amount of one-hundred-forty-thousand-dollars ($140,000) more or less.

Upon closing the above-referenced business, Plaintiff Jesse E. Torres III did provide weekly checks to Dad and the Defendant Sophie J. Torres for an extended period until Dad and the Defendant Sophie J. Torres began receiving their Social Security checks.

It was promised to the Plaintiff Jesse E. Torres III, was common knowledge, and frequently discussed within the family, that the entire estate of Dad and the Defendant Sophie J. Torres was to go to their only natural child, Jesse E. Torres III, in major part to repay the monies owed to their son, the Plaintiff Jesse E. Torres III. This was clearly demonstrated in the original Will of Dad and Defendant Sophie J. Torres. Further, Dad did on many occasions, offer to sell the properties that were inherited from his side of the family to repay his son, the Plaintiff Jesse E. Torres III.

On or about March 22, 2007, the Plaintiff Jesse E. Torres III did have Catastrophic Heart Failure while living in California. This heart failure and its cause are part of the Complaint of this action specific to the Defendant Donald F. Torres. On or about Memorial Day Weekend 2007, the Plaintiffs left California and drove back to the Plaintiff Jesse E. Torres III's childhood home in Falmouth, Massachusetts.

The Plaintiff Jesse E. Torres III, shortly after his return, did ask his mother, the Defendant Sophie J. Torres to accompany him to Rockland Trust to withdraw his monies from the account that Richard Weir, the V.P. of Rockland Trust, had opened for him with a deposit in the amount of one-hundred-fifty-thousand dollars ($150,000), more or less. These funds were being held for him by his late father, Jesse E. Torres Jr.

The account should have had an amount of one-hundred-thirty-five-thousand-dollars

($135,000) plus several years interest, since the amount of fifteen-thousand-dollars ($15,000) had been withdrawn and loaned to Dad by the Plaintiff Jesse E. Torres III in order to repay monies Dad had borrowed years before from his brother, Defendant Donald F. Torres.

The Defendant Sophie J. Torres at this time, informed her natural son, Plaintiff Jesse E. Torres III, that she had transferred all of her son's money from Rockland Trust to the Sovereign Bank, and that an amount of approximately thirty-thousand-dollars ($30,000) was all that remained.

This was devastating news to the Plaintiff Jesse E. Torres III as he needed this money for living expenses and to pay the hospital bills he had accumulated from his Heart Failure. Additionally, it was clear that even if he loaned the Defendant Sophie J. Torres the remaining monies, she would soon exhaust the entire amount without a restructuring of her finances.

As there were considerable properties available valued in the approximate amount of two-million-dollars ($2,000,000), the Plaintiff Jesse E. Torres III and the Defendant Sophie J. Torres did agree to work together, as was in their mutual best interest, and as they had done many times before, to restructure their financing and to have the Plaintiff Jesse E. Torres III manage the family properties and finances as he had always done in the past. In furtherance of this goal, the Defendant Sophie J. Torres did empower her son Jesse E. Torres III with her Power of Attorney hereto attached as Complaint exhibit "R", which was registered with the Barnstable County Registry of Deeds so that he could also manage real estate transactions on her behalf, as well as her general financial requirements. It was agreed that he would make best use of the properties which were to include restoring the properties, and either sell them once restored, or use them to their best economic advantage. This provided the basis of the Contract that is now an action before this Court.

V. HISTORY OF THE PARTIES

There were numerous questions stated during the hearing of posting Court records on the Internet in this case by the Honorable Christopher J. Muse, that can certainly affect this motion and this case, and as such we will try to answer those questions herein.

The Plaintiffs were not always impoverished, nor forced to represent themselves Pro Se. They are now in this predicament due to the specific actions of the Defendants which are now at issue in this case.

The Plaintiff Jesse III is a Senior Computer Scientist of thirty-five (35) years whose last non-personal employment was at the Proximation Think Tank in that capacity. The Think Tank was funded by the eleventh (11th) employee of Microsoft, billionaire Greg Whiten. A main obligation of said Think Tank, was its responsibility for the development of the parallel processing languages and Operating System for what was the world's largest super computer, built for the United States Government at Los Alamos. This Super Computer was to be used in considerable part, to simulate nuclear explosions so that we no longer have to physically test them.

The Plaintiff Jennifer J. Adams has a Masters Degree in Mechanical Engineering and was employed by JPL/NASA as an engineer for the Deep Space Network, responsible for the design, manufacturing and installation of the three (3) seventy (70) meter antennas located in California, Australia and Spain. These antennas allow continuous radio communication with spacecraft used to bring us the images from deep space we now routinely see in the media.

On or about September 1999, Plaintiff Jesse III called his attorneys at Bingham and Dana and asked them to prepare a 505B offering memorandum to sell shares in a new technology he had developed. The entire offering was purchased before the 505B offering was even discussed, as numerous attorneys at Bingham Dana and the firm itself purchased

all of the available stock with the exception of some stock that was withheld for the Plaintiff's Banker, Richard Weir, V.P. Of Rockland Trust.

Prior to the "dot com bust", it was nearly impossible to hire computer programmers in the United States, as they were in such great demand. As the Plaintiff Jesse III had just finished a project utilizing approximately one-hundred-sixty (160) programmers in India, he formed a computer software corporation and started looking for available resources closer to home. Mexico appeared to have the answer with a large untapped staff of well-trained programmers in the same timezone as the United States. The Mexican Government provided tours and meetings with numerous Universities and Science Centers in Mexico, many of whom offered to teach the Plaintiff's new technology. After being the guest of the Mexican Government on and off for several months, the Plaintiff Jesse III did buy a home in the same "Campo" as his uncle, the Defendant Donald F. Torres, and did begin its remodeling in Baja California North, Mexico. This was before he realized the criminal nature of his family members and the extent of their illegal activities. It was also at the same time as the "dot com bust", which forced the closing of the newly formed computer software corporation.

When it became known that the Plaintiff Jesse III may be available for employment, he received a call from the above-mentioned Greg Whitten to help with his new company Proximation, LLC, in New Mexico. Mr. Whitten had hired many of the Physicists away from Los Alamos and was contractually obligated to assist with the implementation of the Operating System and Parallel Processing Languages for the above-mentioned Super Computer.

After a nearly year long obligation, the Plaintiff Jesse III did return to his home in Mexico to complete his life's work, a second generation of the Internet. It was at this time,

while both the Plaintiffs were in Mexico, that the numerous extortion attempts accelerated, and threats on the lives of the Plaintiffs began. After being advised by California DEA officers that they could not protect the Plaintiffs in Mexico and that they should return to the United States, the Plaintiffs were forced to abandon their home in Mexico and move to the mountains of Southern California. These actions did cause the heart failure of Plaintiff Jesse III which almost guarantees that numerous years of his life have been lost.

Respectfully submitted,

Jennifer J. Adams, Pro Se
562 Waquoit Highway
East Falmouth, MA 02536
(617) 840-7880
jadams@jetiii.com

Respectfully submitted,

Jesse E. Torres III, Pro Se
562 Waquoit Highway
East Falmouth, MA 02536
(617) 291-0862
jtorres@jetiii.com

Dated September 26, 2011

ATTESTATIONS

Plaintiff Jesse E. Torres III:

I Jesse E. Torres III of Barnstable County, Massachusetts did personally prepare this affidavit and the response and opposition to which it is in support of, and I do herein swear, under the pains and penalties of perjury, that the facts contained in said documents, are true to the best of my personal knowledge.

Jesse E. Torres III Date 9/26/2011

Plaintiff Jennifer J. Adams:

I Jennifer J. Adams of Barnstable County, Massachusetts did review this affidavit and the response and opposition to which it is in support of, and I do herein swear, under the pains and penalties of perjury, that the facts contained in said documents, are true to the best of my personal knowledge.

Jennifer J. Adams Date SEPT 26, 2011

CERTIFICATE OF SERVICE

I, Jesse E. Torres III, hereby certify that on September 26, 2011, I have served the Defendants Sophie J. Torres through her attorney of record, and Jesse E. Torres IV and Debtmerica, LLC, at their address on record with this Court, a true copy of this document by postage prepaid U.S. Mail.

Jesse E. Torres III, Pro Se