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15  
 16 IN THE UNITED STATES DISTRICT COURT  
 17 FOR THE DISTRICT OF ARIZONA

19 United States of America,  
 20 Plaintiff,  
 21 vs.  
 22 Michael Lacey, *et al.*,  
 23 Defendants.

Case No. 2:18-cr-00422-PHX-SMB  
**MOTION TO LIMIT TESTIMONY  
 OF JESSIKA SVENDGARD**

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1 The Government's case largely is predicated on purported "notice" evidence. The  
2 government's charges, including the indictment's conspiracy count, however, require a showing  
3 of specific, not general, intent. *See United States v. Kaplan*, 836 F.3d 1199, 1212 (9th Cir. 2016) (to  
4 prove a conspiracy charge, the government must prove the "requisite intent for the substantive  
5 crime."). The Government must prove that Defendants had the specific intent to violate the  
6 Travel Act by facilitating business enterprises involved in prostitution in violation of state law.  
7 In connection with the conspiracy count, which, based on the Government's opening, appears  
8 to be their sole focus in this case, as its opposition to Defendants' motion for judgment of  
9 acquittal or mistrial made clear by essentially conceding the substantive Travel Act counts, the  
10 Government also must show an agreement to pursue an illegal objective, here, the violation of  
11 the Travel Act. Therefore, the Government cannot be allowed to introduce every piece of  
12 inflammatory, irrelevant evidence under a purported "notice" theory, which effectively blurs the  
13 line between a general intent and specific intent standard. *See Gibson Specialty Co.*, 507 F.2d 446,  
14 450 (9th Cir. 1974) ("The presumption that one intends the natural and probable consequences  
15 of his actions *is insufficient in this context to establish*  
16 *intent to facilitate criminal activity.*") (emphasis added).

17 Specifically, as to Jessika Svendgard, her anticipated testimony that she was trafficked at  
18 the hands of several pimps is not remotely relevant to demonstrate that *these six Defendants* had  
19 the requisite specific intent to facilitate particular business enterprises involved in prostitution  
20 offenses. There will be no evidence that, *before Svendgard's ads were published*, any of the six  
21 Defendants knew of her, knew of her ads, knew of the pimps who posted her ads, or in any way  
22 directly aligned themselves with those pimps. *See Gibson*, 507 F.2d at 449 ("the prosecutor must  
23 show that the manufacturer *in some significant manner associated himself with the*  
24 *purchaser's criminal venture for the purpose of its advancement.*") (emphasis added).  
25 Critically, the government has conceded that the business enterprises at issue in Counts 2 – 51  
26 of the indictment are "*the ongoing prostitution enterprises of Backpage's customers.*"  
27 *See* Dkt. 649 at 32 n.17 (emphasis added). None of Ms. Svendgard's anticipated testimony will  
28 prove any nexus between Defendants and the pimps who posted Svendgard's ads to the site.

1 And there is no evidence that Svendgard’s ads are at all tied to the “marketing strategies” that the  
2 Government continues to assert purportedly form the basis for Defendants’ “specific intent”  
3 here.

4 The Court cannot allow this trial to become about every bad act associated with Backpage  
5 over a 14-year time period. Allowing the Government to proceed in that manner would violate  
6 Defendants’ rights to a fair trial and effectively amend the indictment beyond the 50 ads at issue.  
7 *See* Doc. No. 946 at 13 (Order denying motion to dismiss) (“[Defendants] were not indicted for  
8 facilitating the amorphous notion of ‘prostitution.’ They were indicted for facilitating (via  
9 publishing ads) on fifty distinct occasions where prostitutes, prostitution-related businesses, or  
10 other groups were involved in the business of prostitution.”).

11 RESPECTFULLY SUBMITTED this 10th day of September 2021,

12  
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15 s/ Whitney Z. Bernstein  
16 Thomas H. Bienert, Jr.  
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17 *Pursuant to the District’s Electronic Case Filing Administrative Policies and Procedures Manual (Oct. 2020) §*  
18 *II(C)(3), Whitney Z. Bernstein hereby attests that all other signatories listed, and on whose behalf this filing is*  
19 *submitted, concur in the filing’s content and have authorized its filing.*

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 10, 2021, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants who have entered their appearance as counsel of record.

/s/ Toni Thomas  
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