

No. 19-56510

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

IN RE: ANY AND ALL FUNDS HELD IN REPUBLIC BANK OF ARIZONA
ACCOUNTS XXXX1889, ET AL.,

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JAMES LARKIN, JOHN BRUNST, MICHAEL LACEY, AND SCOTT SPEAR,
Movants-Appellants.

On Appeal from the United States District Court for the Central District of
California, The Honorable R. Gary Klausner, United States District Judge

**BRIEF OF *AMICI CURIAE* LEGAL MOMENTUM, NATIONAL
COALITION AGAINST DOMESTIC VIOLENCE, NATIONAL CRIME
VICTIM LAW INSTITUTE, NATIONAL CENTER ON SEXUAL
EXPLOITATION, AND UNITED ABOLITIONISTS IN SUPPORT OF
APPELLEE-APPLICANT**

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DISCLOSURE PURSUANT TO RULE 26.1

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, amici certify as follows:

Legal Momentum, also known as the Women’s Legal Defense and Education Fund, is a national non-profit gender justice advocacy organization. Legal Momentum advocates for equal rights for girls and women through legislative efforts, impact litigation, and through direct representation of clients.

The National Coalition Against Domestic Violence is a non-profit group that is the nation’s oldest national grassroots domestic violence organization.

National Crime Victim Law Institute works to promote balance and fairness in the justice system through crime victim centered legal advocacy and education.

National Center on Sex Exploitation is a leading national organization exposing the links between all forms of sexual exploitation.

United Abolitionists, Inc., doing business as Florida Abolitionist (“United Abolitionists”) is a non-profit, antitrafficking organization committed to the prevention of sex trafficking and to crisis intervention for sex trafficking victims.

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18 U.S.C. § 37718

INTERESTS OF AMICI CURIAE¹

Legal Momentum, the Women’s Legal Defense and Education Fund, is a national non-profit gender justice advocacy organization. For nearly 50 years, Legal Momentum has been advancing equal rights for girls and women through legislative efforts, impact litigation, and through direct representation of clients. Its areas of focus have included employment law, campus safety, sports, and all forms of gender-based violence. Legal Momentum considers sex trafficking to be one of the most extreme forms of violence against women and is involved in efforts to end gender-based violence perpetrated online. As part of these efforts, Legal Momentum has partnered with non-profit organizations and cities throughout the country to end online commercial sexual exploitation of women and girls, including sex trafficking on Backpage.com. Additionally, for four decades, through its award-winning National Judicial Education Project, Legal Momentum has been educating judges and court officials on issues related to gender-based violence against girls and women, including cyber-related violence.

The National Coalition Against Domestic Violence (“NCADV”) is the nation’s oldest national grassroots domestic violence organization. NCADV’s

¹ All parties have consented to the filing of this brief. Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), amici certify that no counsel for a party authored this brief in whole or in part, and no persons other than amici curiae or their counsel made a monetary contribution to its preparation or submission.

mission is to lead, mobilize, and raise our voices to support efforts that demand a change of conditions that lead to domestic violence such as patriarchy, privilege, racism, sexism, and classism. NCADV is dedicated to supporting survivors and advocates, and holding offenders accountable. This includes ensuring survivors of gender-based violence have access to the financial resources to enable them to regain stability, including assets seized from their perpetrators.

National Crime Victim Law Institute (“NCVLI”) is a nonprofit educational and advocacy organization located at Lewis and Clark Law School in Portland, Oregon. NCVLI’s mission is to actively promote balance and fairness in the justice system through crime victim-centered legal advocacy, education and resource sharing. As the only national nonprofit focused on victims’ rights, NCVLI accomplishes its mission through education and training of judges, prosecutors, victims’ attorneys, advocates, law students, and community service providers; providing legal assistance on cases nationwide; researching and analyzing developments in crime victim law; and promoting the National Alliance of Victims’ Rights Attorneys & Advocates. NCVLI also participates as amicus curiae in select state, federal and military cases that present victims’ rights issues of broad importance.

The National Center on Sexual Exploitation (“NCOSE”) is a leading national organization exposing the links between all forms of sexual exploitation. NCOSE

embraces a mission to defend human dignity and to advocate for the universal right of sexual justice, which is freedom from sexual exploitation, objectification, and violence. To this end, NCOSE operates on the cutting edge of policy activism to combat corporate and government policies that foster exploitation, to advance public education and empowerment, and to foster united action through leading the international Coalition to End Sexual Exploitation.

United Abolitionists, founded in 2009 as Florida Abolitionist, is a network of first responders to the national human trafficking crisis. United Abolitionists is a leading agency in the U.S. connecting all organizations and resources necessary to educate, prevent, rescue and rehabilitate in the fight against modern-day slavery and exploitation.

* * *

The present case concerns amici because, as described further herein, online sex trafficking brokered through Backpage.com has resulted in widespread harm to numerous victims throughout the United States (and beyond). The undersigned organizations are devoted to ending this type of human trafficking and ensuring that victims are able to achieve justice. This brief is submitted on behalf of these victims, who deserve the opportunity to seek compensation for the harm inflicted upon them from the profits that Backpage and its principals (together, “Backpage”) made through their illegal facilitation of sex trafficking. The Government’s seizure of the

assets in this proceeding plays a critical role in ensuring that these victims are able to achieve meaningful remedies from those who willfully profited from their exploitation.

SUMMARY OF ARGUMENT

Before it was shut down in 2018, Backpage sold sex ads in over 400 cities in the United States and approximately 900 cities worldwide.² This was an extremely profitable endeavor, earning Backpage—including owners James Larkin and Michael Lacey and employees John Brunst and Scott Spear (collectively, “Defendants”)—an average of \$9 million in profits every month.³ It is beyond any reasonable dispute that a portion of these ads involved illegal prostitution, and an additional portion involved sex trafficking (including of children).

Indeed, over the years Backpage has been the subject of several civil lawsuits filed by children who were sold through the site when they were as young as 13 years old.⁴ Backpage’s sex trafficking victims also began telling their stories

² Staff of S. Permanent Subcomm. on Investigations, 114th Cong., Recommendation to Enforce a Subpoena Issued to CEO of Backpage.com, LLC at 6 (2016), (hereinafter, the “PSI 2016 Report”), <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/human-trafficking-investigation>.

³ PSI 2016 Report at 25.

⁴ See, e.g., *J.S. v. Vill. Voice Media Holdings, L.L.C.*, 359 P.3d 714 (Wash. 2015) (claims brought against Backpage for trafficking two 13-year-old plaintiffs and one 15-year-old plaintiff); *Doe ex rel. Roe v. Backpage.com, LLC*, 104 F. Supp. 3d 149 (D. Mass. 2015) (claims brought by female plaintiffs trafficked via Backpage when they were 15 years old); *R.O. v. Backpage.com, LLC*, No. 17-2-04897-1, (Super. Ct. Wash. filed Jan. 25, 2017) (claims brought by a plaintiff trafficked through Backpage when she was 14 years old); *Florida Abolitionist, et al. v. Backpage.com, et al.*, No. 17-cv-218, 2018 WL 1587477 (M.D. Fla. Mar. 31, 2018) (claim filed by a plaintiff trafficked through Backpage when she was 15 years old).

publicly, leading to media attention that shed light on the ease with which a child could be sold for sex on Backpage.⁵ And, as a pair of explosive reports by the Senate’s Permanent Subcommittee on Investigations revealed in 2016 and 2017, Backpage was no passive recipient of advertising content—instead, it actively worked to facilitate these children’s sexual exploitation by knowingly posting ads for trafficked women and children, helping traffickers maintain anonymity to evade law enforcement, and cleansing ads to ensure that their illegal nature remained concealed from the broader public.⁶

⁵ See, e.g., Natalie Neysa Alund, *Federal Jury Convicts Nashville Man of Sex-Trafficking a 12-year-old Runaway*, *Tennessean* (Feb. 10, 2020), <https://www.tennessean.com/story/news/crime/2020/02/10/federal-jury-convicts-nashville-man-sex-trafficking/4711499002/> (describing the sale of a 12-year-old girl on Backpage in 2016, who was trafficked from Texas and through various cities in Tennessee); David J. Neal, *He Pimped out a 15-Year-Old on Backpage.com. Prison Next for Sex Trafficking, Porn*, *Miami Herald* (May 13, 2019), <https://www.miamiherald.com/news/state/florida/article229968649.html> (describing the sale of a 15-year-old on Backpage, who was forced to have sex with men an average of 15 times per day); ABC News, *Daughters for Sale: How Young American Girls Are Being Sold Online*, *Nightline* (May 5, 2016), <http://abcnews.go.com/US/daughters-sale-youngamerican-girls-sold-online/story?id=39350838> (describing ABC investigation involving a Backpage advertisement that purported to sell a girl under the age of 18); Nicholas Kristof, *How Pimps Use the Web to Sell Girls*, *N.Y. Times* (Jan. 25, 2012), https://www.nytimes.com/2012/01/26/opinion/how-pimps-use-the-web-to-sell-girls.html?_r=2&ref=opinion%20 (describing the sale of a 13-year-old girl on Backpage five to nine times per day, and characterizing Backpage as “a godsend to pimps, allowing customers to order a girl online as if she were a pizza”).

⁶ PSI 2016 Report at 2; Staff of S. Permanent Subcomm. on Investigations, 114th Cong., *Backpage.com’s Knowing Facilitation of Online Sex Trafficking* (2017),

To this day, Defendants have retained the money that they earned from the ads they sold, including those ads that Defendants know led to the sale of children for sex. Indeed, Backpage and its CEO, Carl Ferrer, have conceded as much: when Ferrer and Backpage pled guilty in the District of Arizona, they admitted that Defendants' funds, as generated through Backpage, were illegally obtained.⁷ Nonetheless, Defendants claim that the First Amendment entitles them to retain these funds and avoid all criminal liability for their actions.

But Defendants did not engage in a victimless crime. To the contrary, Backpage's facilitation of sex trafficking harmed thousands of victims who intend to seek restitution at the conclusion of the criminal action currently pending in Arizona.⁸ The stories of the trafficking victims sold through Backpage reveal that the site led to their repeated rape, often many times in a single day. They experience lifelong consequences as a result of this immense trauma. Given Defendants' profiteering from this sexual exploitation, victims sold through the Backpage website have filed civil suits in which they seek a portion of these profits as

<https://www.hsgac.senate.gov/imo/media/doc/Backpage%20Report%202017.01.10%20FINAL.pdf> (“PSI 2017 Report”).

⁷ *United States v. Backpage.com, LLC*, No. 18-cr-465, Dkt. 8-1 at 1-12 (D. Az. Apr. 5, 2018); *United States v. Carl Ferrer*, No. 18-cr-464-PHX-DJH, Dkt. 7-1 at 12-14 (D. Az. Apr. 5, 2018); *see also* Gov't Answering Br. (Dkt. 30), at 45 (hereinafter, “Gov't Br.”).

⁸ *United States v. Michael Lacey, et al.*, No. 18-cr-00422-PHX-SPL (D. Ariz.).

compensation for the injuries they suffered due to Defendants' conduct. These civil suits are largely stayed during the ongoing criminal case against Defendants.⁹ Victims also have the ability to seek restitution for the harm they suffered through criminal process.¹⁰ However, these rights are merely illusory if Defendants are permitted to dissipate their assets before the conclusion of criminal proceedings.

The Government recognizes that the purpose of securing Defendants' funds prior to their criminal trial is to "safeguard assets that defendants might otherwise attempt to dissipate or spirit beyond the district court's jurisdiction before trial."¹¹ That need is especially acute here, as Defendants have already worked hard to avoid paying a dime to their many victims. Tellingly, in 2015—when it appeared that a Washington state court was poised to hold Defendants accountable for the harm they caused to child victims—Defendants hid their illicit profits overseas and transferred Backpage's operations abroad in an attempt to shield their assets from those victims.¹² The fact that Defendants were willing to conceal funds to avoid civil liability demonstrates that, if the funds at issue in this case are not seized, Defendants

⁹ See, e.g., *Florida Abolitionist v. Backpage.com LLC*, No. 17-cv-00218, Dkt. 159 at 4 (M.D. Fla. Dec. 6, 2018); *Doe No. 1 v. Backpage.com, LLC*, No. 17-cv-11069, Dkt. 100 (D. Mass. Nov. 30, 2018).

¹⁰ See 18 U.S.C. §§ 1593, 3663A, 3771.

¹¹ Gov't Br. at 60.

¹² PSI 2016 Report at 24; PSI 2017 Report at 48-50.

will likewise continue their efforts to prevent victims from obtaining restitution following the conclusion of the criminal process.

Thus, on behalf of Backpage's many victims who hope to finally obtain justice following the conclusion of Defendants' criminal cases, *amici* ask that this Court affirm the decision of the District Court.

ARGUMENT

This case is about preserving the assets of criminal Defendants who are likely to face massive civil and criminal restitution obligations to the thousands of women who have been trafficked through Backpage.com, the website they helped operate.

Defendants' prior conduct reveals that, if the District Court's order is reversed, Defendants will grab the opportunity to conceal assets to avoid any payments to their victims. On October 21, 2014, the Supreme Court of Washington indicated during oral argument that—contrary to prior federal decisions—Backpage may be subject to civil liability to trafficking victims in Washington state.¹³ Backpage immediately acted to protect its assets from any future judgments, selling the company to a Dutch entity and creating a web of shell companies in foreign countries that could be used to hide funds derived from the operation of

¹³ *J.S.*, 359 P.3d at 714 (argued Oct. 21, 2014); Martha Bellisle, *Website Asks High Court to Throw Out Lawsuit*, *Associated Press News* (Oct. 22, 2014), <https://apnews.com/adc9efe9466b4d76bba82a3ef59b4799>.

Backpage.com.¹⁴ In part based on these attempts to conceal assets, the Government charged Backpage with more than 100 counts of money laundering in the District of Arizona.¹⁵ As alleged in the Indictment, Backpage engaged in numerous “financial transactions designed to conceal their misconduct and evade seizure by law enforcement.”¹⁶

Absent the use of civil forfeiture, Defendants’ efforts to hide their money will hinder the ability of Backpage’s victims to collect restitution related to the injuries they suffered from being trafficked on the website. These victims do not have the resources or the expertise to identify where Defendants’ assets are hidden, and are not well-positioned to untangle the large web of international corporations that Defendants have established. The Government’s ability to locate and freeze Defendants’ funds, which largely consist of profits from Backpage’s facilitation of prostitution and sex trafficking,¹⁷ is therefore essential to ensure that Backpage’s

¹⁴ PSI 2016 Report at 24; PSI 2017 Report at 48-50; *Lacey, et al.*, Dkt. 230 at 6.

¹⁵ *Lacey, et al.*, Dkt. 230 at 6.

¹⁶ *Id.*

¹⁷ Press Release, *Attorney General Kamala D. Harris Announces Criminal Charges Against Senior Corporate Officers of Backpage.com for Profiting from Prostitution and Arrest of Carl Ferrer, CEO* (Oct. 6, 2016), <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-criminal-charges-against-senior> (“Harris Press Release”).

victims can be adequately compensated for the harm they suffered through civil litigation and the criminal restitution process.

I. DEFENDANTS HAVE MADE MILLIONS BY USING BACKPAGE.COM TO FACILITATE SEX TRAFFICKING.

When Backpage.com was active, thousands of American children were sold for sex online each day throughout the United States,¹⁸ from Seattle,¹⁹ to Silicon Valley,²⁰ to Phoenix,²¹ to Chicago,²² to Washington, DC.²³ Girls as young as 11 years old were trafficked online.²⁴

¹⁸ Smith, Linda & Coloma, Cindy, *Renting Lacy: A Story of America's Prostituted Children*, at 95, Shared Hope Int'l (2009).

¹⁹ *Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262, 1267 (W.D. Wash. 2012).

²⁰ Juniper Networks Foundation Fund & Silicon Valley Community Foundation, *Human Trafficking in Silicon Valley*, at 9 (2014), <https://flipflashpages.uniflip.com/3/88537/339160/pub/html5.html#page/14>.

²¹ Dominique Roe-Sepowitz, Ariz. State Univ., *Report on the Incidence of Sex Trafficking in Arizona Juvenile Probation*, 4 (2016), http://endsextrafficking.az.gov/sites/default/files/estaz_012716_materials.pdf.

²² *See Backpage.com, LLC v. Dart*, 127 F. Supp. 3d 919, 922 (N.D. Ill. 2015) (“In over 800 sting operations responding to Backpage ads since 2009, Dart’s officers have made arrests for prostitution, child trafficking, or a related crime 100% of the time.”).

²³ Press Release, U.S. Dep’t of Justice, *Man Convicted of Sex Trafficking A 15-Year-Old Girl* (June 25, 2013), <https://www.justice.gov/usao-edva/pr/man-convicted-sex-trafficking-15-year-old-girl>. A 29-year old man met a runaway girl outside of her home, had sex with her hours later, and then began selling her on Backpage.com.

²⁴ ABC News, *Girls Sold for Sex Online, Backpage Defends Decision to Keep Ads Up* (Apr. 24, 2012), <http://abcnews.go.com/US/girls-sold-sex-online-backpage-defends-decision-ads/story?id=16193220>.

With respect to children, who make up more than half of all sex trafficking victims, experts have explained that the 846% increase in reports of suspected trafficking between 2010 and 2015 was “directly correlated to the increased use of the Internet to sell children for sex.”²⁵

Until Backpage.com was seized by the Government and shut down in April 2018, it monopolized the sex trafficking industry, becoming the highly profitable go-to website for sex trafficking.²⁶ Service providers treating victims across the country, when asked how many of the victims they served were trafficked on Backpage, reported percentages ranging from 70-100%.²⁷ When the National Center for Missing and Exploited Children (“NCMEC”) received a report of a missing child, it first searched Backpage, as over 73% of cases that the public reported to NCMEC relating to child sex trafficking were of children listed on the site.²⁸ NCMEC received approximately 10,000 reports of suspected child sex trafficking each year—meaning that there were more than 7,300 *reported* incidents of child sex

²⁵ PSI 2016 Report at 4 (quoting Testimony of Yiota G. Souras, Senior Vice President & General Counsel, National Center for Missing & Exploited Children, before S. Permanent Subcomm. on Investigations, at 2 (Nov. 19, 2015)); PSI 2017 Report at 4.

²⁶ *Id.* at 6.

²⁷ *Id.*

²⁸ *Id.* at 8 (noting that NCMEC has worked on more than 420 cases where trafficked child had been listed on Backpage).

trafficking involving Backpage.²⁹ The number of unreported incidents is presumably much higher. Given Backpage’s ubiquity in the sale of sex ads online, it is unsurprising that one study found that the online demand for prostitutes dropped 67 percent and search volume was reduced by 90 percent immediately after the Backpage website was taken down.³⁰

One reason that Backpage dominated the sex trafficking market was that its principals took conscious steps to help traffickers evade law enforcement when using the website—including adding a feature to automatically strip metadata from images and sanitizing the text of traffickers’ advertisements to hide their obvious criminality.³¹ As the Government’s indictment in the District of Arizona makes clear, Backpage engaged in a number of practices that increased its profitability at

²⁹ *Id.* at 3.

³⁰ Dan Whitcomb, *Report Gives Glimpse Into Murky World Of U.S. Prostitution In Post-Backpage Era*, *Reuters* (April 11, 2019), available at <https://www.reuters.com/article/us-usa-prostitution-internet-exclusive/exclusive-report-gives-glimpse-into-murky-world-of-us-prostitution-in-post-backpage-era-idUSKCN1RN13E>.

³¹ *See* PSI 2016 Report at 22 (“Backpage does not retain the metadata associated with the images posted in its adult advertisements.”); *id.* at 21 (“Backpage’s moderation process operated to remove explicit references to the likely illegality of the underlying transaction—not to prevent illegal conduct from taking place on its site.”); PSI 2017 Report at 31 (quoting Backpage employee who stated that moderators “remov[ed] key phrases that made it sound like a prostitute ad rather than an escort ad, dancing around the legality of the ad”).

the cost of exposing children to harm.³²

Both the Senate’s investigation into Backpage’s practices and Backpage’s guilty plea in the District of Arizona show that Backpage was keenly aware that the site was used for sex trafficking and took affirmative steps to facilitate this illegal conduct. In its plea to criminal charges in the District of Arizona, Backpage admitted that it knew that “the great majority of these advertisements are, in fact, advertisements for prostitution services” and that Backpage “knowingly facilitate[ed]” prostitution.³³ The company admitted to using “‘moderation’ processes through which Backpage would remove terms and pictures that were particularly indicative of prostitution and then publish a revised version of the ad . . . [as part of a] company-wide culture and policy of concealing and refusing to officially acknowledge the true nature of the services being offered in Backpage’s ‘escort and ‘adult’ ads.’”³⁴

Backpage’s processes and policies created an incredibly lucrative business model for Defendants. The Senate Report found that Backpage was valued at over \$600 million in 2015, and was estimated to be roughly nine times more profitable

³² *Lacey, et al.*, Dkt. 230 at 3-49.

³³ *United States v. Backpage.com, LLC*, No. 18-cr-465, Dkt. 8-1 at 11 (D. Az. Apr. 5, 2018).

³⁴ *Id.*

than the average internet services company.³⁵ Backpage’s staggering profitability appears to be based almost entirely on its advertisements for sex. While Backpage is a private company and does not disclose its financial information, former California Attorney General Kamala Harris reported that from January 2013 to March 2015, 99% of Backpage’s income worldwide was derived from its “adult” section.³⁶ During that same time, Backpage received \$51 million in revenue from California alone.³⁷

Defendants consistently chose to protect their revenue stream rather than taking even the most basic steps to prevent trafficking. On September 16, 2011, the National Association of Attorneys General (“NAAG”) sent a letter to Backpage, which all fifty-one state Attorneys General eventually signed, expressing grave concern over its practices.³⁸ NAAG noted that when Missouri investigators flagged 25 postings advertising children in July 2011, four days later, Backpage had removed only five of those postings.³⁹ NAAG requested that Backpage substantiate its claims that it systematically moderates and removes illegal content, but Backpage refused.

³⁵ PSI 2016 Report at 280; PSI 2017 Report at 1.

³⁶ *See* Harris Press Release.

³⁷ *Id.*

³⁸ NAAG letter to Samuel Fifer (Sept. 16, 2011), *available at* <https://www.naag.org/assets/files/pdf/signons/Backpage.com%20FINAL%209-16-11.pdf>.

³⁹ *Id.*

In 2012, the United States Senate and the House of Representatives each passed resolutions⁴⁰ calling on Backpage to shut down its “adult services” section, where children are often listed for sex. The resolutions noted that girls are often trafficked for the first time between the ages of 12 and 14 and stated that “40 percent of incidents investigated . . . involved . . . the sexual exploitation of a child.”⁴¹ Again, Backpage refused to change its business practices, at the expense of countless victims.

Backpage never voluntarily ceased operations or yielded to the pleas of victims’ advocacy groups to take meaningful steps to stop sex trafficking. Instead, the criminal activity on the website only ended when the FBI seized Backpage.com in 2018 and prosecutors filed criminal charges against the company and its principals.

II. VICTIMS HAVE SUFFERED ENORMOUS HARM FROM BEING SOLD ON BACKPAGE.COM.

The effects of trafficking are long-lasting and widespread. For the rest of their lives, exploited children face devastating health and psychological problems, high rates of suicide and attempted suicide, and post-traumatic stress disorder.⁴² Health

⁴⁰ S. Res. 439 (April 25, 2012); H. Res. 646 (May 7, 2012).

⁴¹ H. Res. 646.

⁴² Melissa Farley & Howard Barkan, *Prostitution, Violence, and Posttraumatic Stress Disorder*, 27(3) *Women & Health* 37–49 (1998).

care workers, government agencies, shelters, law enforcement personnel, family members, and schools are deeply impacted by caring for victims of trafficking.⁴³

A few examples of the massive harm Backpage inflicted are instructive. In Florida, *amici* Florida Abolitionist and Legal Momentum brought a case against Backpage and its enablers (including Defendants Lacey and Larkin) involving two victims, “Alice” and “Sarah.”⁴⁴ Alice was a 15-year-old honors student when her traffickers created an advertisement offering her for sex on Backpage.⁴⁵ Her traffickers kept her confined, branded her, and took numerous photographs of her.⁴⁶ Over the course of two weeks, Alice was repeatedly raped by individuals who responded to the Backpage advertisement.⁴⁷ Alice eventually escaped.⁴⁸ Immediately upon her return home, Alice and her family reported her traffickers to law enforcement and emailed Backpage to request that the advertisement be removed (noting Alice was a minor).⁴⁹ Backpage ignored Alice and her family,

⁴³ *See id.*

⁴⁴ Evidence on file with *amici curiae*. We have used aliases to protect the identities of the victims described herein.

⁴⁵ *Florida Abolitionist*, Dkt. 86 at 7.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 49.

⁴⁹ *Id.*

allowing the advertisement to remain on its website.⁵⁰ Alice remains permanently psychologically and physically traumatized, unable to study or focus for long periods of time, and experiences anxiety as a result of the deep trauma inflicted by Defendants' conduct.⁵¹

Sarah was a high-functioning college student when she was trafficked through Backpage.⁵² By the time Sarah fell into the hands of her traffickers, they had already repeatedly used Backpage to sell other women, and had become experienced using the website.⁵³ In March 2013, she was confined in a hotel room while her captors created an advertisement offering her for sexual services on Backpage.com.⁵⁴ In only twelve hours, Sarah was raped by five different individuals who responded to the Backpage advertisement.⁵⁵ Sarah has suffered long-lasting injuries from her experience being trafficked on Backpage. She stopped attending college courses, missed significant periods of work, and still suffers from post-

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 48.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

traumatic stress disorder. The physical trauma from being repeatedly raped forced Sarah to undergo a hysterectomy.⁵⁶

These two stories are emblematic of the stories of thousands of other victims who were trafficked on Backpage.com. For example, in another civil case against Backpage, the 15-year-old plaintiffs were raped *900 to 1,000 times* each as a result of the ads posted to Backpage.com.⁵⁷ Again, a girl's parents reported the trafficking to Backpage and demanded that the illegal advertisements be taken down.⁵⁸ Just as with Alice, Backpage failed to respond to the report.⁵⁹ A week after the rape of the 15-year-old girl, advertisements of her remained featured on Backpage.⁶⁰

The full scope of the damage that Backpage—with Defendants' help—inflicted on victims can never be fully quantified, but it undoubtedly exceeds the illicit profits that are the subject of this action.

III. THE USE OF CIVIL FORFEITURE WILL HELP ENSURE BACKPAGE'S MANY VICTIMS CAN OBTAIN JUSTICE.

Given the vast harm inflicted by Defendants' illegal conduct, the Government's use of civil asset forfeiture to secure Defendants' assets is both just

⁵⁶ *Id.*

⁵⁷ *See Doe ex rel. Roe*, 104 F. Supp. 3d at 153.

⁵⁸ *Id.* at 153 n.2.

⁵⁹ *Id.*

⁶⁰ *Id.*

and proper. It is *amici*'s hope that, following Defendants' criminal trial, a substantial portion of the forfeited funds will be used to provide restitution to Backpage's many victims.

The civil forfeiture statute was designed to allow forfeited funds to be used to pay restitution to the victims of a crime in an appropriate case.⁶¹ As provided in 18 U.S.C. § 981(e)(6), the Attorney General has the authority to transfer forfeited property "as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity."⁶² Here, the charges underlying the counts of money laundering derive from, among other things, the sale of women and children for sex.⁶³

The lack of remorse Defendants have shown for their victims makes asset forfeiture a necessary tool for prosecutors, particularly given Defendants' extensive

⁶¹ *United States v. Carter*, 742 F.3d 440, 446 (9th Cir. 2014) ("[T]he Government may choose to assign forfeited proceeds to victims.").

⁶² *See Nacchio v. United States*, 824 F.3d 1370, 1380-1 (Fed. Cir. 2016) (affirming the Government's decision to retain funds under Section 981(e) to compensate victims of the offense).

⁶³ *See Lacey, et al.*, Dkt. 230. Because under 18 U.S.C. § 1591(a) the sale of anyone under the age of 18 years old for sex is, by definition, sex trafficking, the Superseding Indictment describes instances of trafficking despite invoking different criminal statutes. For example, the Superseding Indictment details the story of a child (Victim 5) who first appeared in a Backpage ad when she was 14 and was

history of routing Backpage’s illegally obtained profits through foreign entities to evade seizure.⁶⁴ After the criminal charges were filed in Arizona, Lacey and Larkin “remained as defiant as ever.”⁶⁵ In fact, they created a website called “Front Page Confidential” and commissioned a former employee to write a stream of stories disparaging the Arizona court and the criminal prosecutors.⁶⁶ The author of those posts worked for Lacey and Larkin at the Phoenix New Times, where he expressed the cavalier attitude that it would be “un-American” to prevent adult ads on Backpage simply because “because some minors might sneak in.”⁶⁷ Lacey previously invoked a similar lack of concern about the sale of minors on Backpage, stating, “*Of course there are kids who get through system . . . as there are in bars.*”⁶⁸

forced to “perform sexual acts at gunpoint, choked [] to the point of having seizures, and gang-raped.” *Id.* at 41.

⁶⁴ *Lacey, et al.*, Dkt. 230 at 6.

⁶⁵ Stephen Lemons, *Michael Lacey and Jim Larkin Defiant in New Documentary by Reason Magazine* (June 30, 2019), <https://frontpageconfidential.com/backpage-cofounders-defiant-in-new-reason-documentary/>.

⁶⁶ *See* “About Us,” <https://frontpageconfidential.com/about-us/> (identifying Lacey and Larkin as the publishers of Front Page Confidential); “U.S. v. Lacey & Larkin,” https://frontpageconfidential.com/category/us_versus_lacey_larkin/ (last accessed May 5, 2020).

⁶⁷ *See* Stephen Lemons, *Lemons: Backpage Founders Donated to Powerless Democrats; That’s a Story?*, *Phoenix New Times* (Apr. 19, 2017) <https://www.phoenixnewtimes.com/news/backpages-ex-owners-michael-lacey-and-jim-larkin-smearred-by-cronkite-school-arizona-republic-article-9258296>.

⁶⁸ Richard Ruelas, *Request to Ditch Ankle Monitor for Hawaiian Beach Vacation Prompts Release of New Backpage Evidence*, *AZCentral* (Apr. 23, 2019) <https://www.azcentral.com/story/news/local/arizona/2019/04/23/backpage->

Thus, it appears that for Defendants, child sex trafficking was simply a cost of doing business. Without the ability to stop Defendants from hiding their illegal profits, their well-documented antipathy towards the government and their child victims creates a substantial risk that the thousands of women and children trafficked on Backpage will never be able to recover compensation for their injuries.

Moreover, several Defendants have obtained stays in the numerous civil proceedings brought by victims during the pendency of the criminal proceeding, making it impossible for victims to seek justice through the civil process.⁶⁹ Absent the use of civil asset forfeiture, the stays issued as a result of the criminal charges will give Defendants time to dispose of their assets before a verdict can be reached in any civil matters. At that point, any civil judgment that a victim can obtain would have been effectively rendered worthless.

Backpage's victims deserve compensation for their injuries from the Defendants who profited from their abuse. However, victims simply do not have the resources or capability to identify, track, and attach the various assets that Defendants have hidden away in various corners of the world. The best opportunity for Backpage's victims to achieve justice is to affirm the District Court's civil

prostitution-case-michael-lacey-request-ditch-ankle-monitor-prompts-evidence-dump/3555717002/ (emphasis added).

⁶⁹ See, e.g., *Florida Abolitionist*, Dkt. 159; *Doe No. 1*, Dkt. 100.

forfeiture order and permit the Government to retain Defendants' illegal proceeds until they can be used to provide restitution following Defendants' criminal trial.

CONCLUSION

For the foregoing reasons, this Court should affirm the District Court's order denying Defendants' motion to return their assets.

Respectfully submitted,

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May 5, 2020

STATEMENT OF RELATED CASES

Pursuant to Circuit Rule 28-2.6, counsel for amici represent that they are not aware of any other related cases pending in this Court.

CERTIFICATE OF SERVICE

I, Karen A. Chesley, hereby certify that I electronically filed the foregoing Brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 5, 2020, which will send notice of such filing to all registered CM/ECF users.

/s/ Karen A. Chesley
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