

**BACKPAGE.COM'S KNOWING FACILITATION OF
ONLINE SEX TRAFFICKING**

HEARING

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

JANUARY 10, 2017

Available via the World Wide Web: <http://www.fdsys.gov/>

Printed for the use of the
Committee on Homeland Security and Governmental Affairs



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U.S. GOVERNMENT PUBLISHING OFFICE

24-401 PDF

WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

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TUESDAY, JANUARY 10, 2017

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:03 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Rob Portman, Chairman of the Subcommittee, presiding.

Present: Senators Portman, McCain, Lankford, Daines, Johnson, McCaskill, Tester, Heitkamp, Hassan, and Harris.

OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. The Committee will come to order. We are here this morning to address a very serious topic. It is about sex trafficking. It is about selling children online.

More than 20 months ago, this Subcommittee launched a bipartisan investigation concerning how sex traffickers use the Internet to ply their trade. Experts, including many of the victims I have spoken to in my home State of Ohio, tell us that this crime has increasingly moved from the street to the smartphone.

The National Center for Missing and Exploited Children (NCMEC) reported an 846-percent increase in reports of suspected child sex trafficking from 2010 to 2015—a spike the organization found to be “directly correlated to the increased use of the Internet to sell children for sex.” Backpage.com sits at the center of that online black market. This is a large, profitable company: Backpage operates in 97 countries and 934 cities worldwide and was last valued at well over a half-billion dollars. According to an industry analysis in 2013, eight out of every ten dollars spent on online commercial sex advertising in the United States went to one website—Backpage.

The National Center for Missing and Exploited Children tells us that Backpage is linked to nearly three-quarters of all suspected child sex trafficking reports that it receives from the general public through its “CyberTipline.” And according to a leading anti-trafficking organization called “Shared Hope International,” “[s]ervice providers working with child sex trafficking victims have reported that between 80 percent and 100 percent of their clients have been bought and sold on Backpage.com.” That has certainly been my experience as I have talked to victims of sex trafficking in Ohio.

Based on this record, our Subcommittee saw a compelling need to investigate the business practices of Backpage, especially the efforts it takes to prevent use of its site by sex traffickers.

We thought that might be simple enough because Backpage actually promotes itself as a “critical ally” in the fight against human trafficking. The company says it “leads the industry” in its screening of advertisements for illegal activity—a process it calls “moderation.” In fact, Backpage’s top lawyer, Elizabeth McDougall, has described their moderation process as the key tool for, and I quote, “disrupting and eventually ending human trafficking via the World Wide Web.”

Despite these boasts, Backpage refused to cooperate with the Subcommittee’s investigation. They defied our subpoena, failing to appear at a November 2015 hearing or provide the requested documents.

In response, the Subcommittee brought the first civil contempt action authorized by the Senate in more than 20 years. And in August 2016, the Subcommittee prevailed and secured a Federal court order rejecting Backpage’s meritless objections and compelling the company to turn over the subpoenaed documents.

It is now clear why Backpage fought so hard to withhold this information. The Subcommittee published a staff report yesterday afternoon that conclusively shows that Backpage has been more deeply complicit in online sex trafficking than anyone imagined. Without objection, that report will be made part of the record.¹

Our report demonstrates that Backpage has concealed evidence of crimes by systematically deleting words and images suggestive of illegal conduct from advertisements submitted to their website before publishing the ads. And some of those ads involved child sex trafficking. Backpage’s editing process sanitized the content of millions of advertisements and hid important evidence from law enforcement.

This story begins in 2006, apparently, when Backpage executives began instructing staff responsible for screening ads—known as “moderators”—to edit the text of adult ads to conceal their true nature. By October 2010, Backpage executives formalized a process of both manual and automated deletion of incriminating words and phrases in ads.

A feature known as the “Strip Term From Ad filter” did most of the work. Backpage Chief Executive Officer (CEO) Carl Ferrer personally directed his employees to create this electronic filter to “strip”—that is, to delete—hundreds of words indicative of sex trafficking or prostitution from ads before publication.

To be clear, this filter did not reject ads for illegal activity. Backpage executives were afraid to cut into profits and, in Ferrer’s words, “piss off a lot” of customers. Instead, the Strip Term From Ad filter simply altered ads to conceal signs of illegality. They put profits ahead of vulnerable women and children.

The evidence is clear that Backpage deliberately edited out words indicative of child sex trafficking and other crimes from the ads. This list of terms is chilling. Starting in 2010, Backpage automatically deleted words including “Lolita,” “teenage,” “rape,” “young,”

¹ The Subcommittee Report appears in the Appendix on page 56.

“little girl,” “teen,” “fresh,” “innocent,” “school girl,” and even “Amber Alert”—and then published the edited versions of the ads to their website. Backpage also systematically deleted scores of words that were indicative of prostitution.

Backpage claims their staff reviews ads to avoid child exploitation, but these terms were stripped out before anyone at Backpage even looked at the ad. And when law enforcement officials came looking for more information about suspicious ads—as they routinely did—Backpage had already destroyed the original ad posted by the pimp or trafficker. The evidence was gone.

Think about the real-world effect of this practice:

A trafficker submits an ad on Backpage.com containing a word like “Lolita” or “teen”—a pretty good clue that a crime may be afoot.

But then Backpage’s Strip Term From Ad filter would delete the problematic term and the remainder of the ad would be published.

Of course, this editing changed nothing about the real age of a person being sold for sex or the real nature of the advertised transaction.

But as one Backpage executive explained, thanks to the filter, Backpage ads looked “cleaner than ever” to the public eye.

We will never know for sure how many girls and women were subject to abuse and exploitation that Backpage.com helped to conceal. By Backpage’s own estimate, the company was editing “70 to 80 percent of ads” in the commercial-sex section either manually or automatically by late 2010. Based on our best estimate, this means that Backpage was editing well over half a million ads each year. It is unclear whether and to what extent Backpage still uses the Strip Term From Ad filter, but internal emails indicate that the company was using the filter to some extent as recently as April 2014.

These are not the practices of an “ally” in the fight against human trafficking. These are the practices of a corporation intent on profiting from human trafficking—and human misery—and profit they have, at the expense of countless innocent victims.

Backpage has not denied a word of these findings. Instead, several hours after the report was issued yesterday afternoon, the company announced the closure of its adult section—claiming “censorship.” But that is not censorship. That is validation of the findings in the report.

As for this new development, I will just quote from part of the National Center for Missing and Exploited Children’s statement about Backpage’s closure of its “adult” site. They said, and I quote: “We are gratified to know that as a result [of this closure], a child is now less likely to be sold for sex on Backpage.com.”

Our Ranking Member, Senator McCaskill, will have more to say about other key findings in our report. And I just want to conclude by thanking her and thanking her staff for their shoulder-to-shoulder work with my team at PSI on this bipartisan investigation. I am also grateful to the Members of the full Committee and the Subcommittee and the Senate as a whole for unanimously supporting us as we pursued the enforcement of the subpoena against Backpage.com.

In the weeks and months ahead, I intend to explore whether potential legislative remedies are necessary and appropriate to end the facilitation of online sex trafficking that Backpage.com has pioneered. We will have more to say on that later.

With that, I want to turn to Senator McCaskill for her opening statement and to tell my colleagues you are welcome to make a short, let us say two-minute opening statement before the first panel. We will also have a second panel coming up where you will be asked to participate.

With that, I would like to turn to Senator McCaskill for her opening statement.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Thank you, Chairman Portman. If this hearing stands for anything, it stands for the fact that congressional oversight matters and investigations matter. Sometimes they are more powerful than a piece of legislation.

I hope this investigation serves as a very clear sign to the American people that both parties can work together the way that we have to address one of the most devastating issues in our country. Not only have we cooperated in a productive way on this Subcommittee, but the Senate as a whole affirmed the importance of our investigation by voting unanimously—which, by the way, is not a common thing these days in the U.S. Senate—in a vote of 96–0 to compel Backpage to respond to our reasonable, constitutional, congressional requests. The Senate recognized that our investigation into the market leader in selling sex online is a legitimate and important use of the Subcommittee’s authority.

As the Chairman said, Backpage is a \$600 million company built on selling sex, and, importantly, on selling sex with children. And the company knows it. According to one former moderator, his colleagues “went through the motions putting lipstick on a pig, but when it came down to it, it was what the business was about.” Several former moderators even told the Subcommittee that certain Backpage employees contacted prostitutes advertised on the site and used their services and told about it. When moderators had the courage to point out illegal activity, management came down hard on the employees. After one moderator apparently concluded in the account notes that a Backpage user was a prostitute, Andrew Padilla, the Backpage Chief Operating Officer (COO), stated, and I quote, “[l]eaving notes on our site that imply we are aware of prostitution, or in any position to define it, is enough to lose your job.”

More troubling, documents produced to the Subcommittee also show that Backpage often erred against reporting potential child exploitation. In one email, for example, a Backpage supervisor instructed moderators that “[y]oung ads do not get deleted unless they are clearly a child.” “Young ads do not get deleted unless they are clearly a child.”

A Backpage supervisor also apparently hesitated before believing reports from third parties concerning underage escorts. In February 2010, for example, a detective alerted Backpage to the fact that a 17-year-old girl featured on the site had asked the company

to remove her photos, but was “told they could not do that until enough people reported her as ‘potentially underage’.”

As a matter of policy, according to internal documents, Backpage will only escalate the review of an ad for child exploitation when an individual claims they or an immediate family member are at risk; uncles reporting, nephews or grandmothers reporting grandchildren will not suffice.

And, remember—and this is very important—they did not turn away ads selling children. We now know as a result of our legal battle, based on their own documents, they did not turn away ads selling children. They just tried to make it less obvious and, worse, coached the traffickers and the pimps on how to clean up their ads—not turning away their business. Those children were still sold. They just tried to sanitize it. That, ladies and gentlemen, is the definition of “evil”—simply evil.

Throughout this investigation, I have spoken of a 15-year-old girl who was sold for sex on Backpage across the United States before seeking help, walking into an emergency room at Cardinal Glennon Children’s Hospital in St. Louis. According to court documents, this young woman was walking down a street in Madison, Missouri, a small town in my State, in June 2015 when her future trafficker—a young man from Park Hills—approached in a pickup truck. She was contemplating suicide after a fight with her father, and in her distraught state she was coerced into joining the young man and his wife as they sold her and multiple other girls for sex over a six-week period. Earlier this year, Chief Judge Michael Reagan of the Southern District of Illinois sentenced the husband and wife perpetrators of this crime to life in prison and 20 years, respectively. In handing down those sentences, Chief Judge Reagan stated that the couple had “[stripped] an individual of the right to feel secure [and] control and trust what she did with her own body.”

It is crucial that we keep our focus on this 15-year-old girl and the experiences of countless other young girls like her. The parents of two of these girls are here with us today to discuss how their daughters were advertised and sold on Backpage. Both girls found themselves trapped, not on a street corner, but in an online marketplace that billed children as “weekend specials,” under less stringent rules than those for ads selling motorcycles or pets.

One mother here today—then living in St. Louis with her other children—was forced to take the unimaginable step of buying time with her daughter through a Backpage ad in a desperate attempt to save her.

These experiences remind us that this investigation is not about curbing First Amendment rights—give me a break—rights which are now more important than ever. This investigation is about understanding how criminals systematically use online platforms to transform normal American teenagers into sex slaves. As part of this work, it is critical for the Subcommittee to understand the efforts companies selling sex online undertake to prevent trafficking—not to sanitize it, not to clean it up, not to make sure they are making more money, but to prevent it. And if our current laws are inadequate to spur these efforts, we need to know this, too.

This is not a punitive, partisan campaign. This is congressional oversight.

At our last hearing, I promised that Chairman Portman and I would not go quietly into the night and simply give up in the face of repeated roadblocks—lawyering up like no company is capable of lawyering up—Backpage has raised against this investigation. Working together, we fought Backpage all the way to the Supreme Court to vindicate our right to receive the documents we requested. We subpoenaed records from banks, accounting firms, and court proceedings, and we spoke with countless stakeholders and experts in the fight against trafficking. And last night, Chairman Portman and I received word from Backpage that, in response to our report, the company has shut down its adult section across the United States effective immediately. Only time will tell if this action is an end to Backpage’s role in online sex trafficking of children or just a cheap publicity stunt.

In the meantime, I have another promise: I will continue to do everything in my power to protect young women—and young men—from being exploited and assaulted, on Backpage.com or anywhere else. And I know all of my colleagues in the Senate agree with me.

I look forward to getting answers from our panelists today. Thank you, Mr. Chairman.

Senator PORTMAN. Thank you, Senator McCaskill.

We will now recognize colleagues for brief opening statements. Senator Tester, you were here first. If you have a brief opening statement, you can see the clock has two minutes.

OPENING STATEMENT OF SENATOR TESTER

Senator TESTER. Well, thank you, Senator Portman. I want to thank you and Senator McCaskill for having this hearing.

We have some statistics from Montana: a 100-percent increase in human trafficking cases between 2015 and 2016; the number of juvenile victims rescued in Montana between 2015 and 2016 increased by 400 percent. We have a problem out there.

I have two daughters, I have two granddaughters, and I cannot imagine what the victims are thinking about that are either here today or watching this online.

I am in the business of agriculture, and when I hear terms like “bought” and “sold,” I think about cattle and hogs, not people.

Twenty months ago this Subcommittee met, and we asked for Backpage to come in and tell us their business model. They refused. Senator McCaskill talked about the process that went on since then. If you are so damn proud about your business model, why weren’t you here 20 months ago? Why weren’t you here to answer the questions?

We have a problem in this country. We do not need people who enable pimps to buy and sell our children. Come in and answer the questions, and hopefully you will answer the questions today.

Thank you, Mr. Chairman.

Senator PORTMAN. Thank you, Senator Tester.

Senator Lankford.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. I would like to thank the Chairman and Senator McCaskill for holding this hearing and for not letting go of the issue.

I worked with students for 22 years and families for 22 years before I came to Congress. There are many of us on this dais, in the crowd right now, and people that are watching that spend their time fighting for their families, understanding that families sometimes fight and struggle.

It is abhorrent to me to think that there is a business model looking for families that have fallen apart and so they can then profit from families that fall apart rather than fighting to be able to keep families together.

The thought that anyone would say that selling a 13-year-old is something that fits within a business model is astounding to me. And to hear someone—or to hear the allegations and to be able to read the information about any organization that would try to take words away, not to be able to contact the seller and say, “What are you doing? This looks like an illegal act,” but instead say, “Hey, you cannot post it quite that way. Let me help you with a way that you can sell this 13-year-old that you can get away with”—that is a very different business model than where most of Americans are.

So this conversation today is not just about Backpage. It is about fighting for families, and it is about fighting for the dignity of every single person. And it is about holding out the opportunity that no one should be able to steal the life and the future and the hope and the opportunity from any child. That is happening today. Churches, nonprofits, families, neighbors are all fighting for them, and it is a good thing that we in Congress are fighting with them and alongside them in that.

I look forward to the testimony today to be able to get the rest of the details on this and to be able to discover what do we do about it in the days ahead.

Thank you, Mr. Chairman.

Senator PORTMAN. Thank you, Senator Lankford.
Senator Heitkamp.

OPENING STATEMENT OF SENATOR HEITKAMP

Senator HEITKAMP. Thank you, Mr. Chairman. First, I want to thank you, and our great Ranking Member. Without the tenacity of you and your staff, we would not be here today. And, unfortunately, we are here today. We are here today because every person in this country has an obligation to protect children. But we now have knowledge and understanding of a business practice that is basically designed to do exactly the opposite—to exploit children. And the audacity of a group of American citizens wishing to hide behind the First Amendment when they exploit children is beyond me. And maybe it eases your conscience. Maybe it makes you feel like you are somehow championing some good cause. You are not. Your company exploits children—children all across this country, not just in places like New York City or at a Super Bowl; places like Watford City, places like Minot where we rescued a 12-year-old and a 14-year-old when their mothers discovered them on Backpage.

How in the world can we allow that to happen in our country when a foundational piece of this democracy, as Senator Lankford has said, is families and recovering families, helping families? These are the most vulnerable children in America. And shame on you. Shame on you for hiding behind the First Amendment while you exploit children in this country and destroy families.

Senator PORTMAN. Thank you, Senator Heitkamp.
Senator McCain.

OPENING STATEMENT OF SENATOR MCCAIN

Senator MCCAIN. Thank you, Mr. Chairman. I apologize that I am chairing a hearing on the Armed Services Committee, and I thank you for your courtesy. I would like to thank you, Senator Heitkamp, Senator McCaskill, and everyone who has been involved in this issue for a long period of time.

For the past two years, the Permanent Subcommittee on Investigations has sought information pertaining to the role of Backpage.com in the online buying and selling of children for sexual exploitation. We all know that Backpage.com is the market leader in commercial sex advertising, and the website has been linked to hundreds of human trafficking cases. I was gratified to learn of Backpage's announcement last night that it will shut down its adult site. I am sure that was a pure coincidence. And, again, it is a testimony to the work of this Subcommittee.

We have to, all of us, not just this Committee but all 100 of us, do everything in our power to put an end to human sex trafficking. It is so horrible that a lot of times we shy away from discussing it. And as you know, Mr. Chairman, from your work, our border States, including my home State of Arizona, the trafficking back and forth across the border is a terrible issue.

But I would like to thank the parents on our second panel who are here today to discuss the real-life horrors that they experienced when their own daughters fell victim to sex trafficking because of Backpage's illegal facilitation of prostitution and child sex trafficking. Your bravery, your strength, and your love for your daughters and other victims is essential in fighting this evil. We all thank you.

I would also like to thank my wife, Cindy, for her uncompromising and tireless efforts to prevent human trafficking and aid those who have fallen victim to this unimaginable crime.

I thank you again, Mr. Chairman.

Senator PORTMAN. Thank you, Senator McCain, and we thank Cindy McCain for her advocacy globally on this issue. And I know she is in the audience with us today. Senator Hassan.

OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. Well, thank you, Mr. Chairman, and thank you, Ranking Member McCaskill, for your tenacity and determination.

I am new to the Senate, but I am not new to this issue. As Governor, I worked with members of both parties in my home State of New Hampshire to strengthen our laws against human trafficking. So it is particularly difficult to come here today and really begin to understand the lengths to which a private business enterprise would go to circumvent those very efforts.

There are children in my State and throughout our country, as you have heard from my colleagues, who are victims and now survivors. And so I am particularly grateful to this Subcommittee for the work it has done.

I will add to the comments of my colleagues that this is not just about exploiting families who are struggling or young people who are struggling. It is also about exploiting stigma. And I am incredibly grateful to the parents who we will hear from and who we have been hearing from for their strength and bravery in coming forward, because the only way you keep people from defeating stigma is to speak up and to talk about the experiences of the young people who have been exploited and victimized here.

And so I am grateful to all of the families, to the survivors who will continue to speak up and help the American people understand this for the devastating exploitation and crime that it is.

My mom taught history at my high school, and she often said that what kids need to know more than anything else is that they have a grownup in their corner. I am proud today that the U.S. Senate is being that grownup in the corner for all of our children. I am astounded and horrified that a private business enterprise would be the exact opposite in the United States of America.

And so I am grateful to this Committee and eager to work with all Members of this body and the American people and the citizens of my home State to eliminate human sex trafficking.

Thank you.

Senator PORTMAN. Thank you, Senator Hassan.

Senator Daines.

OPENING STATEMENT OF SENATOR DAINES

Senator DAINES. Thank you, Chairman Portman, Ranking Member McCaskill. I am new to this Committee. I am not as new to the Senate as my two new colleagues, and welcome to the U.S. Senate and to this Committee as well.

Thank you for your tenacity for continuing to follow through on this issue. I cannot imagine as a parent—and there are a lot of parents here on the dais, and grandparents. We are on this side of the dais, but to be a parent here today with the courage to come and talk about what has happened to your family and your children, I commend you for that and thank you for your courage.

Think about the tenacity of this Committee, and think about William Wilberforce this morning who fought to abolish slave trade, the British parliamentarian who fought a lifetime to abolish the slave trade in England. In fact, the great hymn “Amazing Grace” was written by a slave trader who became—who was a friend of Wilberforce, was influenced by Wilberforce’s work to abolish slave trade. This is what this is. This is modern-day slavery we have in our country, except we are not talking about adults; we are talking about children. And as my colleague from Montana said, we use these terms when we talk about animals, not people. We talk about rescues at the pound, dogs and cats, not people. It is astounding.

So I want to thank again the parents, your courage. These hurts will not go away. You get one childhood. And to have the memories that these children have, they do not go away. Those videotapes will play in their minds forever. And we are here to stand up on

behalf of those children, the most vulnerable, so that children in this generation—future generations will not have to be in such a hearing and have parents come and tell their story.

Thank you, Mr. Chairman.

Senator PORTMAN. Thank you, Senator Daines.

Senator Harris.

OPENING STATEMENT OF SENATOR HARRIS

Senator HARRIS. Thank you. I want to thank you, Mr. Chairman, Senator McCaskill, and this Committee for the work that you have done. As a career prosecutor, I have personally handled human trafficking cases, and one of the obvious points is that these are some of the most voiceless and vulnerable members of our society, these victims. And I am heartened to see that these victims have been given the power of the voice of the U.S. Senate to expose what has been clear and pure exploitation for profit.

To be clear, this is a crime. It is a crime that is rightly punishable by incarceration in prison because of the nature of the harm to the victims and the outrageousness of the conduct that is predatory in nature.

I am also heartened to hear that these hearings have exposed the fact that one cannot cowardly sit behind a computer committing their crime and then suppose that the Communications Decency Act (CDA) would shield them. Quite the contrary. These individuals must be held accountable. These allegations must be given voice. And we have to do all that is right to make sure that we as a civil society protect always the most vulnerable among us and not take advantage of them, assuming nobody will care. These hearings have made clear we care.

Senator PORTMAN. Thank you, Senator Harris.

We would now like to call our first panel of witnesses for today's hearing. Carl Ferrer is the CEO of Backpage.com. Michael Lacey is a co-founder of Backpage.com. James Larkin is a co-founder of Backpage.com. Elizabeth McDougall is the general counsel of Backpage.com. And, finally, Mr. Andrew Padilla is the chief operating officer of Backpage.com.

We appreciate your attendance at today's hearing, and I would ask you to step forward. It is the custom of this Subcommittee to swear in all witnesses, so at this time I would ask you to please remain standing and raise your right hand. Do you swear that the testimony you are about to give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. FERRER. I do.

Mr. LACEY. I do.

Mr. LARKIN. I do.

Ms. MCDUGALL. I do.

Mr. PADILLA. I do.

Senator PORTMAN. Let the record reflect that the witnesses answered in the affirmative. Please be seated.

I understand from counsel that none of you have prepared opening statements to offer at this time, so we will move to questions from the Subcommittee.

Mr. CORN-REVERE. Mr. Chairman, might I be recognized to make a brief statement on behalf of the witnesses?

Senator PORTMAN. You may not. If you are interested in being part of the panel and being sworn in, we might start a third panel to hear from you. But, no, we would like to hear from the witnesses today who have just been duly sworn in.

Mr. CORN-REVERE. Could I then request that my statement be made part of the record?¹

Senator PORTMAN. Your statement will be made part of the record.

Before we begin any questioning, I would like to address all the witnesses about one important topic. Your lawyers have advised that you may assert your Fifth Amendment right not to answer questions that may tend to incriminate you. The Subcommittee respects the constitutional rights of witnesses that testify before it. I would ask you to listen to the full question put before you should you choose to take the Fifth and before you answer. You should clearly understand that any statement in response to the question other than an invocation of that privilege may be treated as a waiver of those Fifth Amendment rights. The Subcommittee wants to be fair.

The first question I have is for you, Mr. Ferrer. As you know, the last time you were subpoenaed to testify before us was in November 2015. You failed to show up. I have some questions for you about that, but first, just so everybody understands what happened, let me recap it.

On October 1, 2015, we subpoenaed you to produce documents and to appear in person to give testimony. The hearing was set for November 19, 2015. Just three days before the hearing, on November 16, your lawyers wrote us a letter and asked that you be excused and for the first time revealed you had planned some international travel during our hearing. Senator McCaskill and I denied that request. You had been told in plenty of time to make plans to appear on that date. Nevertheless, the day before the hearing, your lawyers wrote back and for the first time announced that you refused to show up.

Without objection, the correspondence I have described below will become part of the record of this hearing.²

So my first question, Mr. Ferrer, is really a very simple one. Could you please tell the Subcommittee precisely where you were and what you were doing during our hearing on November 19, 2015?

TESTIMONY OF CARL FERRER, CHIEF EXECUTIVE OFFICER, BACKPAGE.COM

Mr. FERRER. Is this live? Can you hear me now?

Senator PORTMAN. Yes, I can.

Mr. FERRER. After consultation with counsel, I decline to answer your question based on the rights provided by the First and Fifth Amendments.

¹ The statement of Mr. Corn-Revere appears in the Appendix on page 114.

² The correspondence submitted by Senator Portman appears in the Appendix on page 115.

Senator PORTMAN. OK. I will move on to something else. Mr. Ferrer, your company has repeatedly avoided liability by invoking Section 230 of the Communications Decency Act. That has been referenced a couple times here this morning. This act protects websites who just post content created by third parties. But our report issued today and posted yesterday afternoon demonstrates conclusively that your reliance on this Communications Decency Act section has not been accurate. It has been a fraud, frankly, on the courts, on the victims who have sued you, and on the public. Why do I say that? I say that because Backpage took an active hand in creating the ads on your site. As I talked about in my opening statement, you systematically deleted words, phrases, and images submitted by users that revealed that the posted ad is for an illegal transaction, not just prostitution but also child sex trafficking. Documents show that you called the practice "stripping out" content from an ad. You even maintained an extensive Strip Term From Ad list of words that we talked about earlier.

Let us talk about one of the words on that list: "Lolita." "Lolita," of course, is the title of a book about a man who becomes sexually involved with a 12-year-old girl. With that in mind, I want to call your attention to page 156 of the appendix to the staff report. You should have that in front of you, page 156. This is an email you wrote to Mr. Padilla here on November 17, 2010, under the heading "Items I intend to implement," Item 1c. reads, and I quote, "Lolita-ban or strip out (it is code for under aged girl.)"

Let me read that again. It says, and I quote: "Lolita-ban or strip out (it is code for under aged girl.)"

Now let us look at page 158 of this same appendix. This is an email you received from Mr. Padilla explaining that he was preparing a spread sheet of, and I quote, "the most current list of coded terms set to be stripped out." We have a copy of that spread sheet, and it appears in the appendix on page 161.

So my question to you, Mr. Ferrer, in the document in front of you, you have highlighted one of the many words on that list. Can you read that highlighted word on that list?

Mr. FERRER. After consultation with counsel, I decline to answer your question based on the rights provided by the First and Fifth Amendments.

Senator PORTMAN. OK. In that case, I will read it. The word is "Lolita." There are some other words on that list: "teenage," "rape," "young." Just so everyone understands, this is a document listing code words to be stripped out of advertisements. And the ads were then posted on the Internet, on Backpage, anyway. So consistent with what we talked about in the opening statement, this was a way to edit these ads but still take the payment and profit from the ads.

Next question, Mr. Ferrer: If an underage girl was being sold for sex on Backpage and her pimp puts the word "Lolita" in the advertisement, stripping that term out of the ad does not magically change the girl's age, does it?

Mr. FERRER. After consultation with counsel, I decline to answer your question based on the rights provided by the First and Fifth Amendments.

Senator PORTMAN. OK. We respect your right not to answer, but let me answer for you. The answer is, of course, no. The fact that these terms were stripped out through this screening process does not mean that that girl's age was magically changed. In fact, what you have done, of course, is to cover up the fact that many underage girls were sold on your sites, making it harder for law enforcement, parents, and committed aid groups to find those kids who need help by stripping out those words.

Let us move on to the next topic, and that is the ownership of the company. Mr. Ferrer, our report shows that you own Backpage.com through a series of Dutch shell companies. Backpage's tax adviser told our lawyers that structuring the transaction in that way has no tax advantages to you because all the money flows back to you here in the United States. So we wonder: Why did you structure the company in that way? Was it structured in that way in order to obscure the fact that you were the buyer of the company?

Mr. FERRER. After consultation with counsel, I decline to answer your question based on the rights provided by the First and Fifth Amendments.

Senator PORTMAN. OK. Mr. Ferrer, is it your intention to invoke the Fifth Amendment privilege with respect to questions on any topic?

Mr. FERRER. Yes.

Senator PORTMAN. OK. The Subcommittee, as I said, respects the assertion of the Fifth Amendment rights, and on that basis we will be excusing you at the conclusion of this panel.

I would like to turn the questioning over to Senator McCaskill now.

Senator MCCASKILL. I am going to have a few questions for Mr. Padilla.

Mr. Padilla, who is the chief operating officer of the company. Let me start with a question about the seriousness of the concerns raised by the National Center for Missing and Exploited Children with your company about child exploitation on Backpage. This has been an ongoing effort because of the almost three out of four children reported to the National Center for Missing and Exploited Children who were advertised through Backpage. So, obviously, this group of people dedicated to this heart-breaking issue had a great deal of conversation in an attempt to help these children with your company.

The company's main priority with regard to moderation, even after consultation with NCMEC, seems to have been combating overreporting of suspicious ads rather than underreporting. The documents that we subpoenaed uncovered an email you sent in July 2011 to a manager of a moderating team stating, "I agree that over-cautiousness is as big of a problem as moderators that miss a lot of violations."

In fact, Mr. Padilla, an email from you to another Backpage supervisor seems to imply that Backpage even artificially limited the number of reports it made to organizations like NCMEC. You stated, and I quote, in this email: "If we do not want to blow past 500 reports this month, we should not be doing more than 16 a day."

Now, to be clear, what you are saying is underreport because we do not want them to know how bad it is.

Can you explain to the Committee what would be the motivating factor for you telling the people on the front lines that over-cautiousness when it comes to selling children for sex could be a problem or why it would be a problem if you accurately reported the number of ads you were seeing where children were for sale?

**TESTIMONY OF ANDREW PADILLA, CHIEF OPERATIONS
OFFICER, BACKPAGE.COM**

Mr. PADILLA. After consultation with counsel, I decline to answer your question based on the rights provided by the Fifth and First Amendments.

Senator MCCASKILL. It also appears that when Backpage did, in fact, take action to moderate adult ads, it did so to remove evidence of child exploitation, as we have said in our opening statements. In recent productions to the Subcommittee, Backpage provided a spread sheet containing the Strip Term From Ad list, which the Chairman has just referred to; 250 specific terms were being told to be stripped, including terms such as, in addition to the ones that the Chairman referred to, "cheerleader," "teen," and even "Amber Alert," meaning that Backpage has apparently removed certain words and phrases indicative of child trafficking and child exploitation from the ads that it then goes on to post.

In fact, in a 2011 email to Mr. Padilla, to you, about the moderating practices, a Backpage moderator stated, and I quote, "I had been operating under the assumption before that anytime we saw the word 'young,' we were to edit it out."

Similarly, in an email to Mr. Ferrer regarding the term "Amber Alert" in Backpage ads, you stated, "I have actually seen that before, and we have edited it out."

Mr. Padilla, can you confirm that Backpage and its moderators routinely edited out "Amber Alert," a term referring to an emergency alert of a child abduction, from adult ads?

Mr. PADILLA. After consultation with counsel, I decline to answer your question based on the rights provided by the Fifth and First Amendments.

Senator MCCASKILL. Mr. Padilla, am I to understand from your responses that you will invoke your Fifth Amendment right in response to any and all questions posed to you here today?

Mr. PADILLA. Yes.

Senator MCCASKILL. Let the record reflect that you have availed yourself of the privileges afforded you under the Constitution under the Fifth Amendment to not give testimony that might tend to incriminate you. The Subcommittee respects your constitutional right under the Fifth Amendment to decline to answer the questions, and you are excused from the witness table.

Thank you, Mr. Chairman.

Senator PORTMAN. Thank you, Senator McCaskill.

Mr. Larkin, I have a couple questions for you. You said publicly that you sold Backpage in 2014. Who did you sell Backpage to?

**TESTIMONY OF JAMES LARKIN, FORMER OWNER,
BACKPAGE.COM**

Mr. LARKIN. After consultation with counsel, I decline to answer your question based on the rights provided by the First and the Fifth Amendment.

Senator PORTMAN. Back in 2014, it was reported that Backpage was sold to a mysterious Dutch entity, as you know. We now know that mysterious Dutch entity is actually Mr. Ferrer, who is here today. We have uncovered that and also information that you and Mr. Lacey loaned him about 600 million bucks to buy your company from you. Until he pays off that loan, we also uncovered that you and Mr. Lacey continue to enjoy significant control over the company.

Mr. Larkin, do you not still exercise substantial direction and control over Backpage?

Mr. LARKIN. After consultation with counsel, I decline to answer your question based on the rights provided by the First and the Fifth Amendments.

Senator PORTMAN. OK. Let us talk about the role that you and Mr. Lacey have played in the concealment practices we have reported on this morning. As you know, we have reviewed over one million pages of Backpage's internal documents now. Many of those documents include extensive discussion of editing advertisements. Inside the company, that certainly was not a secret. But it appears that you instructed Mr. Ferrer and others to make sure it stayed a secret from outsiders. Backpage's official public statements and public interviews usually given by Ms. McDougall, whom we will hear from in a moment, said nothing about Backpage's real moderation system, deleting words that reveal illegality, posting the advertisement, and taking the money.

It is not hard to guess why you did not want anybody to know about that, which brings me to an email you wrote in 2011 to Carl Ferrer. This is on page 432 of the appendix, which you have before you. You wrote this: "I want you to think about any of the information in this being made public. We need to stay away from the very idea of 'editing' the posts, as you know."

So, Mr. Larkin, is the reason you needed to "stay away from the very idea of 'editing' the posts" that you knew that editing posts means that you really do not have this protection under the Communications Decency Act, the immunity that you have been selling to courts all around the country, meaning that you could be sued and prosecuted for Backpage's conduct just like anyone else? Is that the reason that you needed to, as you said, "stay away from the very idea of 'editing' the posts"?

Mr. LARKIN. After consultation with counsel, I decline to answer your question based on the rights provided by the First and the Fifth Amendments.

Senator PORTMAN. Mr. Larkin, is it your intention to invoke your Fifth Amendment privilege with respect to questions on any topic?

Mr. LARKIN. Yes, sir.

Senator PORTMAN. Again, the Subcommittee respects that assertion of the Fifth Amendment, and on that basis you will be excused at the conclusion of this panel.

I would now like to recognize Senator McCaskill to ask further questions.

Senator MCCASKILL. Mr. Lacey, our investigation reveals that Backpage knows that there are illegal activities on its site and is well aware that illegal activity takes place on the site. Mr. Padilla, for example, threatened with termination an employee who noticed occurrences of prostitution during his moderation, threatening his job for leaving notes about prostitution on the account.

Similarly, Mr. Lacey, notes from a meeting between you and the National Center for Missing and Exploited Children in 2011 State that when the issue of adult prostitution was raised, you—"lit into me with a vengeance. He said his company agreed to eliminate underage kids on their site being sold for sex, but said that adult prostitution is none of my business."

Given these communications, Mr. Lacey, do you admit that illegal behavior forms the cornerstone of user activity on Backpage?

**TESTIMONY OF MICHAEL LACEY, FORMER OWNER,
BACKPAGE.COM**

Mr. LACEY. After consultation with counsel, I decline to answer your question based on the rights provided by the First and Fifth Amendment.

Senator MCCASKILL. This one is a good one. Mr. Lacey, in response to an article in 2012 involving a child victim advertised on your site, you stated in an email that, "This is only the second case developed by the Attorney General," and that "two cases is not yet a tsunami of underage trafficking."

You further stated that, after prosecuting these cases and treating the victims, people should stop "pandering to yahoos."

Yet, according to NCMEC, suspected child sex trafficking has increased by 846 percent in the last 5 years, and the vast majority of the child sex trafficking tips they receive involve Backpage.

Through media reports alone, this Subcommittee has done the frankly big job of identifying all of the underage cases in public media of trafficking of children on Backpage. We have identified more than 400 cases in 47 States linked to Backpage advertising. And when this illegal activity occurs, Backpage moderators are not always up to the task.

At the risk of being labeled another "yahoo," Mr. Lacey, do you acknowledge today for the record that child sex trafficking is a serious problem on Backpage?

Mr. LACEY. After consultation with counsel, I decline to answer your question based on the rights provided by the First and Fifth Amendment.

Senator MCCASKILL. As shown in its document productions, Backpage routinely hears from concerned parents, relatives, and friends about ads featuring underage or trafficked loved ones. But while Backpage employees responded to many of these complaints, some moderators expressed disbelief toward the individuals reporting suspected underage ads.

In February 2012, for example, when a moderator asked if she could delete an ad based on a parent reporting that her missing underage daughter had been forced into prostitution, Mr. Padilla stated, and I quote, "Yes, I think that is doing enough. We do not

always want to remove ads based on user complaints, but she is not being dramatic.”

Mr. Lacey, I understand that reporting guidelines at Backpage were vague, but is it a requirement that parents not be dramatic in order to have ads featuring their underage children removed from your site?

Mr. LACEY. After consultation with counsel, I decline to answer your question based on the rights provided by the First and Fifth Amendment.

Senator McCASKILL. Mr. Lacey, am I to understand from your responses that you will invoke your Fifth Amendment right in response to any and all questions posed to you here today?

Mr. LACEY. Clearly.

Senator McCASKILL. Let the record reflect that you have availed yourself of the privileges afforded you under the Constitution’s Fifth Amendment not to give testimony that might tend to incriminate you. The Subcommittee respects your constitutional right under the Fifth Amendment to decline to answer questions, and you are excused from the witness table.

Thank you, Mr. Chairman.

Senator PORTMAN. Thank you, Senator McCaskill.

Ms. McDougall, I have a few questions for you. Backpage argued in the courts for the better part of last year that the Permanent Subcommittee on Investigations was seeking, and I quote, “constitutionally protected documents” through a subpoena that “strikes at the heart of Backpage’s editorial decisionmaking.”

I would like to direct you to a couple documents about that so-called editorial decisionmaking. The first is the spread sheet at Appendix 000158. Andrew Padilla in this document described as the “most current list of coded words to be stripped out of adult ads,” including “Lolita,” “teenage,” “rape,” “young.”

The second document is the spread sheet attached to the email at Appendix 000329, which outlines additional words that Backpage stripped from these ads, including “little girl,” “teen,” even “Amber Alert.” These are the words Backpage scrubbed from the ads on its website.

Ms. McDougall, Backpage has argued to the Subcommittee and again in Federal court the documents we subpoenaed were all protected by the First Amendment to our Constitution. I went to law school, so did Senator McCaskill, and we do not remember learning that instructions to cover up a crime are protected speech. But you argue that they did.

Ms. McDougall, I would like you to look at the two documents I just mentioned, the documents about stripping words like “rape” and “little girl” from ads before publication, and tell me whether it is still your opinion that they are protected by the First Amendment.

**TESTIMONY OF ELIZABETH MCDUGALL, GENERAL COUNSEL,
BACKPAGE.COM**

Ms. MCDUGALL. After consultation with counsel, I decline to answer your question based on the rights provided by the Fifth and the First Amendments, and to the extent any particular question might require the disclosure of protected attorney-client commu-

nications or attorney work product, I also decline, relying on the common law privileges.

Senator PORTMAN. Ms. McDougall, do you believe that Backpage is entitled to immunity under Section 230 of the Communications Decency Act for ads which deletes these kinds of words?

Ms. MCDUGALL. After consultation with counsel, I decline to answer your question based on the rights provided by the Fifth and First Amendments, and to the extent any particular question might require the disclosure of protected attorney-client communications or attorney work product, I also decline, relying on the common law privileges.

Senator PORTMAN. OK. Ms. McDougall, in a sense we are here today because of your testimony. On June 19, 2015, when you sat down for an extended interview with our lawyers, you said under questioning that Backpage sometimes edits out offending words and images from advertisements. As far as I know, this Subcommittee is the first to report that information. You never disclosed that to law enforcement, as I understand it, and you certainly did not disclose that to the victim plaintiffs in the many lawsuits against Backpage.

As general counsel since April 2012, you have been responsible for the company's litigation. Recently, the First Circuit Court of Appeals, in an opinion joined by retired Supreme Court Justice David Souter, said that "a persuasive case" had been "made that Backpage has tailored its website to make sex trafficking easier." But then the court affirmed the dismissal of the lawsuit under the Communications Decency Act for the familiar reason that Backpage was just publishing third-party content and that Congress had made it immune for that.

My question is this: When Backpage filed its briefs in the First Circuit case under your supervision, were you aware of Backpage's practice of altering the content of adult advertisements by removing evidence of criminality?

Ms. MCDUGALL. After consultation with counsel, I decline to answer your question based on the rights provided by the Fifth and First Amendments, and to the extent the particular question might require the disclosure of protected attorney-client communications or attorney work product, I also decline, relying on the common law privileges.

Senator PORTMAN. Ms. McDougall, can you tell us if your outside litigation counsel in that case was aware of your editing practices when they signed and submitted the briefs in that case, convincing the court to throw out the lawsuit on the theory that Backpage just posts whatever it receives, other people's content?

Ms. MCDUGALL. After consultation with counsel, I decline to answer your question based on the rights provided by the Fifth and First Amendments, and to the extent any particular question might require the disclosure of protected attorney-client communications or work product, I also decline, relying on the common law privileges.

Senator PORTMAN. OK. Well, let me ask you one more question. I would like to ask you about Backpage's cooperation with law enforcement. You all talk a lot about that. Here is what you said, and I quote: "Accommodation for Backpage.com's responsiveness and

thoroughness with law enforcement investigations and stings are replete in our records. Backpage.com responds to law enforcement requests within 24 hours or less in most cases.”

I think one thing is very clear, and it comes out in the report, and that is that what would assist law enforcement in their investigations is to have the original unedited advertisements for the sale of a trafficked child or adult prostitute as opposed to the altered version that appears on your website, so providing law enforcement the actual ad that you received.

Ms. McDougall, when responding to law enforcement requests or grand jury subpoenas, did you ever tell law enforcement that ads reported to them may have been sanitized?

Ms. MCDougall. After consultation with counsel, I decline to answer your question based on the rights provided by the Fifth and First Amendments, and to the extent any particular question might require the disclosure of protected attorney-client communications or attorney work product, I also decline, relying on the common law privileges.

Senator PORTMAN. Ms. McDougall, is it your intention to invoke your Fifth Amendment privilege with respect to questions on any topic?

Ms. MCDougall. Yes, it is.

Senator PORTMAN. OK. Again, the Subcommittee respects your assertion of the Fifth Amendment rights, and on that basis we will excuse you, along with the rest of the panel. That concludes the questioning of this panel.

Senator McCASKILL. If I could, Mr. Chairman.

Senator PORTMAN. Yes.

Senator McCASKILL. I certainly would invite you to stay and listen to the testimony of the second panel.

Senator PORTMAN. This concludes the questioning of this panel. You are excused from the panel based on your assertion of your Fifth Amendment rights. And, of course, you are welcome to stay. We encourage you to stay to listen to the next panel.

[Pause.]

We would now like to call our second panel of witnesses. The second panel represents really the heart and soul of the Subcommittee’s investigation. Before us will be three parents of survivors who were advertised on Backpage.com. I am only going to use their first names at their request.

First we have Tom and Nacole S.—

Mr. PFAU. Mr. Chairman, they are in another room and are being escorted here.

Senator PORTMAN. Yes, we will certainly be patient and await their entrance. In fact, I am going to wait to describe them and their interaction with the Subcommittee until they have arrived.

Mr. PFAU. Thank you.

[Pause.]

Senator PORTMAN. We are now going to call our second panel of witnesses. Again, I thank the witnesses for joining us here today. This second panel, as I said earlier, really is the heart and soul of the investigation of this Subcommittee. We are going to hear from three parents of survivors. Those survivors were advertised on Backpage.com, as we have talked about earlier.

I am only going to use first names today at the request of the parents and the survivors. We have Tom and Nacole S. with us. Tom and Nacole are the parents of a young girl we will call “Natalie.” Natalie ran away from home at age 15. Shortly after running away, Natalie was recruited for prostitution and advertised on Backpage.com. It was a horrific ordeal, but eventually the local police department was able to recover and return their daughter to them.

Also on this panel is Kubiiki P. Kubiiki is the mother of a survivor of online sex trafficking who was also advertised through Backpage.com. When she was 14 years old, Kubiiki’s daughter ran away from her home in Missouri. Nine months after her daughter disappeared, Kubiiki discovered ads online selling her own daughter. It was on Backpage.com. Kubiiki contacted the website numerous times requesting that they take down the ads with her daughter, pleading with them. The ads remained on Backpage for a month and a half.

I really appreciate you all being with us today and being willing to share your stories. The courage that you have in speaking up will help other girls, other women, other boys to be able to avoid the plight that you and your families have gone through, and I thank you for that.

Without objection, we will also make part of the record the written testimony submitted by Sara Loe, a pseudonym used for the mother of another survivor from Massachusetts.¹

I will also enter into the record a letter submitted by her attorney detailing yesterday’s decision by the Supreme Court denying her petition to review the case.²

I would ask the witnesses now to please come forward and remain standing. It is the custom of this Subcommittee to swear in every witness, and we appreciate your raising your right hand to be sworn in. Do you swear that the testimony you are about to give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. NACOLE S. I do.

Mr. TOM S. I do.

Ms. KUBIIKI P. I do.

Senator PORTMAN. Let the record reflect that the witnesses answered in the affirmative. Please have a seat.

To the witnesses, let me say that your written testimony in its entirety will be printed in the record, and we would ask you to limit your opening statement, to about five minutes. And, Nacole, if it is OK, we are going to start with you. So thank you for being here, and we look forward to hearing from you.

TESTIMONY OF NACOLE S.,³ MOTHER OF JANE DOE 1

Ms. NACOLE S. Good morning, Mr. Chairman and esteemed members of the Subcommittee.

My name is Nacole S., and I want to thank you for the opportunity to be here today and represent myself and my family. I also hope I can be a voice for the countless other families not present

¹ The prepared statement of Ms. Loe appears in the Appendix on page 109.

² The letter from Ms. Loe’s attorney appears in the Appendix on page 112.

³ The prepared statement of Ms. Nacole S. appears in the Appendix on page 48.

here today, but whose lives have been forever changed by Backpage.com and similar websites that make their living hiding in the shadows of the law.

Before I get any further, let me first say that I am truly honored to be addressing you as Members of the U.S. Senate. Neither I nor my family felt fully equipped to be testifying here today. We are not lawyers nor politicians. And our experience with the English language is not nearly as poetic or profound as other testimony you may hear. But after a lot of thought and a lot of prayer, we realized that this testimony is not about poetry. It is about telling a story, our story, and hoping that what you hear today makes a difference.

It is also about keeping a promise to our daughter to bring justice to everyone that had wronged her. So instead, for a moment, let me address you not as politicians, but as mothers and fathers, aunts and uncles, and grandparents (if you have been so blessed as I have). These are the credentials that I can relate to, and you are the people that need to hear my story.

In 2010, we were a close, loving family. We were realizing our American dream. We had built something for ourselves more valuable than money, more important than a big, new house or new cars in the driveway. We had built three lives, our great kids, ready to come into their own and make a difference in this world. Passionate about our children, we wanted and expected the best. I remember a conversation with a school guidance counselor who was chastising us about how we were going about filling out college applications for our son. The counselor was convinced that our son, a first-generation college student, would be best served by applying only to local schools. We, ever reaching, were convinced that he was better than that. It felt like our stubborn optimism and belief was rewarded when our son was accepted into a prestigious private engineering school in New York. We were not surprised at all. We were so proud of all three of our children, each national honor roll students, and at the top of their game. Little did we understand how dramatically our lives would change. In just a few short months, our American dream would be exchanged for a Third World nightmare and lead us to question everything.

Our youngest, our baby Natalie, was something special. She was always the most energetic of our three children, so full of life and promise. She participated in varsity soccer, wrestling, and played the violin for her high school orchestra—all in her freshman year. That was Natalie. She tried to experience everything. And she was taking high school by storm in her light-hearted way. She was one of those kids. And only a family with one of those knows what that means. Natalie wanted to do everything at once—high energy, and nothing could contain her zest for life.

Challenging as she was, she was exceeding every possible expectation a parent could have. It was amazing to be a part of, and none of us could have predicted that her innocent, carefree attitude was about to take her down a path that would shake our family to its very core. At the time, our family dynamic had changed, our son off to college, and her older sister was distracted by her own concerns. Natalie was struggling to find her place in her new world.

Looking back, we understand that our daughter was burning the candle at both ends, struggling with all of the sudden but inevitable changes that were occurring. While they were good things to us, they were confusing and difficult for her. All we saw was an exceptional young lady doing exceptional things. But Natalie, in her own way, was sending out signals. It is easy to see now because of all the painful retrospection that comes with a tragedy, but impossible to see then.

She made the implausible decision to leave the safety of our home. She wrote a letter, five pages long, telling us how wonderful her family was and that she loved us. But “finding herself” was the gist of the letter, and, of course, for us not to worry. Not certain of her choice, Natalie shared the letter with a friend, and like a sick game of telephone, it circulated the school. Now it was not just a letter, but a dare. It was her reputation at stake. So, backed into a corner, she left.

Making her way to Seattle, she found herself in a teen homeless shelter. A woman there, 22, and posing as a teen, must have immediately noticed Natalie as an easy target. As smart as Natalie was, she had no idea of the danger she was in. And as a parent, it is hard to talk about what happened next. I cannot imagine her fear and bewilderment at what was happening to her as she was repeatedly raped, beaten, threatened, and treated like a sexual object every day, all while being posted on an ad on Backpage. I honestly try not to think about it. I can only tell you that when we finally got Natalie back for good, months later, the young girl we found was not the same Natalie that had left our home months earlier. I literally did not recognize her. Her appearance had changed so much. Her hair was cut and dyed. Of course, she was wearing different clothes. She did not even sound like herself anymore. Everything she was saying was incomprehensible to me. Our Natalie was gone. That was the beginning of our six-year odyssey to get here, to our new American dream.

Our new dream is simple: to live in an America that does not stand aside while little girls like our daughter, Natalie, at 15, are sold online like a commodity, purchased with all the same convenience you would expect from an order on Amazon and always returned as damaged human beings, forever changed by their tragedy.

It is time to accept that child sex trafficking has entered the digital age and has been embraced by it. The loose moral code and “sisterhood” of the streets is gone. There is no protection or accountability, and no escape. The same speed and anonymity that attracts so many to the Internet has made it a hotbed for the ugliest human behaviors, at the forefront of which are websites like Backpage.com. Backpage and similar sites have changed the rules of engagement for people who purchase children for sex. Any semblance of risk has been taken from the process. All the dark street corners have been replaced with the familiarity and comfort of the computer screens, and these men now make their illicit transactions from the safety of their homes, secure in the fact that no one is watching.

While Backpage may wish to pretend that they are simply the virtual street corner in this metaphor, inanimate and blameless,

that simply is not true. They are complicit. They are more like the corrupt authority figure, paid to look the other way—and paid well, I might add—reporting a few suspicious advertisements every year to feign compliance or concern, all while letting thousands of others slip by. We have reason to believe that their level of involvement goes further still to enable and streamline the process of illegal prostitution and child sex trafficking on their website, and yet so far they have gotten away with it.

The question is: How? How could such a horrific, morally bankrupt business model find success in our America? Backpage and its facilitators continue to operate as they do because they feel the same level of immunity as the purchasers of children for sex sitting behind their computer screens, because they also believe they are protected. Hiding behind old laws and the mantra that somehow any action on the Internet is free speech, they carry on unabashedly while children like our daughter are repeatedly raped day after day. They claim to be protecting First Amendment rights, while at the same time allowing my little girl, a young bright-eyed resident of an all-American neighborhood, to be sold on their website as a “Weekend Special.”

I ask you now: Where were her rights to be heard? What immunity was there from these unspeakable acts or from the damage that it caused her and our family? It is time to admit the truth to ourselves that this was never about protecting the Constitution. This is about abusing constitutional protection for greed and gain, no matter the consequences. In reality, Backpage CEO Carl Ferrer is no warrior for free speech. He is just another pimp, one who happens to have a lot of expensive lawyers on retainer.

My family believes in a just America. We believe that, in time, our government and our people will realize that the moral cost of the current path is too high. We would like to ask this Subcommittee, the parents, aunts, uncles, and grandparents present here today: How long? How long until the changes are made to prevent what happened to our daughter from happening to another child? Because it has been six years for us. And while my family has not rested, neither has the evil that took our Natalie from us. Please do not let another innocent child be sold in America in an online advertisement and let their spirit be crushed.

I have heard it said many times that the Communications Decency Act does not need a rewrite to prevent another tragedy like the one that befell my family, just a few words, carefully crafted. A few words to end online child sex trafficking in our country, so that we can honestly and with pride say that we live in the land of the free.

I would like to thank you for your time on behalf of my family, and I would also like to thank the dozens, if not hundreds, of people who have helped to get us this far over the years. Only with their help have we had the strength to continue this cause.

Thank you.

Senator PORTMAN. Nacole, thank you, and I would say to your statement earlier that your statement was not going to be as poetic or profound as others, I do not think we have had a witness before this Subcommittee that was as profound as that. And it was poetic

in your own way, and thank you for your willingness to testify to a lot of pain that your family has gone through.

Tom, we would like to hear from you.

TESTIMONY OF TOM S.,¹ FATHER OF JANE DOE 1

Mr. THOMAS S. Good morning, Mr. Chairman and esteemed Members of the Subcommittee.

I am a husband, father, and grandfather. I am a simple man, raising his family. I now find myself in this fight, mainly in support of my wife and daughter. Until today I have been in the background, but I am here today because I do not see any future prospect of living a life where we do not have to mention this ordeal we have been living at least once a day.

I can tell you that I was very intimidated and awestruck thinking about what to say here today to our American leadership. How can I tell you anything, describe anything in a way that could make a change? I am humbled at that idea. I have watched my wife with respect and pride, trucking along in this incomprehensible battle against long odds, a true David and Goliath fight. I am not as optimistic and hopeful as she is, and let me tell you why.

During this six-year nightmare, two things have struck me:

First, that somehow children have become a bargaining chip. They have become bystanders in the outcome of a fight that has been labeled as being about Internet freedom and they are just collateral damage in the huge industry of modern convenience that we all enjoy online. I cannot bring myself to accept that these kids are just the cost of doing business in today's world.

Second, I have been disgusted and shocked by the commitment and stance that Backpage has taken, that Backpage somehow thinks it has the right to sell my child, and that the First Amendment gives them the right to do so and there is nothing anyone can do about it. And this is not just their business opinion. They are shouting this argument from every court in the country. I cannot believe the contempt and lack of humanity they have taken. Not only do they admit to selling kids and human beings, they have doubled down to protect their right to do so. They are committed to selling people on the Internet. How can it be that we are even debating this here today?

Backpage hides behind the Communications Decency Act, and they collect their money, all the while pretending to support the lofty, high-minded principles of the First Amendment. Even more amazing is that they usually win.

In my mind, it is simple. What happened to my daughter on Backpage.com is criminal. What happens to every child sold for sex on Backpage.com is criminal. Children are not acceptable collateral damage. They are our hope, our future, America's conscience.

Now that I know you have heard our story, I know you can do something to prevent any more children from paying this horrible price.

Thank you.

¹ The prepared statement of Tom S. appears in the Appendix on page 51.

Senator PORTMAN. Thank you, Tom. I appreciate that, and we will have a chance to have further dialogue in a moment here with the Senators.

Kubiiki, thank you for being here. We look forward to hearing from you.

TESTIMONY OF KUBIIKI P.,¹ MOTHER OF JANE DOE 2

Ms. KUBIIKI P. Thank you. Good morning, Mr. Chairman and esteemed Members of the Subcommittee.

In 2009 and 2010, when my daughter, M.A., was 14 years old, she was sexually trafficked on Backpage.com. The Backpage ads of my daughter had nude and sexually explicit photos of her. The ads were posted on Backpage to advertise my daughter for sex with adults.

Backpage was aware that explicit and pornographic photographs were on its website. They also knew that some escort ads on their site were for children, like my daughter, who were being trafficked. I know this because after my daughter was recovered, ads with her photos continued to be re-posted on Backpage, causing her significant distress. I called Backpage numerous times and explained that I was the mother of the child pictured in these sexually explicit ads. And I explained that my child had been sexually and physically abused by being trafficked on Backpage. And I begged for them to remove the photos. Eventually, the ads were no longer posted, but Backpage did not remove them immediately after I called those numerous times.

My daughter was trafficked on Backpage for months at a time, and what she went through on a daily basis is still unimaginable to me. And it would be unimaginable to most of us in this room. Still, it was not until after she was recovered and brought back home to me that I started to realize the full extent of the trauma she suffered and the impact her suffering from being trafficked on Backpage would have on my entire family.

In 2010, when my daughter was recovered, I was living in St. Louis with my other children. M.A. had been missing for nine months, and then all of a sudden we had her back. But what was happiness initially turned into a world of craziness because we found ourselves in a world without adequate support and professional resources to help us. At that time, there were no resources for child sex trafficking victims in the general area where I lived. I feel so fortunate that I was able to connect with smaller organizations from other parts of the country who supported my daughter and me. They were a lifeline to me at this time, but their resources were limited. And I was able to benefit from their help only because I was lucky enough to find their services. But I think of all the families who were not so lucky.

Even with the help I did receive, the pain our family suffered was immense. My other children did not know how to process what had happened to M.A. or how to help to support her. Our community did not understand the exploitation she suffered. The news reports of the arrest and trial of my daughter's trafficker further publicized her trauma.

¹ The prepared statement of Ms. Kubiiki P. appears in the Appendix on page 53.

This continuing trauma that was caused by my daughter's very public trafficking on Backpage kept her from having a path forward to heal when she came home to us. She turned inward instead, to silence and self-blame. And I quickly realized that if my family was going to have a chance to heal together, we needed to move to a new city and a new State where we could find resources for my daughter and more support for me as a mother to help my daughter and my children to move forward.

We are still in the process of healing, even now eight years later. But I am here today and still talking about our experience because it is so important for everyone to understand what we went through and to talk about what can be done to help children like my daughter.

First, there must be stronger laws to protect children against exploitation. There is no other way to state this: The laws must be strengthened. If there are loopholes or if the laws are outdated or misinterpreted, then these gaps must be fixed. No child should ever have to endure what my daughter went through. And I say this because I know that even now, eight years, later children continue to be trafficked for sex on Backpage.

But we just do not need new laws. We need more coordinated support for victims and their families at the Federal, State, and local level. This includes coordinated support from government agencies and private social services. When my daughter was recovered, I could not easily find the right services to help her heal. And I know these services would not have undone the damage that was done or the trauma she suffered, but they would have helped her start a path to recovery that even now, as an adult, she struggles with on a daily basis.

We also need a more coordinated legal process among Federal, State, and local prosecutors when a child is trafficked. We need new laws and processes to make sure that every child that is a victim of trafficking and is exploited receives restitution from everyone who harms them. The limited process for court-ordered restitution that exists today does not work.

My daughter's trafficker has been in and out of jail. The court ordered her to pay restitution to my daughter, but she has paid nothing, and there is no process to help me collect this restitution. As you know, when I tried to get restitution from Backpage for being involved and profiting from the escort ads of my daughter's body being sold for sex, they rejected my case. Like the trafficker who was paid from the sale of my child's body, Backpage was allowed to pocket all the money from this crime, but my daughter has never received any restitution for her victimization.

Another rarely discussed issue is the need for more social, psychological, and emotional support for the exploited children and their families. My family was so isolated after this happened, and it was devastating. The family of a child who has been trafficked and exploited needs a lot of help to manage their economic needs, family dynamics, and emotional functioning.

Today my daughter is back home with me. I cherish the ability to hold her and help her as she works through challenges toward a better future. But I still do not have any answers to explain why this happened to her or why everyone responsible for hurting her

and causing her trauma has not been held responsible. Meanwhile, I know children continue to go missing, are lured and run away, and too easily can become another escort ad on Backpage.com.

When I first started to talk about my family's experience, I was depressed and taken aback to find out how little the public knew about child exploitation. They did not understand that child sex trafficking happens here and everywhere in this country. They did not realize that every child can be vulnerable at one point or another. And it scares me that children are not taught how vulnerable they are to this crime and what they can do to protect themselves.

We need real prevention and awareness programs on trafficking and exploitation. Anywhere that children and parents interact—including schools and churches, hospitals, community centers, police and social service agencies—should disseminate prevention and awareness information. We need the public and children to understand that the crime of child sex trafficking happens. It can happen to children everywhere. And it is never a child's fault when they are forced into trafficking. Prevention and awareness would increase empathy in our communities and help children like mine and families like mine feel supported in their time of greatest need.

I would like to thank you for your time today and also thank you on my daughter's behalf. Having lived with this issue for the past eight years, I can tell you that we still need real changes to help our children and to make sure no child is ever sold again on Backpage.

I hope you will continue your efforts.

Senator PORTMAN. Kubiiki, thank you for your willingness to share your family's story, and to each of you, Tom, Nacole, and Kubiiki, thank you for your advocacy for not just your daughters but for children everywhere. And as Kubiiki talked about, advocacy, prevention, awareness, treatment, prosecution, Tom talked about these are kids, not collateral damage; Kubiiki, you talked about how we cherish our children. That is ultimately what this is about.

Your testimony also helps us as a practical matter to understand how the current laws are affecting families and our constituents, and reference was made to the Communications Decency Act a lot today in the earlier panel and in our opening statements. That is an example of that.

What I am going to do is turn to my colleagues for questions. I will be around here until the end, and a lot of them have patiently listened today, and I want them to have the chance to talk a little bit and to ask questions of you all. Again, it was profound, Nacole, and we appreciate your being here.

With that, I will turn to Ranking Member McCaskill.

Senator MCCASKILL. First, I want thank the three of you from the bottom of my heart. There is no harder task than feeling helpless when your child is in the kind of pain that your children have been in. And I think you have been incredible role models to the rest of the country today, and your courage is very admirable.

I also will turn over the questioning to my colleagues. I will also be here until the end. But I do think it is important that we provide some input today on the resources that are out there, because

right this moment there is a family somewhere who cannot find their daughter, does not know where she is, and has the worst sinking feeling that the very worst, unimaginable things are happening to her. And if we can do nothing more today than hold the people accountable on the first panel and give more information to families with your testimony today, then I think we have put in a good day's work here. And you are huge part of that, so thank you very much. And I will also defer to the other members of the Subcommittee.

Senator PORTMAN. Thank you, Senator McCaskill.

The order that we have from arrival at the hearing is Senators Hassan, Tester, Heitkamp, Harris, Daines, Johnson. We will start with Senator Hassan.

Senator McCASKILL. She left.

Senator PORTMAN. I should have looked over there. Senator Tester.

Senator TESTER. Yes, thank you, Mr. Chairman. And I thank you and Senator McCaskill. But, more importantly, I thank you guys. The strength and power of your testimony is amazing to me you are able to sit here and do this, because of the pain, the hatred, the anger, the concern, all these emotions that have to be flowing through your heads at this time.

But what I really want to say is that the solution to these problems, since you have been through it, unfortunately, is doing what you have done today and continuing to tell your story so that we as policymakers can do things like work to get you the resources you need when these horrible things happen, and do everything we can do to prevent them from happening initially.

You never quit loving your kids. It does not matter if they are newborns or 25 years old. Just they are always your kids. And I just cannot thank you enough for what you are doing. The truth is that we all need information. This is something nobody wants to even think about. It is horrible. But you being here today and being able to talk about what is happening to you and your family and your children is going to be helpful in finding a solution to preventing this from ever happening again and making sure that you have the kind of resources you need.

I just have one question for you, Kubiiki, and it dealt with your statement. You said that you approached Backpage with getting you resources, because all that stuff costs a ton of money, and it was rejected. Was it rejected by Backpage or was this a court rejection?

Ms. KUBIIKI P. This was a court rejection. In 2010, I filed a lawsuit against Backpage.com asking them to—first, I must tell you that the lawsuit never would have come about had they removed the pictures of my daughter when I called and asked.

Senator TESTER. Right.

Ms. KUBIIKI P. And because they did not, I sought out legal help to make them remove the photos. Only then did I realize that this is what child trafficking is. Only then did I understand that. But it was in the court of law that my case was denied.

Senator TESTER. OK. I just think that every one of us up on this rostrum believe strongly in the Constitution and the protections it gives, but it should never be a document that is used to protect

child traffickers or prostitution. And so we hear you. This will not be resolved tomorrow, but I think if we work on it all together, we can get resolution to this problem, at least in part.

Thank you all very much for your strength.

Senator PORTMAN. Senator Heitkamp.

Senator HEITKAMP. Thank you so much, and thank you so much for your courage and for your advocacy for not just your children but children across America. That is who you are sitting there representing today, not just your child but all the children that we as adults promise we will fight to protect, because they are all our kids.

One point that I want to make, because I think sometimes people maybe do not appreciate, but there but for the grace of God goes anyone in this room who could be in your chair. You are not unique. This can happen in any family. And until we really get people to appreciate and understand that, we will not build the army that we need because Backpage is a small part of this. If Backpage goes away tomorrow, which we would all love, there will be another Backpage. There will be another run at this. And if we do not stay vigilant together, if we do not walk together, if we do not fight together, if we do not believe that we can conquer this problem together, we will not do our job as adults in America.

And so we sit here with no greater power than those of you who sit at this table and those of us who are in this room. No one has greater power. But together we have the most power to prevent this from ever happening. And the invisibility—I think, Nacole, you said it so correctly. This is no longer the street corner where we can look, where law enforcement can drive by and say, “I do not think that is a kid that is volunteering to be out here.” This is no longer the street corner. The street corner now is digital. And until we start exposing all of the wrong that happens to children in this digital media and stop standing behind inappropriately important constitutional protections in this country, we will surely fail.

And so I want to tell you that we are in this fight with you and no one here is giving up. No one from the McCain Institute is giving up; Cindy is not giving up. Kamala is not giving up. We are not giving up, because there is a way to do this. And as smart as their lawyers think they are, we are pretty smart, too. And we have a whole lot of people behind us who are thinking how we are going to get this done.

But we need to figure out the second piece of this. There are two other pieces: prevention and recovery. And you all have spoken so eloquently today about recovery and about services. We have been trying to reauthorize the Runaway and Homeless Youth Program because a critical piece of this is making sure kids—Nacole, tragically, I am so upset at how your daughter was courted and got into this was in a shelter. So what do we need to educate shelter workers that this can never happen, that they have to be more vigilant about preventing this. What can we do to get more kids off the street? What additional resources do you think would be valuable in the prevention side? And I would ask anyone on the panel.

Ms. KUBIKI P. Well, I would say as far as prevention, every kid has a cell phone now. Every kid has access to this evil and this evil has access to them. Prevention would probably start with educating

them about the way that predators are able to contact them and to ease their way into their lives.

Just the other day, some grown man comes into my daughter's Snapchat DM. It is very easy for people to pick and choose. When social media sites post the pictures, you are choosing to post your pictures, and then there is a predator on the other side behind that screen that is preying on these kids. But if you do not teach your children—because that is Ground Zero right there, teaching the children and teaching them at an early enough age—just like sex education, you are teaching that in school. Why not offer an Internet class to teach these children how to navigate through this world that we are all still trying to figure out, we are all still having a problem with it? But we can do all we want, but they are the victims. And so you have to educate them at that level.

Ms. NACOLE S. I would agree that earlier prevention techniques at a much younger age, because you have children as young as eight or nine that are getting cell phones. Even though there are parent protections on there, children are very smart and can find their way around that, so starting prevention at a much younger age.

Also, first responders. My daughter in my case was arrested twice prior to being recovered, both times held in adult jail and both times released back to her trafficker. So first responders, people that come in contact with these young girls or young men in hospitals or on the street need to be educated on what they are looking for.

Also, having in place—in my case, upon recovery, she was taken immediately to the emergency room for all the testing that you would find reasonable—AIDS, sexually transmitted diseases, pregnancy. And the resource I was given at that visit was a pamphlet on domestic violence and told to have a nice day and there was nothing they could do for me. “I am sorry. She has had too many partners. We cannot do a rape kit.” OK. This was not domestic violence. There was no resource outside of that in my community that was given to me that said you need to call this person. That is where the case was left, right there.

Senator HEITKAMP. Right. If I can just indulge, Senator Collins and I have a bill called SOAR, which is to do better training for emergency room and medical responders. But every suggestion that you have, every thought that you have is valuable as we navigate not just the enforcement piece of this, but as we navigate the prevention and recovery piece of this, which we all have to be in together.

So thank you, Mr. Chairman, for indulging some extra time.

Senator PORTMAN. Senator Harris.

Senator HARRIS. I just want to thank you all for the courage that you have shown. One of the points that you have made so clearly and must be made continuously is these are children.

The images that are depicted on Backpage are purposely presented in a way that suggests that they may be adults. But as any of us know who have children, even if that girl is physically developed, as soon as she starts talking, you know she is a child. And the reality of it is that, as Senator Heitkamp said, these are not only your children; they are the children of our community. They

are all of our children. And so we all have a responsibility to protect them as children.

Your voices as their parents are so important to making that point clear. And as difficult as it is for you to have the courage to expose yourselves and your family's story by sharing with us what has happened, you are being a voice for so many others out there that cannot be in this room, do not know where this room is, do not know this room might be a safe place for them. And in that way, you all are doing the work on behalf of people who are never going to know your name, people you will never meet.

So keep fighting. And no matter how big Backpage might pretend itself to be—they walk around thumping their chest—we are bigger, and there are more of us who are on this side of it. So let us keep fighting. It is an uphill battle to be sure, but we are always on the side of right when we are fighting to protect our children.

And, yes, this is a new world because of technology. This stuff usually happened on the street. It now facilitates, because of technology, coward both in terms of those who traffic and those who buy other human beings who are children.

And so we are going to have to adjust to this new world with our laws, with our procedures and policies and practices, but you all as the parents of these children are going to continually give us a reminder and a conscience and the courage to fight for what is right. So I just want to thank you. I really do thank you.

Thank you.

Senator PORTMAN. Thank you, Senator Harris.

Again, to our witnesses, you are here talking about Backpage, but you also have the opportunity to speak to this broader issue of how do we help with prevention and increase awareness, which I think this hearing has done just by us talking about these issues, and how do we improve recovery services and be sure that people are held accountable.

One of the things that I found most disturbing about your testimony was the fact that you saw your daughter online, that you knew it was your daughter. And yet the website, Backpage, refused to take down the ad. So as a father and an uncle, I just cannot imagine the frustration, the pain you must have felt. And I am not going to ask you to recount anything that you are uncomfortable with, but if you could just talk a little about what happened. When you called them and said, "My daughter is on your website being sold for sex, my 14-year-old daughter," what did they say? What happened?

Ms. NACOLE S. I am going to defer to Kubiiki because in my case we were looking at the wrong website. I had never heard of Backpage.com.

Senator PORTMAN. Most people have not.

Ms. NACOLE S. We were looking on Craigslist because we were at the end of 2010 and Craigslist was still up. So although my husband was checking Craigslist, we were on the wrong website. So I never contacted Backpage about my daughter being exploited there, but I know she did, and I am going to let her speak to her experience.

Senator PORTMAN. Kubiiki, tell us what happened.

Ms. KUBIKI P. I do not remember the date, but maybe it was about 4:00 in the morning, and I had used Backpage on a regular basis like the classified ad site that it is or that I assumed it to be, and I had sold old toys, and items that my kids never really liked, clothes. And so I was familiar with Backpage but had never even paid attention that they had that escort section. And it was only when my husband asked me if I went through the pictures on Backpage that I began to look, and it shocked me because what I had seen on Craigslist, even though they shuttered their escort section, I still knew that there was human trafficking going on on that site.

But to look at the way Backpage had made it look so pretty, they give the options to put bows and buttons and smiley faces to give the appearance that it is a young person without saying so. I got to the third ad on the page that I pulled up and knew that it was my daughter even though I had not seen her face. I knew because of a tattoo that when I saw her at the grocery store while she was missing, trying to catch her, I said, "What is that on your hand?" And she snatched away. So I knew when I saw this tattoo that it was my daughter. But it was not until the third day when the new pictures came up with her face, her body nude with an adult woman, that I realized exactly what was going on, because I could not wrap my brain around it at first. And I called Backpage and I spoke to a lady that answered the phone who asked me what she felt were very important questions, if I had proof or identification that this was my daughter, if I knew that this was my daughter, how did I know that this was not someone else. They assumed this to be an adult—all while I am trying to keep my composure and say to them, "Hey, please, take these pictures down. This is my baby. She is hurt."—We can talk about the physical damage that she suffered when she came home to me, my daughter had been burned maybe about 60 percent of her back with cigarette butts. Her scalp had been burned. Her hair had been shaved. We can talk about all of that. But right now, eight years later, the pain is so intense. There has been no true healing. And the way that the programs are set up—and I would say that I was there kind of at the beginning when there were no programs. But to see how far it has come and to realize that you are still missing key elements. You are still missing that when this damaged child comes back home, the community that surrounds this child is still not educated, so they are placing blame. The children inside this home, the siblings to this victim, do not understand because they are not educated. The parents feel guilt. A lot of people place blame on the fathers because they are not educated.

So if there is anything to be said of this whole situation, it is that knowledge is the key component that is keeping us in this clutch of people going back and forth, because they do not truly understand. But if you make them understand—I see how Mothers Against Drunk Driving, how that campaign just kind of went everywhere and people understood, and it is like, hey, we are all on the same team. But there are so many people that still make the statement, "Well, a person should have the choice to sell their body," when we are not even talking about adults, we are talking about children. So, clearly, there is a disconnect. There is not

enough conversation about what our future is going to look like if we keep destroying our children. And Backpage, they are playing a very large role in that. And not saying that it is not going to happen again, not saying that it is not going to happen on a different site. Just saying that if you make people feel the fear of the repercussions from the damage that they do, then maybe they will think about it, because Backpage is not thinking about it. They are just saying, because of my Fifth Amendment rights I am not going to say—you know what I am saying? It is like they do not care, there is no remorse. But all of you have the power to start the programs and to lead this into a different direction.

Senator PORTMAN. Kubiiki, as we talked about, based on the evidence that we were able to uncover finally, it is all about the money. It is all about the profit. So my understanding is when you first called and you talked to that woman on the phone, didn't she also say to you, "Did you post that ad?"

Ms. KUBIIKI P. Yes, she said, "Did you pay for it? Do you have the credit card that paid for this ad?"

Senator PORTMAN. And she basically was saying, "Unless you paid for the ad, we cannot take it down." And, wow, after a mother calls and says, "That is my baby," the response is, "Did you pay for this ad?" Is that what happened?

Ms. KUBIIKI P. Yes, sir. And they hung up numerous times. I called many times, going off, being very angry. I understood the reason why they stopped answering my calls. I got it. But it still did not make them take the pictures down. So they did not get it.

Senator PORTMAN. This is, again, a hearing focused on Backpage. As you say, they are a big player in this. Probably 80 percent or more of the commercial sex business is on this one site now. And the fact that they took down their adult section last night, as the National Center for Missing and Exploited Children said last night, that will save some kids. That will help. But it is not the ultimate answer because even if they continue to keep this site down, other sites will crop up, including some other sites that are connected to Backpage. And so we have a broader responsibility here.

There is an increased awareness here in the U.S. Senate, as Senator Heitkamp, Senator McCaskill, Senator Harris, and others have talked about, and that is good. We have a caucus now on human trafficking. We have more Senators who understand it. We have some good legislation that was passed about a year and a half ago now on prosecution of those engaged, increasing that level, more resources for recovery, treating these victims as victims, not as criminals, which is just a paradigm shift. But it is also expanding, I would say even exploding. It is the dark side of the Internet, right? And the victims I talk to almost to a person tell me, "Rob, it has gone from the street corner to the iPhone." And this is where you see this huge increase. And drugs play a big role, too, in my home State, and specifically making young people dependent on drugs. And that is part of the human trafficking, modern-day slavery aspect of this, is that dependency, and not just on drugs. It goes beyond that. But this is why I think we need to do new things both on the community front in terms of the prevention, awareness, and the better recovery services and educating the first responders

and those who are dealing with this issue day to day in emergency rooms and others, but also in terms of the legal environment.

And so we will talk about this in the closing in just a moment, but Senator McCaskill and I are committed to continuing this effort, not just this one specific goal of uncovering information that was not previously known about Backpage that will help us to be able to pursue actions against them and keep them accountable, but this broader effort of, as Nacole said at the start, looking at the laws differently because we have a different environment now, and the laws have not kept up in my view.

With that, I will turn it over to Senator McCaskill for questions.

Senator MCCASKILL. I actually do not have any additional questions, but I would take a moment at this point in time, Mr. Chairman, to make just a few closing comments. Most importantly, I want to put on the record a couple of phone numbers. The National Human Trafficking hotline is 1-888-373-7888, and the National Center for Missing and Exploited Children is 1-800-THE-LOST, 1-800-843-5678.

I should also mention the McCain Institute. It does a lot of work in this area and would be happy to help anyone who is in that incredibly dark place where they have lost their child and do not know where to turn.

I certainly know that my office and the other Senators' offices are always available to try to help and make sure that the right resources are made available, and I really appreciate the point you all have made about resources after the fact. I mean, Humpty Dumpty is on the wall. Humpty Dumpty falls off the wall. And then no one is there to help put Humpty Dumpty back because it is hard and it takes extended time and effort, and many families are just not ready to handle that burden because they do not know the right thing to do. They do not know whether to wrap up their child in cotton batting and make sure they never go anywhere or to be more open and accepting. It is just really tough, and we have found this over the years with so many sexual assault victims that the lack of resources is really a huge problem. And I remain committed to making sure that we are doing everything we can from where I sit on that.

I also want to make sure today, as we near the end of this hearing, that people read this report who are in the field, and not just the Executive Summary. There is a treasure trove of evidence in this report. As someone whose job it was for many years to make sure I had enough evidence to prove beyond a reasonable doubt that someone had committed a crime, I want to send a very clear message to police, to local prosecutors, to U.S. Attorneys, to the Federal Bureau of Investigation (FBI), to Attorneys General across this country that there is evidence in this report that can assist you in holding people accountable for what has gone on to young women and young men across this country. What we have been able to do is put in one place a lot of information that would have caused a different result in lots of lawsuits across this country and lots of decisions that were made by local prosecutors as to whether or not there was an actionable file in terms of criminal prosecution.

So I hope that this is not one of these reports that goes quietly into the night. I hope this become a go-to resource for prosecutors,

police, and other people that enforce our laws across this country. I am confident that there is sufficient evidence here to hold some of the people responsible for this accountable in ways that have been very frustrating to the families.

And then, finally, I want to thank the staff. Sometimes it is hard when you are working in a bipartisan way because, I have ideas and I tell my staff this is what I want, and Senator Portman has ideas and tells his staff this is what he wants. And sometimes it is not identical, and you have to keep talking and you have to keep communicating and you have to work out differences. And particularly because this was challenging in terms of the roadblocks we faced, I just want to commend the staff. Keep in mind, someone looked at over a million pages of documents. They did not get consumed by some software program. There were people who put in long hours on this staff, both Republican staff and Democratic staff, to produce this report. And I stand in awe of their public service. I am sick and tired of everybody who works for the government being a bad guy. There are some amazing, dedicated public servants that work and get paid by your tax dollars, and this is a great example of a group of them that have worked hard and done the right thing, and I want to thank them from the bottom of my heart.

Thank you.

Senator PORTMAN. Thank you, Senator McCaskill. And, again, I want to thank the witnesses for joining us today on this last panel. You have made a nice contribution to the inquiry and, more importantly, your testimony is going to help to inform us going forward on some of these legislative challenges that we have here.

This concludes our fact finding on the Backpage matter, and it is a fitting finale for Senator McCaskill who you just heard from as the Ranking Member. As you may have heard, she is moving up in the world. She will now be the ranking Democrat on the full Committee, and so we are going to lose her as Ranking Member of the Permanent Subcommittee. But I am proud of the important work we have done together. She has been a good teammate. As she said, we may not always agree in terms of some of our objectives, but we have managed to come together and figured out ways to get things done in a number of investigations, including this one. I am looking forward to working with our new Ranking Member, who will be Senator Carper, the former Ranking Member of the full Committee. And he and I are committed to maintaining PSI's reputation for rigorous, bipartisan fact finding wherever it leads.

And I think this investigation has been a great example of that. Two years ago, Senator McCaskill and I set out on this mission. We knew that online sex trafficking was a serious and growing problem. To be frank, we did not know enough about how it worked, nor did anybody, because so much of it had been hidden. And now, thanks to this investigation, we know that the largest online marketplace for trafficking, as we heard today in the summary of our report, has done a number of things. It clearly was done to conceal criminal activity. Advertisements were deliberately sanitized to conceal evidence of prostitution, to conceal evidence of child trafficking.

We know Backpage has hid its systematic editing practices from the public for years while convincing the courts and Congress it was just a host for third-party content, entitled to an immunity under Federal law for that reason.

We know now that Backpage's claims to be cooperative with law enforcement and the National Center for Missing and Exploited Children were misleading.

We know now who really owns Backpage—its CEO and original founders still do—and that it is widely reported sale to a Dutch entity was really just a ruse, probably designed to simply launder the money that Backpage was making on illegal advertisements through a Dutch company.

All this will help us and help our colleagues enormously as we consider these changes to Federal law, Federal spending priorities, as we talked about today, as we continue this obvious need to combat the challenge of child trafficking online.

But I must tell you this. It seems likely that Backpage has been breaking the law as it exists right now, so, I do not think we have to go and reform legislation in order to find culpability here. Based on the evidence we have collected and the testimony we have received at our two hearings on this subject, Senator McCaskill and I will promptly consider whether to refer this matter to the Department of Justice (DOJ) and to State Attorneys General across the country for further investigation.

Before we close, I have something to say—and I think Senator McCaskill agrees with me—about the conduct of the lawyers who have appeared before the Subcommittee in this case. As you know, subjects and witnesses in an investigation have an absolute right to hire lawyers to represent them zealously, represent their interests, defend their constitutional and legal rights, as we saw today. We respect that. But I will say that Senate committees also have the right to expect something of the bar as well. We expect candor. And in this case, it has become apparent that many of the lawyers for Backpage carefully arranged matters so that none of them was ever in possession of a straight answer.

Let me give you one example. It may seem like a small one, but it is illustrative.

On December 30, just a week or so ago, the counsel for Backpage wrote to Senator McCaskill and me asking that Mr. Ferrer, Mr. Lacey, and Mr. Larkin be excused from appearing today on the grounds that they were required to be in California for an arraignment tomorrow morning. We thought that sounded reasonable enough until we learned that three days before, on December 27, the California Attorney General's office had confirmed in writing to the defense team that, in the event of a conflict with PSI's hearing, the defendants could get a continuance of their arraignment. The lawyers did not disclose that, obviously a material fact, in their letter to us. Then just last night, after being warned about it, counsel once again repeated the same misrepresentation in a letter to all Members of this Committee—again, without disclosing the Attorney General's agreement to excuse the defendants from appearing in the event of a conflict.

I just raise that as one example of what we have been through in this investigation. Sadly, it is the sort of conduct we have come

to expect in this case. We are left to conclude that counsel has not been appropriately candid with this Subcommittee. Lawyers have to take care to ensure their representations are true to the best of their knowledge after taking reasonable steps to make sure they are true. As we go forward with this Congress, Senator Carper and I will discuss how we can improve PSI's rules to reinforce that duty of candor.

Again, as Senator McCaskill said, we owe a lot to the staff. I want to acknowledge their hard work, both the majority and minority staff. This investigation spanned nearly two years, a lot of hard work, a lot of late nights. They did review over one million documents. We are very grateful for their efforts and very proud of them.

I would like to give particular attention, if I might at the end, to a staff member who is leaving us after this investigation. Brian Callanan, who is the Majority Staff Director and General Counsel, is leaving the Senate soon to reenter the private sector. He has ably led the staff of PSI for the last two years and previously served as a key policy adviser to me. He leaves very big shoes to fill. We are pleased that Matt Owen, our current Counsel, will be succeeding him. But I would like to thank Brian for his wise counsel to me over the years and for his remarkable service on this Subcommittee and to the Senate and the public. We wish him the best of luck in his new endeavor.

With that, the record of this hearing will remain open for 15 days. We are adjourned.

[Whereupon, at 12:20, the Subcommittee was adjourned.]

APPENDIX

U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
Hearing: Backpage.com's Knowing Facilitation of Online Sex Trafficking
January 11, 2017

Statement of Chairman Rob Portman

This hearing will come to order.

We are here this morning to address a very serious subject. It's about sex trafficking—and the selling of children online.

More than 20 months ago, this Subcommittee launched a bipartisan investigation concerning how sex traffickers use the Internet to ply their trade. Experts (including victims) tell us that this terrible crime has increasingly moved from the street to the smart phone. The National Center for Missing and Exploited Children (known as NCMEC) reported an 846% increase in reports of suspected child sex trafficking from 2010 to 2015 — a spike the organization found to be “directly correlated to the increased use of the Internet to sell children for sex.”

Backpage.com sits at the center of that online black market. This is a large, profitable company: Backpage operates in 97 countries and 934 cities worldwide and was last valued at well over a half-billion dollars. According to an industry analysis in 2013, eight out of every ten dollars spent on online commercial sex advertising in the United States went to Backpage.

NCMEC tells us that Backpage is linked to nearly *three quarters* (73%) of all suspected child sex trafficking reports that it receives from the general public through its “CyberTipline.” And according to a leading anti-trafficking organization called Shared Hope International, “[s]ervice providers working with child sex trafficking victims have reported that between 80% and 100% of their clients have been bought and sold on Backpage.com.”

Our Investigation

Based on this record, the Subcommittee saw a compelling need to investigate the business practices of Backpage, especially the efforts it takes to prevent use of its site by sex traffickers.

We thought that might be simple enough because Backpage actually promotes itself as a “critical ally” in the fight against human trafficking. The company says it “leads the industry” in its screening of advertisements for illegal activity—a process it calls “moderation.” In fact, Backpage’s top lawyer Elizabeth McDougall has described their moderation process as the “key” tool for “disrupting and eventually ending human trafficking via the World Wide Web.”

Despite those boasts, Backpage refused to cooperate with the Subcommittee’s investigation. They defied our subpoena, failing to appear at November 2015 hearing or provide the requested documents.

In response, we brought the first civil contempt action authorized by the Senate in more than 20 years. And in August 2016, the Subcommittee prevailed and secured a federal court order rejecting Backpage’s meritless objections and compelling the company to turn over the subpoenaed documents.

Our Findings

It is now clear why Backpage fought so hard to withhold this information.

The Subcommittee published a staff report last night that conclusively shows that Backpage has been more deeply complicit in online sex trafficking than anyone imagined. And without objection, that report will be made part of the record.

Our report demonstrates that Backpage has concealed evidence of crimes by systematically *deleting* words and images suggestive of illegal conduct from advertisements submitted to their website *before* publishing the ads. And some of those ads involved child sex trafficking. Backpage’s editing process sanitized the content of millions of advertisements and hid important evidence from law enforcement.

This story begins in 2006, when Backpage executives began instructing staff responsible for screening ads (known as “moderators”) to *edit* the text of adult ads to conceal their true nature. By October 2010, Backpage executives formalized a process of both manual and automated deletion of incriminating words and phrases in ads.

A feature known as the “Strip Term From Ad filter” did most of the work. Backpage CEO Carl Ferrer personally directed his employees to create this electronic filter to “strip”—that is, *to delete*—hundreds of words indicative of sex trafficking or prostitution from ads *before* publication.

To be clear, this filter did not *reject* ads for illegal activity. Backpage executives were afraid that would cut into profits and, in Ferrer's words, "piss off a lot" of customers. Instead, the Strip Term From Ad filter simply altered ads to conceal signs of illegality. They put profits ahead of vulnerable women and children.

The evidence is clear that Backpage deliberately edited out words indicative of child sex trafficking and other crimes from ads.

The list of terms is chilling. Starting in 2010, Backpage *automatically* deleted words including "lolita," "teenage," "rape," "young," "little girl," "teen," "fresh," "innocent," "school girl," and even "amber alert"—and then published the edited versions of the ads to their website. Backpage also systematically deleted scores of words indicative of prostitution.

Backpage claims their staff reviews ads to avoid child exploitation, but these terms were stripped out before anyone at Backpage even *looked* at the ad. And when law enforcement officials came asking for more information about suspicious ads—as they routinely did—Backpage had already destroyed the original ad posted by the pimp or trafficker. The evidence was gone.

Think about the real-world effect of that practice:

- A trafficker submits an ad on Backpage.com containing a word like "lolita" or "teen" — a pretty good clue that a crime may be afoot.
- But then Backpage's Strip Term From Ad filter would delete the problematic term and the remainder of the ad would be published.
- Of course, this editing changed *nothing* about the real age of a person being sold for sex or the real nature of the advertised transaction.
- But as one Backpage executive explained, thanks to the filter, Backpage ads looked "cleaner than ever" to the public eye.

We will never know for sure how many girls and women were subject to abuse and exploitation that Backpage.com helped to conceal. By Backpage's own estimate, the company was editing "70 to 80% of ads" in the commercial-sex section either manually or automatically by late-2010. Based on our best estimate, this means that Backpage was editing well over a half-million ads each year. It is unclear whether and to what extent Backpage still uses the Strip Term From Ad filter, but

internal emails indicate that the company was using the filter to some extent as of April 2014.

These are not the practices of an “ally” in the fight against human trafficking. These are the practices of a corporation intent on *profiting* from human trafficking—and human misery--and profit they have, at the expense of countless innocent victims.

Backpage has not denied a word of these findings. Instead, several hours after the report was issued yesterday afternoon, the company announced the closure of its adult section—claiming “censorship.” But that’s not censorship. That’s *validation* of our findings. As for this new development, I’ll just quote from part of the National Center for Missing & Exploited Children’s statement about Backpage’s closure of its ‘adult’ site: “We are gratified to know that as a result [of this closure], a child is now less likely to be sold for sex on Backpage.com.”

Our Ranking Member, Senator McCaskill, will have more to say about the other key findings in our report. And I just want to conclude by thanking Senator McCaskill and her staff for their shoulder-to-shoulder work with my team at PSI on this bipartisan investigation. I am also grateful to the members of the full Committee and the Senate as a whole for unanimously supporting us as we pursued the enforcement of a subpoena against Backpage.com.

In the weeks and months ahead, I intend to explore whether potential legislative remedies are necessary and appropriate to end the facilitation of online sex trafficking that Backpage.com has pioneered. We’ll have more to say on that later.

With that, I want to turn to Senator McCaskill for her opening statement.

Backpage.com's Knowing Facilitation of Online Sex Trafficking

January 10, 2017

Senator Claire McCaskill

Opening Statement

Thank you, Chairman Portman, for holding this hearing. I hope this investigation can serve as a clear sign to the American people that both parties can work together, the way that we have, to address one of the most devastating issues in our country. Not only have we cooperated in a productive way on this Subcommittee, but the Senate as a whole has affirmed the importance of our investigation by voting unanimously to enforce our subpoena to Backpage in federal court. In voting 96-0 to compel Backpage to respond to our requests, the Senate recognized that our investigation into the market leader in selling sex online is a legitimate and important use of the Subcommittee's authority.

Backpage is a \$600 million company built on selling sex, including sex with children. And the company knows it. According to one former moderator, his colleagues, quote, "went through the motions putting lipstick on a pig, because when it came down to it, it was what the business was about." Several former moderators even told the Subcommittee that certain Backpage employees contacted prostitutes advertised on the site and used their services. When moderators had the courage to point out this illegal activity, management came down hard on the employees. After one moderator apparently concluded in his account notes that a Backpage user was a prostitute, Andrew Padilla, Backpage COO, stated, quote, "[l]eaving notes on our site that imply we're aware of prostitution, or in any position to define it, is enough to lose your job over."

More troublingly, documents produced to the Subcommittee also show that Backpage often erred against reporting potential child exploitation. In one email, for example, a Backpage supervisor instructed moderators that, quote, “[y]oung ads do not get deleted unless they are clearly a child.” A Backpage supervisor also apparently hesitated before believing reports from third parties concerning underage escorts. In February 2010, for example, a detective alerted Backpage to the fact that a 17-year-old girl featured on the site had asked the company to remove her photos, but was, quote, “told they couldn’t be until enough people reported her as potentially underage.” As a matter of policy, according to internal documents, Backpage will only escalate the review of an ad for child exploitation when an individual claims *they* or an *immediate* family member are at risk; uncles reporting nephews or grandmothers reporting grandchildren will not suffice.

Throughout this investigation, I have spoken of a 15-year-old girl who was sold for sex on Backpage across the United States before seeking help at Cardinal Glennon Children’s Hospital in St. Louis. According to court documents, this young woman was walking down a street in Madison, Missouri, in June 2015 when her future trafficker—a young man from Park Hills—approached in a pickup truck. She was contemplating suicide after a fight with her father, and in her distraught state she was coerced into joining the young man and his wife as they sold her and multiple other girls for sex over a six-week period. Earlier this year, Chief Judge Michael Reagan of the Southern District of Illinois sentenced the husband and wife perpetrators of this crime to life in prison and 20 years, respectively. In handing down one of these sentences, Chief Judge Reagan stated that the couple had “[stripped] an individual of the right to feel secure [and] control and trust what she did with her own body.”

It is crucial that we keep our focus on this 15-year-old girl, and the experiences of countless other young girls like her. The parents of two of these girls are here with us today to discuss how their daughters were advertised and sold on Backpage. Both girls found themselves trapped, not on a street corner, but in an online marketplace that billed children as “weekend specials,” under less stringent rules than those for ads selling motorcycles or pets. One mother here today—then living in St. Louis with her other children—was forced to take the unimaginable step of buying time with her daughter in a desperate attempt to rescue her.

These experiences remind us that this investigation is not about curbing the First Amendment rights of online platforms for speech—rights which are more important now than ever—or using the powers of the Subcommittee to target private actors engaged in unpopular conduct. This investigation is about understanding how criminals systematically use online platforms to transform normal American teenagers into sex slaves. As part of this work, it is critical for the Subcommittee to understand the efforts companies selling sex online undertake to prevent trafficking—and if our current laws are inadequate to spur these efforts, we need to know this too. Our responsibility, as elected representatives, to protect the most vulnerable Americans requires nothing less.

At our last hearing, I promised that Chairman Portman and I would not go quietly into the night and simply give up in the face of the repeated roadblocks Backpage has raised against this investigation. Working together, we fought Backpage all the way to the Supreme Court to vindicate our right to receive the documents we requested, we subpoenaed records from banks, accounting firms, and court proceedings, and we spoke with countless stakeholders and experts in the fight against trafficking. This is not a punitive, partisan campaign—this is congressional oversight. And I have another promise: I will continue to do everything in my power to protect

young women—and young men—from being exploited and assaulted, on Backpage.com or anywhere else.

I look forward to getting answers from our panelists today.

**Statement of Chairman Ron Johnson
“Backpage.com’s Knowing Facilitation of Online Sex Trafficking”
Hearing of the Permanent Subcommittee on Investigations of the
Senate Committee on Homeland Security and Governmental Affairs
January 10, 2017**

I would like to thank Chairman Portman and Ranking Member McCaskill for holding this important hearing. Over the past year and a half, the Permanent Subcommittee on Investigations has worked diligently to investigate human sex trafficking on the Internet. I commend both Chairman Portman and Ranking Member McCaskill for their tireless work in pursuing this investigation and uncovering the information presented today.

Our Committee has a long history of investigation and bipartisanship. Both are on display here. Last February, this Committee unanimously approved a resolution to enforce the Subcommittee’s subpoena for information. Then the full Senate unanimously approved it. The information turned over pursuant to that subpoena was instrumental in allowing the Subcommittee to complete its investigation. This is an example of what we can achieve when we find areas of agreement.

The findings presented today will help Congress better understand some of the reasons for the proliferation of sex trafficking in the digital age. I appreciate the powerful testimony from the family members of the victims of online sex trafficking. Thank you for telling your stories. I hope this investigation and today’s hearing are just the first steps in developing legislative proposals to combat this scourge.

**Statement by
Nacole S., Mother of a Child Sex Trafficking Victim on Backpage.com**

**Backpage.com's Knowing Facilitation of Online Sex Trafficking
January 10, 2017**

**Permanent Subcommittee on Investigations
Homeland Security and Governmental Affairs Committee
U.S. Senate**

Good morning, Mr. Chairman and esteemed members of the Subcommittee.

My name is Nacole S., and I want to thank you for the opportunity to be here today to represent myself and my family. I also hope I can be a voice for the countless other families who are not present today, whose lives have been forever changed by Backpage.com and similar websites that make their living hiding in the shadows of the law.

Before I get any further, let me first say that, I am truly honored to be addressing you as members of the U.S. Senate. Neither I nor my family felt like we were fully equipped to provide testimony since we're not lawyers or politicians. Our experience with the English language isn't nearly as poetic or profound as other testimonies you might hear. But, after a lot of thought (and a lot of prayer), we realized that this testimony is not about poetry—it's about honesty. It's about telling a story, *our* story, and hoping that what you hear today means something. It's also about keeping a promise to our daughter to bring justice to everyone (*everyone*) that wronged her. So instead, for a moment, let me address you not as politicians, but as fathers and mothers; as aunts and uncles, as grandparents (if you've been so blessed like I have). These are credentials that I can relate to. You are the people who need to hear our story.

In 2010, we were a close, loving family. We were all realizing our American dream. We had built something for ourselves more valuable than money, more important to us than a big new house or better cars in the driveway. We had built 3 lives, our great kids, ready to come into their own and take on the world. Passionate about our children, we wanted and expected the best. I remember a conversation with a school guidance counselor who was chastising us on how we were going about our son's college applications. The counselor was convinced that our son, a first-generation college student, would be best served applying to only local schools. We, ever-reaching, were convinced that he was better than that. It felt like our stubborn optimism and belief was rewarded when our son was accepted into a prestigious private engineering school in New York. We weren't surprised at all. We were so proud of all 3 of our children, each national honor roll students, and at the top of their games. Little did we understand how dramatically our lives were about to change. In just a few months, our American dream would be exchanged for a third-world nightmare, and would lead us to question everything.

Our youngest, our baby Natalie¹, was something special. She was always the most energetic of our 3 children, so full of life and promise. She participated in varsity soccer and wrestling, and played violin in the high school orchestra - all in her freshman year. That was Natalie, she tried to experience everything. She was taking high school by storm, in her light-hearted way. She was *one of those* kids. (Only a family with *one of those* kids knows what that means. Natalie wanted to do everything at once, with high energy, and nothing could contain her zest for life). Challenging as she was, she was exceeding every possible expectation a parent could have. It was amazing to be part of. None of us could've predicted that her innocent, care-free attitude was about to take her down a path what would shake our family to its very core. At the time, our family dynamic had changed as our son was off to college and our oldest daughter was distracted by her own concerns. Natalie was struggling to find her place in her new world.

Looking back, we understand that our daughter was burning the candle at both ends, struggling with all the sudden, but inevitable, changes that were occurring. While they were all good things to us; they were confusing and difficult to Natalie. All we saw was an exceptional young lady, doing exceptional things. But Natalie, in her own way, was sending out signals. It's easy to see now, because of all the painful retrospection that comes with a tragedy, but it was impossible to see then.

She made the implausible decision to leave the safety of her home. She wrote a letter, five pages long, telling us how wonderful her family is and how much she loved us. "Finding herself" was the gist of the letter, and of course not to worry. Not certain of her choice, Natalie had shared the letter with friends and like a sick game of telephone it circulated the school. Now it wasn't just a letter, but a dare. It was her reputation at stake. So, backed into a corner, she left.

Making her way to Seattle she found herself at a teen homeless shelter. A woman there, 22 and posing as a teen, must've immediately noticed Natalie as an easy target. As smart as Natalie was, she had no idea of the danger she was in. As a parent, it's hard to talk about what happened next. I can't imagine her fear and bewilderment at what was happening to her as she was repeatedly raped and beaten and threatened, and treated like a sexual object every single day. All while being posted on a Backpage online ad. I honestly try not to think about it. I can only tell you that when we finally got Natalie back for good, months later, the young girl we found wasn't the same Natalie who left our home months earlier. I literally didn't recognize her at first; her appearance had changed so much. Her hair was dyed and cut and she was wearing different clothes. She didn't even sound like Natalie. Everything she was saying was incomprehensible to me. Our Natalie's light was gone. That was the beginning of our 6 year odyssey to get here, to our new American dream.

Our new dream is simple: to live in an America that doesn't stand aside while little girls like our daughter, Natalie at age 15, are sold online like a commodity. Purchased with all the same conveniences you would expect from an order on Amazon and always returned as broken, damaged human beings, forever changed by the horror they experienced.

It's time to accept that child sex trafficking has entered the digital age, and been embraced by it. The loose moral code and "sisterhood" of the streets is now gone. There is no protection, no accountability, and no escape. The same speed and anonymity that attracts so many to the Internet has made it a hot-bed for the ugliest human behaviors; at the forefront of which are websites like Backpage.com. Backpage and similar sites have changed the rules of engagement for people who

¹ We use the pseudonym Natalie to protect our daughter's privacy.

purchase children for sex. Any semblance of risk has been taken from the process. All of the dark street-corners have been replaced with the familiarity and comfort of computer screens, and these men now make their illicit transactions from the safety of their homes. Secure in the fact that no one is watching. While Backpage may wish to pretend they are simply the new virtual street corner in this metaphor, inanimate and blameless, that just simply isn't true. They are complicit. They are more like the corrupt authority figure, paid to look the other way (paid well, I might add), reporting a few hundred suspicious advertisements every year to feign compliance and concern, all while letting thousands of others slip by. We have reason to believe their level of involvement goes further still to enable and streamline the process of illegal prostitution and child sex trafficking on their website, and yet so far they've gotten away with it.

The question is how? How could such a horrific, morally bankrupt business model find success in our America? Backpage.com and its facilitators continue to operate as they do because they feel the same level of immunity as those who purchase children for sex while sitting behind their computer screens. Because they believe they are *protected*. Hiding behind old laws, and the mantra that somehow any action on the Internet is free speech, they carry on unabashedly while children like my daughter are repeatedly raped day after day. They *claim* to be protecting 1st Amendment rights, while at the same time allowing my little girl, a young bright-eyed resident of an all-American neighborhood, to be sold on their website as a "Weekend Special". I ask you now - where was her right to be heard? What immunity was there for her from these unspeakable acts, or from the damage it caused to her and our family? It is time to admit the truth to ourselves that this was never about protecting the Constitution. This is about abusing Constitutional protections for greed and gain, no matter the consequences. In reality, Backpage CEO Carl Ferrer is no warrior for Free Speech, he's just another pimp. One who happens to have a lot of expensive lawyers on retainer.

My family believes in a just America. We believe that, in time, our government and our people will realize that the moral cost of our current path is too high to sustain. What we would like to ask of this subcommittee, of the parents, aunts and uncles, and grandparents present today is "How long?" How long until changes are made to prevent what happened to our daughter from ever happening to another child? Because it's already been six years for us. While our family hasn't rested, neither has the evil that took our Natalie from us. Please don't let another innocent child in America be bought and sold for sex, and have their spirit crushed.

I've heard it said many times that the Communications Decency Act doesn't need a rewrite to prevent further tragedies like the one that befell my family, just a few new words, carefully crafted. A few words to end online child sex trafficking in our country, so that we can honestly and with pride say that we are the land of the free.

I would like to thank you for your time on behalf of my family, and also thank the dozens, if not hundreds, of people who have helped us get this far over the years. Only with their help have we had the strength to continue to fight this cause.

**Statement by
Tom S., Father of a Child Sex Trafficking Victim on Backpage.com**

**Backpage.com's Knowing Facilitation of Online Sex Trafficking
January 10, 2017**

**Permanent Subcommittee on Investigations
Homeland Security and Governmental Affairs Committee
United States Senate**

Good morning, Mr. Chairman and esteemed members of the Subcommittee.

I am a husband, father, and grandfather. I am a simple man, raising his family. I now find myself in this fight, mainly in support of my wife and daughter. Until today I have been in the background, but I am here today because I do not see any future prospect of living a life where we do not have to mention this ordeal we've been living at least once a day.

I can tell you that I was very intimidated and awestruck thinking about what to say here today to our American leadership. How can I tell you anything? Describe anything in a way that could make a change? I'm humbled at the idea. I have watched my wife with respect and pride, just trucking along in this incomprehensible battle against long odds. A true David and Goliath fight. I'm not as optimistic and hopeful as she is, and let me tell you why.

During this six-year nightmare, two things have struck me: First, that somehow children have become a bargaining chip. They've become bystanders in the outcome of a fight that's been labeled as being about internet freedom and they are just collateral damage in the huge industry of modern convenience that we all enjoy online. I can't bring myself to accept that these kids are just the cost of doing business in today's world.

Second, I've been disgusted and shocked by the commitment and stance that Backpage.com has taken. That Backpage somehow thinks it has the right to sell my child, and that the First Amendment gives them that right to do so and there's nothing anyone can do about it. And this isn't just their business opinion – they're shouting this argument from every court in the country. I can't believe the contempt and lack of humanity they've taken. Not only do they admit to selling kids and human beings, they have doubled down to protect their right to do so. They are *committed* to selling people on the Internet. How can it be that we are even debating this here today?

Backpage hides behind the Communications Decency Act (CDA), and they collect their money, all the while pretending to support the lofty, high-minded principals of the First Amendment. Even more amazing is that they usually win.

In my mind, it's simple -- what happened to my daughter on Backpage.com is criminal. What happens to every child sold for sex on Backpage.com is criminal. Children are not acceptable collateral damage. They are our hope and our future, America's conscience.

Now that I know you've heard our story, I know you can do something to prevent any more children from paying this price.

**Statement by
Kubiiki P., Mother of a Child Sex Trafficking Victim on Backpage.com**

**Backpage.com's Knowing Facilitation of Online Sex Trafficking
January 10, 2017**

**Permanent Subcommittee on Investigations
Homeland Security and Governmental Affairs Committee
United States Senate**

Good morning, Mr. Chairman and esteemed members of the Subcommittee.

In 2009 and 2010, when my daughter, M.A., was 14 years old, she was sexually trafficked on Backpage.com for many months. The Backpage ads of my daughter had nude and sexually explicit photographs of her. The ads were posted on Backpage to advertise my daughter for sex with adults.

Backpage was aware that explicit and pornographic photographs were on its website. They also knew that some escort ads on their site were for children, like my daughter, who were being trafficked. I know this because after my daughter was recovered, ads with her explicit photos continued to be re-posted on Backpage, causing her significant distress. I called Backpage numerous times and explained that I was the mother of the child pictured in these sexually explicit ads. I explained that my child had been horribly sexually, physically, and emotionally abused by being trafficked on Backpage through these ads. I begged Backpage to remove the explicit photos of my daughter. Eventually the ads were no longer posted, but Backpage did not remove them immediately after I called.

My daughter was trafficked on Backpage for months at a time. What she went through on a daily basis during that time is still unimaginable to me. It would be unimaginable to most of us in this room. Still, it wasn't until after she was recovered and brought back home to me, that I started to realize the full extent of the trauma she suffered and the impact her suffering from being trafficked on Backpage would have on my entire family.

In 2010, when my daughter was recovered, I was living in St. Louis with my other children. Suddenly we had M.A. back, but we found ourselves lost in a world without adequate coordinated support or professional resources to help us. At the time, there were no resources for child sex trafficking victims in the general area where I lived. I feel so fortunate that I was able to connect with smaller organizations from other parts of the country who supported me and my daughter. They were a lifeline to me during this time. But their resources were limited. I was able to benefit from their help only because I was lucky enough to find their services. I think of all the families who are not so lucky.

Even with the help I did receive, the pain our family suffered was immense. My other children did not know how to process what had happened to M.A. or how to help and support her. Our community did not understand the exploitation she had suffered. The news reports of the arrest and trial of my daughter's trafficker, further publicized the trauma.

This continuing trauma that was caused by my daughter's very public trafficking on Backpage kept her from having a path forward to heal when she came home to us. She turned inward instead, to silence and self-blame. I quickly realized that if my family was going to have a chance to heal together we needed to move to a new city and state where I could find resources for my daughter and more support for me as a mother to help my daughter and my children move forward.

We are still in the process of healing – even now 7 years later. But I am here today and still talking about our experience because it is so important for everyone to understand what we went through and to talk about what can be done to help children like my daughter.

First, there must be stronger laws to protect children against child exploitation. There is no other way to state this – the laws must be strengthened. If there are loopholes or if laws are outdated or misinterpreted, then these gaps must be fixed and they must be fixed now. No child should ever have to endure what my daughter went through. I say this because I know that even now 7 years later, children continue to be trafficked for sex on Backpage.

But we just don't need new laws. We also need more coordinated support for victims and their families at the federal, state and local level. This includes coordinated support from government agencies and private social service agencies. When my daughter was recovered, I couldn't easily find the right services to help her heal. I know these services would not have undone the trauma she suffered, but they would have helped her start a path to recovery that even now – as an adult – she struggles with on a daily basis.

We also need a more coordinated legal process among federal, state and local prosecutors when a child is trafficked. We need new laws and processes to make sure that children who are trafficked and exploited receive restitution from everyone who harms them. The limited process for court-ordered restitution that exists today doesn't work.

My daughter's trafficker has been in and out of jail. The court ordered her to pay restitution to my daughter, but she has paid nothing and there is no process to help me collect this restitution. As you know, when I tried to get restitution from Backpage for being involved and profiting from escort ads of my child, the courts rejected my case. Like the trafficker who was paid from the sale of my child's body, Backpage was allowed to pocket all the money from this crime, but my daughter has never received restitution for her victimization.

Another rarely discussed issue is the need for more social, psychological, and emotional support for exploited children and their families. My family was so isolated after this happened, and it was devastating socially and emotionally. The family of a child who has been trafficked and exploited needs a lot of help to manage their economic needs, family dynamics, and emotional functioning.

Today my daughter is back home with me. I cherish the ability to hold her and help her as she works through challenges towards a better future. But I still don't have any answers to explain why this happened to her or why everyone responsible for her trauma has not been held responsible. Meanwhile, I know children continue to go missing, are lured and run away, and too easily can become another escort ad on Backpage.

When I first started to talk about my family's experience, I was depressed and taken aback to find out how little the public knew about child exploitation. They didn't understand that child sex trafficking happens here and everywhere in this country. They didn't realize that every child can be vulnerable at one point or another. It scares me that children are not taught how vulnerable they are to this crime and what they can do to protect themselves.

We need real prevention and awareness programs on trafficking and exploitation. Anywhere that children and parents interact – including schools and churches and hospitals and community centers, and police and social service agencies – should disseminate prevention and awareness information. We need the public and children to understand that the crime of child sex trafficking happens. It can happen to children everywhere. And it is never a child's fault when they are forced into trafficking. Prevention and awareness would increase empathy in our communities and help children like my daughter and families like mine feel supported in their time of greatest need.

I would like to thank you for your time today and also thank you on my daughter's behalf. Having lived with this issue for the past 7 years, I can tell you that we still need real changes to help our children and to make sure no child is ever sold again on Backpage.

I hope you will continue your efforts.

United States Senate
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
Committee on Homeland Security and Governmental Affairs

Rob Portman, Chairman
Claire McCaskill, Ranking Member

BACKPAGE.COM'S KNOWING FACILITATION OF ONLINE SEX TRAFFICKING

STAFF REPORT

**PERMANENT SUBCOMMITTEE ON
INVESTIGATIONS**

UNITED STATES SENATE



SENATOR ROB PORTMAN
Chairman

SENATOR CLAIRE McCASKILL
Ranking Minority Member

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

BRIAN CALLANAN
Staff Director and General Counsel

MATT OWEN
Chief Counsel

MARK ANGEHR*
Senior Counsel

ANDREW POLESOVSKY
RACHAEL TUCKER
PHILIP ALITO*
Counsels

JOSHUA DeBOLD
Special Counsel

WILL DARGUSCH
Investigator

MARGARET DAUM
Staff Director and Chief Counsel to the Minority

BRANDON REAVIS
Counsel to the Minority

KELSEY STROUD
Chief Clerk

ADAM HENDERSON
Professional Staff Member

* Staff during the 114th Congress.

BACKPAGE.COM'S KNOWING FACILITATION OF ONLINE SEX TRAFFICKING

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EXECUTIVE SUMMARY

For more than twenty months, the Permanent Subcommittee on Investigations has investigated the problem of online sex trafficking. The investigation led the Subcommittee to focus on Backpage.com, the leading online marketplace for commercial sex. Operating in 97 countries and 943 locations worldwide—and last valued at more than a half-billion dollars—Backpage is the world’s second-largest classified advertising website. Backpage is involved in 73% of all child trafficking reports that the National Center for Missing and Exploited Children (NCMEC) receives from the general public (excluding reports by Backpage itself). The National Association of Attorneys General has aptly described Backpage as a “hub” of “human trafficking, especially the trafficking of minors.”¹

Backpage does not deny that its site is used for criminal activity, including the sale of children for sex. Instead the company has long claimed that it is a mere host of content created by others and therefore immune from liability under the Communications Decency Act (CDA). Backpage executives have also repeatedly touted their process for screening adult advertisements as an industry-leading effort to protect against criminal abuse. Since June 2015, the Subcommittee has sought information from Backpage—first through a voluntary request, then by subpoena—about those screening measures. Backpage refused to comply, and the Subcommittee was forced to initiate the first civil contempt action authorized by the Senate in more than twenty years. In August 2016, the Subcommittee prevailed and secured a federal court order compelling Backpage to produce the subpoenaed documents.

The internal company documents obtained by the Subcommittee conclusively show that Backpage’s public defense is a fiction. Backpage has maintained a practice of altering ads before publication by deleting words, phrases, and images indicative of criminality, including child sex trafficking. Backpage has avoided revealing this information. On July 28, 2011, for example, Backpage co-founder James Larkin cautioned Backpage CEO Carl Ferrer against publicizing Backpage’s moderation practices, explaining that “[w]e need to stay away from the very idea of ‘editing’ the posts, as you know.”² Backpage had good reason to conceal its editing practices: Those practices served to sanitize the content of innumerable advertisements for illegal transactions—even as Backpage represented to the public and the courts that it merely hosted content others had created.

¹ Letter from the Nat’l Ass’n of Attorneys General to Samuel Fifer, Esq., Counsel for Backpage.com LLC (Aug. 31, 2011), http://www.ct.gov/ag/lib/ag/press_releases/2011/083111backpageletter.pdf.

² App. 000432.

This report contains three principal findings. *First*, Backpage has knowingly concealed evidence of criminality by systematically editing its “adult” ads. As early as 2006, Backpage executives began instructing staff responsible for screening ads (known as “moderators”) to edit the text of adult ads to conceal the true nature of the underlying transaction. By October 2010, Backpage executives formalized a process of both manual and automated deletion of incriminating words and phrases, primarily through a feature called the “Strip Term From Ad Filter.” At the direction of CEO Carl Ferrer, the company programmed this electronic filter to “strip”—that is, delete—hundreds of words indicative of sex trafficking (including child sex trafficking) or prostitution from ads before their publication. The terms that Backpage has automatically deleted from ads before publication include “lolita,” “teenage,” “rape,” “young,” “amber alert,” “little girl,” “teen,” “fresh,” “innocent,” and “school girl.” When a user submitted an adult ad containing one of these “stripped” words, Backpage’s Strip Term From Ad filter would immediately delete the discrete word and the remainder of the ad would be published. While the Strip Term From Ad filter changed nothing about the true nature of the advertised transaction or the real age of the person being sold for sex, thanks to the filter, Backpage’s adult ads looked “cleaner than ever.”³ Manual editing entailed the deletion of language similar to the words and phrases that the Strip Term From Ad filter automatically deleted—including terms indicative of criminality.

By Backpage’s own internal estimate, by late-2010, the company was editing “70 to 80% of ads” in the adult section either manually or automatically.⁴ It is unclear whether and to what extent Backpage still uses the Strip Term From Ad filter, but internal company emails indicate that the company used the filter to some extent as of April 25, 2014. Manual editing appears to have largely ended in late 2012.

Over time, Backpage reprogrammed its electronic filters to reject an ad in its entirety if it contained certain egregious words suggestive of sex trafficking. But the company implemented this change by coaching its customers on how to post “clean” ads for illegal transactions. When a user attempted to post an ad with a forbidden word, the user would receive an error message identifying the problematic word choice to “help” the user, as Ferrer put it.⁵ For example, in 2012, a user advertising sex with a “teen” would get the error message: “Sorry, ‘teen’ is a banned term.”⁶ Through simply redrafting the ad, the user would be permitted to post a sanitized version. Documents from as recently as 2014 confirm the continued use of

³ App. 000157.

⁴ App. 000133.

⁵ App. 000328.

⁶ App. 000801-35. (Forbidden Term List attachment and accompanying email of the same date).

these error messages.⁷ Backpage employed a similarly helpful error message in its “age verification” process for adult ads. In October 2011, Ferrer directed his technology consultant to create an error message when a user supplied an age under 18. He stated that, “An error could pop up on the page: ‘Oops! Sorry, the ad poster must be over 18 years of age.’”⁸ With a quick adjustment to the poster’s putative age, the ad would post.⁹

Second, Backpage knows that it facilitates prostitution and child sex trafficking. In addition to the evidence of systematic editing described above, additional evidence shows that Backpage is aware that its website facilitates prostitution and child sex trafficking. Backpage moderators told the Subcommittee that everyone at the company knew the adult-section ads were for prostitution and that their job was to “put[] lipstick on a pig” by sanitizing them. Backpage also knows that advertisers use its site extensively for child sex trafficking, but the company has often refused to act swiftly in response to complaints about particular underage users—preferring in some cases to interpret these complaints as the tactics of a competing escort. Backpage may also have tried to manipulate the number of child-exploitation reports it forwards to the National Center for Missing and Exploited Children.

Third, despite the reported sale of Backpage to an undisclosed foreign company in 2014, the true beneficial owners of the company are James Larkin, Michael Lacey, and Carl Ferrer. Acting through a complex chain of domestic and international shell companies, Lacey and Larkin lent Ferrer over \$600 million to purchase Backpage from them. But as a result of this deal, Lacey and Larkin retain significant financial and operational control, hold almost complete debt equity in the company, and still receive large distributions of company profits. According to the consultant that structured the deal, moreover, this transaction appears to provide no tax benefits. Instead, it serves only to obscure Ferrer’s U.S.-based ownership and conceal Lacey and Larkin’s continued beneficial ownership.

⁷ App. 000397.

⁸ App. 000297.

⁹ Yiota Souras, NCMEC General Counsel, testified at the Subcommittee’s 2015 hearing that Backpage also has “more stringent rules to post an ad to sell a pet, a motorcycle, or a boat. For these ads, you are required to provide a verified phone number.” Testimony of Yiota G. Souras, Senior Vice President & General Counsel, National Center for Missing & Exploited Children, before Permanent Subcommittee on Investigations (Nov. 19, 2015).

BACKGROUND

A. Sex Trafficking on the Internet

The crime of human trafficking generates billions of dollars each year in illegal proceeds, making it more profitable than any transnational crime except drug trafficking.¹⁰ Under U.S. law, human trafficking includes, among other things, the unlawful practice of selling, soliciting, or advertising the sexual services of minors or of adults who have been coerced into participating in commercial sex.¹¹ Precise empirical data concerning this black-market trade are scarce. But in 2013, social scientists estimated that there were as many as 27 million victims of human trafficking worldwide,¹² including 4.5 million people trapped in sexual exploitation.¹³ In the United States the percentage is much higher; over eight in ten suspected incidents of human trafficking involve sex trafficking.¹⁴

Too often, the victims of sex trafficking are minors. The Department of Justice has reported that more than half of sex-trafficking victims are 17 years old or younger.¹⁵ Last year, NCMEC reported an 846% increase from 2010 to 2015 in reports of suspected child sex trafficking—an increase the organization has found to be “directly correlated to the increased use of the Internet to sell children for sex.”¹⁶ Children who run away from home are particularly vulnerable to this crime. In

¹⁰ U.S. Dep’t of Homeland Security, *Blue Campaign: What is Human Trafficking?* (Sept. 14, 2015), <http://www.dhs.gov/blue-campaign/what-human-trafficking>. Sections A and B are adapted from the Subcommittee’s November 2015 report. They are included here for the readers’ convenience.

¹¹ See 18 U.S.C. § 1591(a); 22 U.S.C. § 7102(10).

¹² U.S. Dep’t of State, *Trafficking in Persons Report 2013*, at 7 (June 2013), <http://www.state.gov/documents/organization/210737.pdf>.

¹³ Polaris Project, *Sex Trafficking*, <http://www.polarisproject.org/sex-trafficking>.

¹⁴ U.S. Dep’t of Justice, Bureau of Justice Statistics, *Characteristics of Suspected Human Trafficking Incidents, 2008-2010*, at 1 (Apr. 2011), <http://bjs.ojp.usdoj.gov/content/pub/pdf/cshti0810.pdf>.

¹⁵ U.S. Dep’t of Justice, Office of Juvenile Justice & Delinquency Prevention, *Literature Review: Commercial Sexual Exploitation of Children/Sex Trafficking*, at 3 (2014) (citing Bureau of Justice Statistics data), <http://www.ojjdp.gov/mpg/litreviews/CSECSexTrafficking.pdf>.

¹⁶ Testimony of Yiota G. Souras, Senior Vice President & General Counsel, National Center for Missing & Exploited Children, before Permanent Subcommittee on Investigations, at 2 (Nov. 19, 2015); Br. of National Center for Missing & Exploited Children, *J.S. v. Village Voice Media Holdings, LLC*, No. 4492-02-II, at 3 (Wash. Sup. Ct. Sept. 15, 2014). Congress designated NCMEC to be the “official national resource center and information clearinghouse for missing and exploited children.” 42 U.S.C. § 5773(b)(1)(B). Among its 22 statutorily authorized duties, NCMEC assists law enforcement in identifying and locating victims of sex trafficking and operates a “cyber tipline,” which collects reports of Internet-related child sexual exploitation, including suspected child sex trafficking. *Id.* §§ 5773(b)(1)(P)(3), (b)(1)(V).

2015, one in five endangered runaways reported to NCMEC was likely a child sex trafficking victim.¹⁷

Online advertising has transformed the commercial sex trade and in the process has contributed to the explosion of domestic sex trafficking.¹⁸ Sex trafficking previously took place “on the streets, at casinos and truck stops, and in other physical locations”; now it appears that “most child sex trafficking currently occurs online.”¹⁹ Sex trafficking has thrived on the Internet in part because of the high profitability and relatively low risk associated with advertising trafficking victims’ services online in multiple locations.²⁰ With the help of online advertising, traffickers can maximize profits, evade law enforcement detection, and maintain control of victims by transporting them quickly within and between states.

B. Commercial Sex Advertising and Backpage.com

Sex traffickers have made extensive use of websites that serve as marketplaces for ordinary commercial sex and escort services. These sites facilitate the sex trade by providing an easily accessible forum that matches buyers of sex with traffickers selling minors and adults.

One such site, Backpage.com, is similar in look and layout to the online marketplace Craigslist.com, and contains links to advertisements in sections such as “community,” “buy/sell/trade,” “jobs,” as well as “adult.” Advertisements in the

¹⁷ Email from Yiota G. Souras, Senior Vice President & General Counsel, National Center for Missing & Exploited Children to Permanent Subcommittee on Investigations (Jan. 5, 2017).

¹⁸ Urban Institute, *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities*, at 234 (Mar. 2014) (“The overall sex market has expanded . . . and law enforcement detection has been reduced.”), <http://www.urban.org/uploadedpdf/413047-underground-commercialsex-economy.pdf>; *id.* at 237-38 (“The results presented here corroborate [previous] findings that the use of the Internet is not necessarily displacing street-based sex work, but is likely helping to expand the underground commercial sex market by providing a new venue to solicit sex work.”).

¹⁹ Aff. of Staca Shehan, *Backpage.com, LLC v. Dart*, No. 15-cv-6340, Doc. 88-4, ¶ 17 (N.D. Ill. Oct. 6, 2015).

²⁰ Urban Institute, *supra* n.15, at 218 (reporting on multiple studies concluding Internet-facilitated commercial sex transactions are “not as easily detected by law enforcement”); U.S. Dep’t of Justice, *National Strategy for Child Exploitation Prevention and Interdiction: A Report to Congress*, at 33 (Aug. 2010) (noting the increase in profitability of trafficking children with the aid of the Internet and explaining how the movement of sex trafficking victims from city to city, with the help of online advertisements, makes building criminal cases more difficult), <http://www.justice.gov/psc/docs/natstrategyreport.pdf>; Michael Latonero, *Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds*, at 13 (Sept. 2011) (quoting former NCMEC president and CEO Ernie Allen as stating, “[o]nline classified ads make it possible to pimp these kids to prospective customers with little risk”), https://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking_FINAL.pdf.

“adult” section typically consist of a headline, a photo or photos, video, and a brief description of the services being offered. Backpage’s classified listings are localized by city or region; as of January 2017, Backpage had sites in 437 locations in the United States and 506 other locations around the world.²¹

Backpage is a market leader: In 2013, it reportedly net more than 80% of all revenue from online commercial sex advertising in the United States.²² According to the latest report from NCMEC, 73% of the suspected child trafficking reports it receives from the public involve Backpage.²³ According to the Massachusetts Attorney General, “[t]he vast majority of prosecutions for sex trafficking now involve online advertising, and most of those advertisements appear on Backpage.”²⁴

The National Association of Attorneys General has sounded similar alarms concerning Backpage’s facilitation of sex trafficking. On August 31, 2011, 45 state attorneys general sent a letter in which they described Backpage as a “hub” of “human trafficking, especially the trafficking of minors.”²⁵ Pointing to more than 50 cases over the previous three years involving individuals trafficking or attempting to traffic minors on Backpage, the attorneys general argued that Backpage’s screening efforts were “ineffective.” They requested documents from Backpage concerning the company’s public claims that it screens and removes advertisements

²¹ Backpage’s predecessor company was an alternative news weekly, *The New Times*, founded in 1970 in Phoenix by James Larkin and Michael Lacey. In 2005, New Times Media acquired *The Village Voice*, based in New York, and the new entity, still owned by Larkin and Lacey, renamed itself Village Voice Media. Richard Siklos, *The Village Voice, Pushing 50, Prepares to Be Sold to a Chain of Weeklies*, *The New York Times* (Oct. 24, 2005), available at http://www.nytimes.com/2005/10/24/business/the-village-voice-pushing-50-prepares-to-be-sold-to-a-chain-of-weeklies.html?_r=0. In response to public pressure regarding its adult advertisements and the alleged connection to sex trafficking, Village Voice Media is reported to have spun off its media holdings into Voice Media Group. In the wake of that spinoff, Village Voice Media, and its owners Larkin and Lacey, retained ownership of Backpage. Mallory Russell, *Village Voice Management Buyout Leaves Backpage.com Behind*, *Advertising Age* (Sept. 24, 2012), available at <http://adage.com/article/media/village-voice-management-buyout-leaves-backpage/237371/>.

²² Advanced Interactive Media Group, *Prostitution-ad revenue up 9.8 percent from year ago* (Mar. 22, 2013), <http://aimgroup.com/2012/03/22/prostitution-ad-revenue-up-9-8-percent-from-year-ago/>.

²³ Email from Yiota G. Souras, Senior Vice President & General Counsel, National Center for Missing & Exploited Children to Permanent Subcommittee on Investigations (Jan. 5, 2017). This 73% figure does not include reports to the cyber tipline made by Backpage itself.

²⁴ Br. of Commonwealth of Massachusetts, *Doe ex rel. Roe v. Backpage.com, LLC et al.*, No. 14cv-13870-RGS, Doc. No. 30, at 7 (D. Mass. Feb. 20, 2015) (“In Massachusetts, seventy-five percent of the cases that the Attorney General has prosecuted under our state human trafficking law, plus a number of additional investigations, involve advertising on Backpage.”).

²⁵ Letter from the Nat’l Ass’n of Attorneys General to Samuel Fifer, Esq., Counsel for Backpage.com LLC (Aug. 31, 2011), http://www.ct.gov/ag/lib/ag/press_releases/2011/083111backpageletter.pdf.

linked to sex trafficking.²⁶ Backpage provided no substantive response to that request.

C. Backpage and Section 230 of the Communications Decency Act

In 1996, Congress enacted the Communications Decency Act (CDA) in an attempt to regulate the distribution of obscene or indecent material to children.²⁷ Section 230 of the CDA provides broad immunity to Internet Service Providers (ISPs) that republish content online: The statute provides that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”²⁸ Section 230 provides protection against all liability, civil and criminal, except liability under federal criminal law and intellectual property law.²⁹ The CDA further provides certain protections for ISPs engaged in good-faith screening or blocking of offensive material; an ISP cannot be held liable for “any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.”³⁰

Most courts have broadly construed Section 230 to provide near complete criminal and civil immunity for ISPs when they publish content website users have created.³¹ The U.S. Court of Appeals for the Ninth Circuit, however, has suggested that ISPs that edit user-created content can sometimes lose their CDA immunity. In *Fair Hous. Council of San Fernando Valley v. Roommates.com*, 521 F.3d 1157 (2008), the court wrote that Section 230 “was not meant to create a lawless no-man’s-land on the internet,”³² and that

a website operator who edits user-created content . . . retains his immunity for any illegality in the user-created content, provided that the edits are unrelated to the illegality.

²⁶ *Id.*

²⁷ Title V of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56. The Supreme Court held the anti-indecency provisions of the CDA unconstitutional in *Reno v. ACLU*, 521 U.S. 844 (1997).

²⁸ 47 U.S.C. § 230(c)(1).

²⁹ See 47 U.S.C. § 230(e).

³⁰ 47 U.S.C. § 230(c)(2)(A).

³¹ *Hill v. Stubhub, Inc.*, 727 S.E.2d 550, 558 (N.C. Ct. App. 2012) (“According to our research, there have been approximately 300 reported decisions addressing immunity claims advanced under 47 U.S.C. § 230 in the lower federal and state courts. All but a handful of these decisions find that the website is entitled to immunity from liability.”); cf. Brief for Legal Momentum, et al., as Amicus Curiae, *Jane Doe No. 1 v. Backpage.com, LLC*, No. 16-276 (U.S. Oct. 27, 2016) (arguing that courts have wrongly extended Section 230 beyond congressional intent).

³² 521 F.3d at 1164.

However, a website operator who edits in a manner that contributes to the alleged illegality . . . is directly involved in the alleged illegality and thus not immune.³³

Other courts—in cases involving Backpage itself—have differed about how far ISPs may go in guiding or incentivizing users to create unlawful content. In 2015, for example, the Supreme Court of Washington allowed a suit brought by underage sex trafficking survivors against Backpage to proceed. Relying on the Ninth Circuit’s decision, it held that Backpage would lose its immunity under Section 230 if, as the plaintiffs alleged, the company “helped develop the content of [the offending] advertisements” through its posting rules, screening process, and content requirements.³⁴ The court explained that

[i]t is important to ascertain whether in fact Backpage designed its posting rules to induce sex trafficking to determine whether Backpage is subject to suit under the CDA because “a website helps to develop unlawful content, and thus falls within the exception to [CDA immunity], if it contributes materially to the alleged illegality of the conduct.”³⁵

By contrast, the U.S. Court of Appeals for the First Circuit recently rejected a similar theory in a separate lawsuit against Backpage. In *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12 (2016), the plaintiffs alleged that Backpage’s platform, categories, and filters “assist[ed] in the crafting, placement, and promotion of illegal advertisements offering plaintiffs for sale.”³⁶ Although the court concluded that the plaintiffs “ha[d] made a persuasive case” that “Backpage has tailored its website to make sex trafficking easier,”³⁷ it nevertheless upheld the dismissal of the suit under Section 230 on the ground that the site’s features did not render Backpage a content-creator.³⁸ The court noted that “[i]f the evils that the appellants have identified are deemed to outweigh the First Amendment values that drive the CDA, the remedy is through legislation, not through litigation.”³⁹

³³ *Id.* at 1169.

³⁴ *J.S. v. Village Voice Media Holdings*, 184 Wash. 2d 95 (Sept. 3, 2015).

³⁵ *Id.* at 103 (citing *Roommates.com*, 521 F.3d at 1164).

³⁶ Amended Complaint, *Doe ex rel. Roe v. Backpage.com, LLC*, No. 14-cv-13870, Doc. No. 9, ¶ 4 (D. Mass. Nov. 6, 2014).

³⁷ 817 F.3d 12 at 29.

³⁸ *Id.* at 21.

³⁹ *Id.* at 29.

Backpage and its officers have successfully invoked Section 230 in at least two other cases to avoid criminal or civil responsibility for activities on the site.⁴⁰ In neither case, however, did the court have before it evidence that Backpage had moved beyond passive publication of third-party content to editing content to conceal illegality. In a 2010 civil suit against Backpage by a child-trafficking survivor, the U.S. District Court for the Eastern District of Missouri upheld Backpage's CDA immunity, in part because the plaintiff failed to allege that the company "specifically encouraged the development of the offensive nature of [the] content" of the ads.⁴¹ In that case, Backpage explained that the appearance of any "improper advertisements" on the site was due to the "volume and the difficulty of reviewing and editing the advertisements," not "because of a nefarious desire by Backpage to aid and abet prostitution."⁴²

In December 2016, a California state court dismissed felony pimping and conspiracy charges against Backpage CEO Carl Ferrer and the company's founders, Michael Lacey and James Larkin, on CDA grounds.⁴³ In considering the key question of whether the defendants had "crossed the line of merely providing a forum for speech to become actual creators of speech, and thus not entitled to immunity under the CDA,"⁴⁴ the court concluded that Backpage's "traditional publishing decisions [were] generally immunized under the CDA."⁴⁵ Echoing the First Circuit, the court noted that "it is for Congress, not this Court, to revisit" the scope of CDA protection.⁴⁶ On December 23, 2016, California filed new charges against Ferrer, Lacey, and Larkin, including 26 counts of money laundering and 13 counts of pimping and conspiracy to commit pimping.⁴⁷

Backpage has also successfully invoked Section 230 in federal-preemption challenges to state laws in Washington, Tennessee, and New Jersey criminalizing the advertisement of minors for sex.⁴⁸ During its litigation challenges to these laws,

⁴⁰ *M.A. ex rel. P.K. v. Village Voice Media Holdings*, 809 F. Supp. 2d 1041 (E.D. Mo. 2011); Court's Final Ruling on Demurrer, *The People of California v. Ferrer, et al.*, No. 16FE019224 (Cal. Super. Ct. Dec. 9, 2016).

⁴¹ *M.A. ex rel. P.K. v. Village Voice Media Holdings*, 809 F. Supp. 2d 1041, 1052 (E.D. Mo. 2011).

⁴² Memorandum of Law in Support of Motion to Dismiss, *M.A. ex rel. P.K. v. Village Voice Media Holdings, LLC.*, No. 10-cv-01740-TCM, Doc. No. 18, n.5 (E.D. Mo. Nov. 22, 2010).

⁴³ Court's Final Ruling on Demurrer, *The People of California v. Ferrer, et al.*, No. 16FE019224, 2 (Cal. Super. Ct. Dec. 9, 2016).

⁴⁴ *Id.* at 2.

⁴⁵ *Id.* at 14.

⁴⁶ *Id.* at 15.

⁴⁷ Criminal Complaint, *The People of California v. Ferrer, et al.*, No. 16FE024013 (Cal. Super. Ct. Dec. 23, 2016).

⁴⁸ *Backpage.com LLC v. McKenna*, 881 F. Supp. 2d 1262 (W.D. Wash. 2012); *Backpage.com LLC v. Cooper*, 939 F. Supp. 2d 805 (M.D. Tenn. 2013); *Backpage.co, LLC v. Hoffman*, No. 2:13-cv-03952,

Backpage represented that it was a mere “conduit” for third-party content created by others.⁴⁹ It did not disclose its extensive editing practices. In each case, the court held that the CDA preempted the state statute.⁵⁰

D. The Subcommittee’s Investigation

The Subcommittee first contacted Backpage on April 15, 2015, to request an interview to discuss Backpage’s business practices. On June 19, 2015, after nearly two months of extensive communication with Backpage’s outside counsel regarding the specific topics the Subcommittee wished to discuss, the Subcommittee conducted an interview with Backpage general counsel Elizabeth McDougall. During that interview, McDougall would not answer several critical questions about the Subcommittee’s main areas of interest, including basic questions about Backpage’s ownership and the details of its much-touted procedures for screening advertisements for illegal content.

On July 7, 2015, the Subcommittee issued a subpoena to Backpage requesting documents related to the company’s basic corporate structure, the steps it takes to review advertisements for illegal activity, its interaction with law enforcement, and its data retention policies, among other relevant subjects.⁵¹ The subpoena was returnable August 7, 2015. On August 6, Backpage informed the Subcommittee by letter that it would not produce *any* documents in response to the subpoena.⁵²

Meanwhile, in an attempt to continue its fact-finding, the Subcommittee issued subpoenas for the depositions of two Backpage employees to discuss their job

2013 WL 4502097 (D.N.J. Aug. 20, 2013); cf. SB 6251, Wash. Leg. 2011-2012, Reg. Sess. (Wash. 2012); Tenn. Code Ann. § 39-13-314; N.J. Stat. Ann., § 2C:13-10.

⁴⁹ Memorandum of Law in Support of Motion for Temporary Restraining Order and Preliminary Injunction, *Backpage.com LLC v. Hoffman*, No. 2:13-cv-03952, Doc. No. 1-8, 21 (D.N.J. June 26, 2013) (arguing that the New Jersey statute “target[ed] content created by third parties, for which websites like Backpage.com are mere conduits”); Memorandum of Law in Support of Motion for Temporary Restraining Order and Preliminary Injunction, *Backpage.com LLC v. Cooper*, No. 3:12-cv-00654, Doc. No. 4, 12 (M.D. Tenn. June 27, 2012) (“[S]ites like Backpage.com do not create [third-party] content; millions of users across the country do.”); Motion for Temporary Restraining Order and Preliminary Injunction, *Backpage.com LLC v. McKenna*, No. 2:12-cv-00954, Doc. No. 11 (W.D. Wash. June 4, 2012) (arguing that “websites like Backpage.com are mere conduits” for third-party ads and thus immune from liability under the CDA).

⁵⁰ *McKenna*, 881 F. Supp. 2d at 1274; *Cooper*, 939 F. Supp. 2d at 823-824; *Hoffman*, 2013 WL 4502097 at *5.

⁵¹ See Letter and Subpoena from Senate Permanent Subcommittee on Investigations to Carl Ferrer (July 7, 2015).

⁵² Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Aug. 6, 2016).

duties.⁵³ The two employees—Andrew Padilla (the head of Backpage’s moderation department) and Joye Vaught (the supervisor in charge of training Backpage’s roughly 80 moderators)—retained individual counsel and, invoking their Fifth Amendment privilege, declined to testify on the ground that it might tend to incriminate them.⁵⁴ Ferrer also declined to be voluntarily interviewed by Subcommittee staff.

On October 1, 2015, the Subcommittee withdrew its original subpoena and issued a new, more targeted subpoena focused on its areas of principal interest.⁵⁵ This subpoena requested, among other items, documents concerning Backpage’s moderation efforts, including information related to editing or modifying ads before publication. The subpoena also requested documents concerning metadata, document retention, basic corporate information, and revenue derived from adult advertisements.

On the return date, Backpage produced 21 pages of publicly available documents and submitted a letter objecting to certain document requests in the subpoena (Requests One, Two, Three, Five, and Eight) on the grounds that they violated the First Amendment and were not pertinent to a proper legislative investigation.⁵⁶ In particular, Backpage objected that “First Amendment tensions” inherent in requesting information from a “publisher” counseled in favor of reading the Subcommittee’s authorizing resolution not to encompass the power to issue the subpoena.⁵⁷

On November 3, on behalf of the Subcommittee, the Chairman and Ranking Member overruled Backpage’s objections.⁵⁸ They explained that Backpage’s vague and undeveloped First Amendment arguments lacked merit. Unlike the subpoenas or other investigatory tools in the cases Backpage cited, which furthered the official suppression of ideas, the Subcommittee’s subpoena did not infringe the First

⁵³ See Letters and Subpoenas from the Senate Permanent Subcommittee on Investigations to Steven Ryan (Aug. 13, 2015).

⁵⁴ Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Sept. 3, 2015).

⁵⁵ In the letter accompanying the October 1 subpoena, PSI explained that “we continue to see no legal merit in Backpage’s explanation for its categorical refusal to comply with the Subcommittee’s subpoena” and that withdrawal of the earlier subpoena “does not reflect, in any way, our agreement with the merits of Backpage’s expansive claim of privilege; rather, it represents a good-faith effort to address Backpage’s expressed concerns.” Letter from Senate Permanent Subcommittee on Investigations to Steven R. Ross, Counsel for Backpage, at 2 (Oct. 1, 2015).

⁵⁶ See Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Nov. 13, 2015).

⁵⁷ *Id.*

⁵⁸ See Ruling from Senate Permanent Subcommittee on Investigations to Steven R. Ross, Counsel for Backpage (Nov. 3, 2015).

Amendment rights of any company or individual. Senators Portman and McCaskill further rejected Backpage's unexplained contention that the document requests in the October 1 subpoena were not pertinent to a proper investigation. The Subcommittee's ruling articulated in detail why each request related to PSI's efforts to understand online sex trafficking, the steps companies like Backpage can take to prevent it, and further action the government might take to combat it.⁵⁹ The Subcommittee ordered and directed Backpage to comply with the subpoena by November 12, 2015.

Ferrer's personal appearance under the subpoena was continued until the hearing date and time of November 19, 2015 at 10:00 a.m. At that hearing, the Subcommittee received testimony from NCMEC and the Washington State Attorney General's Office. The Subcommittee also received written testimony from the Director of the Crimes Against Children Initiative with the Office of the Ohio Attorney General and the New York County District Attorney. Ferrer defaulted on his obligation under the subpoena and failed to appear for the hearing. Through counsel, he informed the Subcommittee on November 16, 2015, that he would not appear due to foreign business travel.⁶⁰

1. Litigation in D.C. Federal Courts

Following Backpage's continuing non-compliance with the October 1, 2015 subpoena, on February 29, 2016, the Subcommittee presented a resolution to the Homeland Security and Governmental Affairs Committee authorizing and directing Senate Legal Counsel to bring a civil action under 28 U.S.C. § 1365 to enforce subpoena Requests 1, 2, and 3.⁶¹ On March 17, 2016, the Senate—by a vote of 96-0—adopted the resolution.⁶² In the 40 years since the enactment of 28 U.S.C. § 1365, the Senate has sought to enforce a subpoena only five times prior to the Subcommittee's 2016 action.⁶³

On March 29, 2016, the Subcommittee filed its Application to Enforce Subpoena Duces Tecum with the U.S. District Court for the District of Columbia,

⁵⁹ *Id.*

⁶⁰ Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Nov. 16, 2015).

⁶¹ S. Rep. No. 114-214 (2016).

⁶² 162 Cong. Rec. S1561 (daily ed. Mar. 17, 2016).

⁶³ See, e.g., *In re Application of U.S. Senate Permanent Subcomm. on Investigations (Cammisano)*, 655 F.2d 1232, 1238-39 (D.C. Cir. 1981); *Senate Permanent Subcomm. on Investigations v. Accardo*, Misc. No. 84-53 (D.D.C. Mar. 29, 1984 amended Mar. 30, 1984); *Senate Select Committee on Secret Military Assistance to Iran v. Secord*, 664 F. Supp. 562, 566 (D.D.C. 1987), *appeal dismissed as moot* Order, No. 87-5177 (D.C. Cir. Oct. 9, 1987); *Impeachment Trial Committee on Articles Against Judge Alcee L. Hastings v. Borders*, Misc. No. 89-129 (D.D.C. Aug. 17, 1989); *Senate Select Committee on Ethics v. Packwood*, 845 F. Supp. 17 (D.D.C.), *stay denied*, 510 U.S. 1319 (1994).

and Backpage responded with its Opposition on April 26, 2016.⁶⁴ On August 5, 2016, the district court granted the Subcommittee's application, roundly rejecting the same First Amendment arguments Backpage had previously asserted in correspondence with the Subcommittee.⁶⁵ Following the ruling, Backpage filed a notice of appeal and moved for a stay pending appeal in the D.C. district court, the U.S. Court of Appeals for the D.C. Circuit, and the U.S. Supreme Court, all of which denied the stay requests.⁶⁶ Backpage then moved the district court for a six-week extension of its August 15, 2016, production deadline, and on September 16, 2016, the court granted an extension to October 10, 2016.⁶⁷ Importantly, the court also rejected Backpage's untimely attempt to assert the attorney-client and work-product privileges and instead ordered the company to produce "all" responsive documents.⁶⁸

On September 20, 2016, Backpage filed a notice of appeal from the district court's September 16, 2016 order, along with a motion for stay pending appeal, and on October 10, 2016, the company also moved the district court for a second extension of its production deadline to November 18, 2016—an additional five weeks.⁶⁹ On October 17, 2016, the U.S. Court of Appeals for the D.C. Circuit granted Backpage's motion for stay pending appeal to the extent the district court's order required Backpage to produce privileged documents.⁷⁰ Regarding Backpage's

⁶⁴ Application to Enforce Subpoena Duces Tecum of Senate Permanent Subcommittee on Investigations, *Senate Permanent Subcommittee on Investigations v. Ferrer*, Misc. Action No. 16-mc-621 (D.D.C. March 29, 2016); Memorandum of Points and Authorities in Opposition to Application of Senate Permanent Subcommittee on Investigations to Enforce Subpoena Duces Tecum, *Senate Permanent Subcommittee on Investigations v. Ferrer*, Misc. Action No. 16-mc-621 (D.D.C. Apr. 26, 2016).

⁶⁵ *Senate Permanent Subcommittee on Investigations v. Ferrer*, Misc. Action No. 16-mc-621 (D.D.C. Aug. 5, 2016).

⁶⁶ Order, *Senate Permanent Subcommittee on Investigations v. Ferrer*, Misc. Action No. 16-mc-621 (D.D.C. Aug. 12, 2016); Order, *Senate Permanent Subcommittee on Investigations v. Ferrer*, No. 16-5232 (D.C. Cir. Sept. 2, 2016) (denying motion for stay and resetting date for production of documents to September 12, 2016); *Ferrer v. Senate Permanent Subcommittee on Investigations*, No. 16A236, 2016 WL 4740416 (S. Ct. Sept. 13, 2016) (mem.).

⁶⁷ Order, *Senate Permanent Subcommittee on Investigations v. Ferrer*, No. 16-5232 (D.C. Cir. Sept. 16, 2016).

⁶⁸ *Id.*

⁶⁹ Notice of Appeal, *Senate Permanent Subcommittee on Investigations v. Carl Ferrer*, Misc. No. 1:16-mc-00621-RMC (D.D.C. Sept. 20, 2016); *Motion for Extension of Time to Comply with the Court's Order Enforcing Subpoena Duces Tecum and Response to the Court's September 16, 2016 Order*, Misc. No. 1:16-mc-00621-RMC (D.D.C. Oct. 10, 2016).

⁷⁰ Order, *Senate Permanent Subcommittee on Investigations v. Carl Ferrer*, No. 16-5232 (D.C. Cir. Oct. 17, 2016).

appeals from the August 5 and September 16 orders, the court of appeals set a briefing schedule ending in mid-January.⁷¹

The court of appeals also extended Backpage's production deadline for non-privileged documents to November 10, 2016.⁷² On November 16, 2016, the U.S. District Court for the District of Columbia granted Backpage's request for an extension until November 30 to complete its full document production, contingent on a certification from the company by November 18 that it had already produced documents for Carl Ferrer, other senior executives, and senior moderators.⁷³ Backpage made this certification on November 18, 2016.⁷⁴

2. Document Productions

As the litigation was proceeding in D.C. federal courts, Backpage made a series of document productions to the Subcommittee from September 2016 through November 2016. On September 13, 2016, the Subcommittee received a production from Backpage of approximately 110,000 pages of documents. According to Backpage, this production included "nearly all responsive non-privileged corporate documents" from Ferrer, Chief Operations Officer Andrew Padilla, and moderation supervisor Joye Vaught.⁷⁵ On October 10, 2016, Backpage made a further production of approximately 195,000 pages of documents. Along with this production, Backpage attached a declaration from the law firm Perkins Coie LLP, that stated that Backpage used a prior document production made in a Washington State court case as the basis for its production of documents from 2010 to 2011, and that the company had conducted new collections and searches for documents between 2012 and 2016.⁷⁶ The declaration also stated that Backpage had collected emails from accounts belonging to Michael Lacey and James Larkin, a personal email account for Elizabeth McDougall, and certain Backpage task management systems.⁷⁷

Despite these claims, the Subcommittee continued to express concerns regarding Backpage's document collection and review—specifically, its efforts to preserve responsive documents, collect documents from non-work email accounts,

⁷¹ *Id.*

⁷² *Id.*

⁷³ Order, *Senate Permanent Subcommittee on Investigations v. Carl Ferrer*, Misc. No. 1:16-mc-00621-RMC (D.D.C. Nov. 16, 2016).

⁷⁴ Response to Order of November 16, 2016, *Senate Permanent Subcommittee on Investigations v. Ferrer*, Misc. Action No. 16-mc-621 (D.D.C. Nov. 18, 2016).

⁷⁵ Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Sept. 13, 2016).

⁷⁶ Declaration of Breana M. Roos, *Senate Permanent Subcommittee on Investigations v. Carl Ferrer*, Misc. No. 1:16-mc-00621-RMC (D.D.C. Nov. 18, 2016).

⁷⁷ *Id.*

collect documents from Backpage-related corporate entities, identify relevant custodians, and employ adequate search terms.⁷⁸ The Subcommittee also attempted to hold a custodial deposition of Elizabeth McDougall, who apparently served a central role in the discovery process, but her attorney indicated she would assert her Fifth Amendment privilege in response to any questioning.⁷⁹ In an October 18, 2016 response to the concerns the Subcommittee raised, Backpage described the search terms it had employed in the document collection in the Washington case.⁸⁰ Backpage stated in a supplemental response that it collected documents from relevant non-work accounts for Ferrer and McDougall, but could not collect from the non-work accounts of Lacey and Larkin because “these personal email accounts are not within the company’s possession, custody, or control,” as Lacey and Larkin “ceased to be Backpage.com employees or officers” before the time period covered by the Subcommittee’s subpoena.⁸¹

In response, the Subcommittee wrote to Backpage on November 4, 2016, and raised a number of additional concerns with the company’s document productions.⁸² Specifically, the Subcommittee noted that it was unclear whether Backpage had taken all necessary steps to preserve responsive documents; had not explained its efforts to collect documents from non-work email accounts or listed email accounts used by key custodians; had not provided a complete list of Backpage-related corporations being searched for documents; had not identified the complete list of custodians searched; and finally, the company had not specified the search terms it used and the sources to which they applied.⁸³

Backpage made a further production of approximately 250,000 pages of documents on November 10, 2016, and then responded with a November 14, 2016, letter that largely sidestepped the Subcommittee’s questions and referred Subcommittee staff to previous declarations.⁸⁴ Backpage provided certain additional details concerning the document collection and review process in communications with the Subcommittee on November 20, 2016, and December 11,

⁷⁸ Letter from Senate Permanent Subcommittee on Investigations to Steven R. Ross, Counsel for Backpage (Oct. 5, 2016).

⁷⁹ Letter from Stephen M. Ryan, Counsel for Elizabeth McDougall, to the Permanent Subcommittee on Investigations (Oct. 7, 2016).

⁸⁰ Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Oct. 18, 2016).

⁸¹ Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Oct. 20, 2016).

⁸² Letter from Senate Permanent Subcommittee on Investigations to Steven R. Ross, Counsel for Backpage (Nov. 4, 2016).

⁸³ *Id.*

⁸⁴ Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Nov. 14, 2016).

2016.⁸⁵ Backpage later made a final production of 160,000 pages of responsive, non-privileged documents to the Subcommittee on November 30, 2016.⁸⁶ Since August 2016, Backpage has produced a total of 552,983 documents, comprising 1,112,826 pages, to the Subcommittee in response to the October 2015 subpoena.⁸⁷

3. Other Investigative Efforts

In addition to its review of Backpage document productions, since the November 19, 2015 hearing the Subcommittee has issued subpoenas for Backpage account information to numerous banks and requested information related to Backpage valuations and tax returns from an independent financial firm retained by Backpage. The Subcommittee also reviewed documents produced during discovery in litigation involving Backpage in Washington state court, as well as filings and analyses relating to the California criminal proceeding against Ferrer, Lacey, and Larkin.

Over the course of this investigation, the Subcommittee has repeatedly sought testimony from Backpage executives and multiple current employees who developed, supervised, or implemented editing practices for adult ads. Each executive and employee indicated through counsel that he or she would refuse to answer any questions and would instead invoke the Fifth Amendment privilege against self-incrimination. The Subcommittee conducted voluntary telephonic interviews with two former Backpage moderators (“Backpage Employee A” and “Backpage Employee C”). After securing a judicial order of immunity compelling the witness to testify, the Subcommittee also conducted a deposition of one longstanding Backpage moderator (“Backpage Employee B”) who provided some additional details concerning the company’s moderation policies and practices. As a result of limited testimonial evidence, the Subcommittee’s findings are based primarily on documents obtained from Backpage and other parties during the course of the investigation.

FINDINGS

This report details three principal findings. *First*, Backpage has knowingly concealed evidence of criminality by systematically editing its adult ads. *Second*, the evidentiary record makes clear that Backpage executives knew their website

⁸⁵ Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Nov. 20, 2016); Email from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Dec. 11, 2016).

⁸⁶ Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Nov. 30, 2016).

⁸⁷ Declaration of Breana Roos, *Senate Permanent Subcommittee on Investigations v. Carl Ferrer*, Misc. No. 1:16-mc-00621-RMC (D.D.C. Nov. 30, 2016).

facilitated illegal activity, including child sex trafficking. And *third*, despite reports that Backpage was sold to a Dutch entity, it was, in fact, purchased by CEO Carl Ferrer through a series of shell companies, the ultimate parent of which is based in the United States.

I. Backpage Has Knowingly Concealed Evidence of Criminality By Systematically Editing Its “Adult” Ads

Backpage has publicly touted its process for screening adult advertisements as an industry-leading effort to protect against criminal abuse, including sex trafficking.⁸⁸ A closer review of that “moderation” process reveals, however, that Backpage has maintained a practice of altering ads before publication by deleting words, phrases, and images indicative of an illegal transaction. Backpage has avoided revealing this information. On July 28, 2011, Backpage co-founder James Larkin wrote to Carl Ferrer cautioning him against Backpage’s moderation practices “being made public. We need to stay away from the very idea of ‘editing’ the posts, as you know.”⁸⁹ As the report explains below, Backpage had good reason to conceal its editing practices: Those practices served to sanitize the content of innumerable advertisements for illegal transactions—even as Backpage represented to the public and the courts that it merely hosted content created by others.

A. Backpage Began Editing “Adult” Ads On An *Ad Hoc* Basis

Backpage’s editing of language in its “adult” ad section began as early as 2006. A 2007 email from Village Voice executive Scott Spear to then-Backpage Vice President Carl Ferrer,⁹⁰ for example, includes a document titled “BACKPAGE.COM PERSONALS CRITERIA”—clearly referring to the “personals” subsection of Backpage’s adult section.⁹¹ Spear described the document as a “criteria memo[]”

⁸⁸ Backpage has publicly touted its moderation procedures as robust and effective. The company’s general counsel, Elizabeth McDougall, has testified that “Backpage leads the industry in” its moderation methods, which the company says are an effective way to exclude illegal activity from its site. Liz McDougall, Op-Ed, *Backpage.com is an Ally in the Fight Against Human Trafficking*, SEATTLE TIMES (May 6, 2012), <http://www.seattletimes.com/opinion/backpagecom-is-an-ally-in-the-fight-against-human-trafficking/>. The company has gone so far as to describe its moderation practices as the key countermeasure against human trafficking. In her testimony, McDougall asserted the company’s view that the “key to disrupting and eventually ending human trafficking via the World Wide Web is . . . an online-service-provider community — of businesses including Backpage — that aggressively monitors for and traces potential trafficking cases, and promptly reports to and cooperates with law enforcement.” *Id.*

⁸⁹ App. 000432.

⁹⁰ App. 000061 (identifying Ferrer as a “Founder and Vice President” of Backpage). Ferrer was later named Backpage CEO as early as February 2011. *See* App. 000764.

⁹¹ App. 000001-2.

from “last year” that was used for ads in “Phx [Phoenix] and KC [Kansas City].”⁹² The criteria include instructions on how to “edit ads.” Some instructions are innocuous: “The online ad may ramble on a bit. Feel free to edit that down.” But the memo also instructed moderators to “[e]dit ads for explicit sexual language” and “[t]ake out anything questionable.”⁹³

For a time, Backpage appears to have instructed moderators to delete an *entire* ad if it clearly referred to performing sex acts in exchange for money. The 2006 personals criteria, for example, stated that ads should not be printed if they have “anything to do with \$\$. ”⁹⁴ Similarly, a “REVISED Adult Policy” implemented in March 2008 required Backpage employees to sign an agreement that provided in part that “any references to acts of prostitution or sex acts in exchange for money must result in an immediate rejection of any advertising or posting from such person or entity.”⁹⁵

To implement this policy throughout 2008 and 2009, Backpage used a combination of manual moderation and automated filtering. For manual review, Backpage maintained a list of “forbidden words” starting at least as early as 2009. For part of that year, moderators were instructed to delete an entire ad if certain forbidden terms appeared. These terms include the most unambiguous references to prostitution, such as “Full Service” or other “blatant sex act” terms.⁹⁶ In addition, company documents show that, as early as March 2008, Backpage employed an automated filter to delete ads containing a set of similar words.⁹⁷

By 2009, however, it became clear that this policy failed to block ads for illegal activity consistently. In one representative exchange, the manager of an alternative newspaper in Toronto, Joel Pollock, emailed Ferrer in February 2009 asking why Backpage advised users to post “legal” ads and to “not suggest an exchange of sexual favors for money.” Pollock explained that “[c]learly everyone on the entire backpage network breaks” those rules.⁹⁸ Ferrer did not disagree. Instead he replied that the public posting rules are “about CDA protection per our attorney.”⁹⁹

By May 2009, Ferrer was moving toward a new solution: directing Backpage employees to manually *edit* the language of adult ads to conceal the nature of the

⁹² App. 000001.

⁹³ App. 000002.

⁹⁴ *Id.*

⁹⁵ App. 000005.

⁹⁶ App. 000018-19; *see also* App. 000020.

⁹⁷ App. 000008.

⁹⁸ App. 000014.

⁹⁹ *Id.*

underlying transaction. The policy was first introduced on an *ad hoc* basis. In response to a news article regarding a potential criminal investigation of Craigslist in South Carolina, Ferrer instructed the company's Operations and Abuse Manager Andrew Padilla to scrub local Backpage ads that South Carolina authorities might review: "Sex act pics remove ... In South Carolina, we need to remove any sex for money language also."¹⁰⁰ (Sex for money is, of course, illegal prostitution in every jurisdiction in the United States, except some Nevada counties.¹⁰¹) Significantly, Ferrer did not direct employees to *reject* "sex for money" ads in South Carolina, but rather to sanitize those ads to give them a veneer of lawfulness. Padilla replied to Ferrer that he would "implement the text and pic cleanup in South Carolina only."¹⁰²

Editing practices that Backpage introduced in an *ad hoc* manner soon developed into a systematic process. By December 2009, Backpage executives prepared a training session for their team of moderators. The PowerPoint presentation prepared for the session indicates that the "Adult Moderation pre-posting review queue" would be "fully implemented by Jan. 1[, 2010]."¹⁰³ The presentation reiterated Backpage's "Terms of Use," including the rule against "[p]osting any solicitation directly or in 'coded' fashion for any illegal service exchanging sexual favors for money or other valuable consideration."¹⁰⁴ Importantly, however, the presentation explained that "Terms and code words indicating illegal activities require removal of ad *or words*."¹⁰⁵ One slide of the presentation posed several questions including: "Can you eliminate some words and not others?"¹⁰⁶ Internal company documents confirm that the answer was *yes*: Backpage executives soon began instructing all moderators to manually remove words, phrases, and images that indicated an illegal transaction was being offered—and then publish the edited ads.

Backpage began to formalize these new instructions on manual editing of content in early 2010.¹⁰⁷ A January 2010 document, for example, addresses terms-of-use violations in "personal ads" stating: "PERSONAL TOU [terms of use]

¹⁰⁰ App. 000015.

¹⁰¹ See *Coyote Pub., Inc. v. Miller*, 598 F.3d 592, 604 (9th Cir. 2010) (noting that "every state but Nevada" has outlawed the sale of sex, "including the proposing of such transactions through advertising").

¹⁰² App. 000015.

¹⁰³ App. 000042.

¹⁰⁴ App. 000043.

¹⁰⁵ App. 000045 (emphasis added).

¹⁰⁶ App. 000047.

¹⁰⁷ App. 000064; see also App. 000070.

VIOLATIONS – EDIT OUT BAD CONTENT.”¹⁰⁸ At the time, terms of use prohibited advertisements of sex for money.¹⁰⁹

In an April 2010 email note to himself with the subject line “Adult clean up tasks,” Ferrer confirmed that, as of April 2010, staff were “moderating ads on a 24/7 basis.”¹¹⁰ In a section of the note on “[c]urrent” practices, Ferrer noted that “Ads with bad images or bad text [sic – text] will have the image removed or the offending text removed.”¹¹¹ In a section titled “Additional Steps,” he noted that “text could be cleaned up more as users become more creative.”¹¹²

By July 2010, Backpage executives were praising moderation staff for their editing efforts. Ferrer circulated an agenda for a July 2010 meeting of Backpage’s Phoenix staff that applauded moderators for their work on “Adult content”: “Keep up the good work removing bad content,” the agenda read. Ferrer elaborated in an August 2010 email to an outside vendor: “We currently staff 20 moderators 24/7 who do the following: *Remove any sex act pics in escorts *Remove any illegal text in escorts to include code words for sex for money.”¹¹³

For a brief period, however, Backpage executives appear to have had second thoughts about editing the content of ads. In September 2010, in response to pressure from Village Voice executives to “get the site as clean as possible,” Backpage “empower[ed]” Phoenix-based moderators “to start deleting ads when the violations are extreme and repeated offenses.”¹¹⁴ On September 4, 2010, when Craigslist, the company’s chief competitor, shut down its entire adult section, Backpage executives recognized it was “an opportunity” and “[a]lso a time when we need to make sure our content is not illegal”¹¹⁵ due to expected public scrutiny. Backpage executives initially responded by expanding the list of forbidden terms that could trigger the complete deletion of an entire ad—whether by operation of an automated filter or by moderators.¹¹⁶

But Backpage executives soon began to recognize that the deletion of ads with illegal content was bad for business. Ferrer explained his rationale to the company’s outside technology consultant, DesertNet:

¹⁰⁸ App. 000064.

¹⁰⁹ App. 000028.

¹¹⁰ App. 000070.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ App. 000071-72.

¹¹⁴ App. 000073.

¹¹⁵ App. 000074.

¹¹⁶ App. 000795-97 (email & attached document).

We are in the process of removing ads and pissing off a lot of users who will migrate elsewhere. I would like to go back to having our moderators remove bad content in a post and then locking the post from being edited.¹¹⁷

The more “[c]onsumer friendly” approach, Ferrer concluded, was to “[r]emove bad content in the post” and allow moderators “to be subjective and not cause too much damage.”¹¹⁸ By contrast, removing the *entire* post “[h]urts [the] user financially” and does not teach the user “what they did wrong.”¹¹⁹ Backpage decided to focus on ad editing—both automatic and manual.

B. Backpage Automatically Deleted Incriminating Words From Sex Ads Prior to Publication

Before September 2010, Backpage’s automated filters performed one of two actions depending on the type of term detected: an ad could be removed (“banned”), or it could be flagged as spam.¹²⁰ Starting in late September 2010, Backpage added a third function to its filters: “Strip Term From Ad.”¹²¹ By operation of this new filter, most of the “banned” words that previously resulted in rejection of the *entire* ad would simply be “stripped”—that is, deleted—before publication.¹²²

The Strip Term From Ad filter soon became Backpage’s most important tool for sanitizing ads that contained language suggestive of illegality. As originally configured, the filter stripped out offending terms only after moderators had reviewed the ad—at least giving moderators an opportunity to review the original ad.¹²³ But within two months, Ferrer concluded that it would be more efficient to “strip out a term after the customer submits the ad and before the ad appears in the moderation queue”¹²⁴ so that the unedited version of the ad would “not appear in moderation view.”¹²⁵ By November 2010, Backpage had implemented this change, with the result that deletions applied instantly—*before* any moderator screening.¹²⁶

¹¹⁷ App. 000096.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ App. 000085.

¹²¹ App. 000098.

¹²² App. 000087 (Padilla: “I just switched over the action on a lot of terms”).

¹²³ App. 000085.

¹²⁴ App. 000087.

¹²⁵ *Id.* Backpage considered having stripped terms highlighted for moderators to view. See App. 000142. The concern, however, was that this “means our moderators are looking at something that should be gone already.” App. 000144. The solution was to “add a list of terms to the filter that should not be stripped out, but could be highlighted in moderation and admin view,” as Ferrer suggested. “The terms are possible violation of TOU but are too short to strip out like BJ or ASP,” he

The Strip Term From Ad filter concealed the illegal nature of countless ads and systematically deleted words indicative of criminality, including child sex trafficking and prostitution of minors. In a December 1, 2010 email addressed to Backpage moderators and copying Ferrer, Padilla touted the success of the Strip Term from Ad Filter, solicited ideas for additional words to be stripped, and attached the list of words then-programmed to be stripped. Padilla wrote:

Between everyone's manual moderation, both in the queue and on the site, and the Strip Term From Ads Filters, things are cleaner than ever in the Adult section.

In an effort to strengthen the filters even more and avoid the repetitive task of manually removing the same phrases everyday, can every moderator start making a list of phrases you manually remove on a regular basis? ...

Included in your lists should be popular misspellings of previously banned terms that are still slipping by.

To avoid unnecessary duplicates, I'm attaching a spreadsheet with the most current list of coded terms set to be stripped out.¹²⁷

The spreadsheet attached to Padilla's email indicates that the following words (among others) were automatically deleted from adult ads by the Strip Term From Ad filter before ads were published:

- "lolita" (and its misspelled variant, "lollita")
- "teenage"
- "rape"
- "young"¹²⁸

explained, "[o]r, the terms require context of the entire ad to see if they are bad." *Id.* Ultimately the company settled on highlighting only terms that "might lead to an ad being removed but ... are too short to strip out." App. 000148; *see* App. 000192 (listing terms to be highlights such as "top, bottom, AJB, ATF, BL, FIV," etc.).

¹²⁶ *See* App. 000087 ("We're also working on moving where the [strip term] process is located so it can happen at the moment of the edit/post and therefore be instant"); App. 000088 ("This modification is now in place").

¹²⁷ App. 000158 (emphasis added).

¹²⁸ *Id.*

Multiple Backpage documents and communications confirm the inclusion of these and other terms in the Strip Term From Ad filter.¹²⁹ Over the course of the next several months, Backpage added additional words to the Strip Term From Ad filter, including:

- “amber alert” (the name of the national child abduction emergency broadcast system)¹³⁰
- “little girl”¹³¹
- “teen”¹³²
- “fresh”¹³³
- “innocent”¹³⁴ and
- “school girl.”¹³⁵

When a user submitted an adult ad containing one of the above forbidden words, Backpage’s filter would immediately delete the discrete word and the remainder of the ad *would be published* after moderator review. Of course, the Strip Term From Ad filter changed nothing about the real age of the person being sold for sex or the real nature of the advertised transaction. But as Padilla explained, thanks to the filter, Backpage’s adult ads looked “cleaner than ever.”¹³⁶

¹²⁹ See App. 000322 (email and attached spreadsheet); See also App. 000329-53 (email and spreadsheet). In addition, records of Ferrer’s online chat with DesertNet confirm that these words were stripped out from new ads before posting *and* deleted from old ads. See App. 000198. On December 2, 2010, Ferrer instructed DesertNet to remove dozens of terms (including “lolita,” “teenage,” “rape,” and “young”) “from every old ad in the database.” In the same online chat, Padilla confirmed that the same terms “are already set as Strip From Ad filters” for new ads. App. 000148; see also App. 000117 (Padilla: “If [contract moderators are] failing ads, it makes more work for us.”). In-house moderators were instructed to edit out “offending” language before contract moderators were authorized to do so. See, e.g., App. 000070 (“Staff is moderating ads on a 24/7 basis[.] Ads with bad images or bad test [sic] will have the image removed or the offending text removed.”); App. 000080 (“These additional [banned] terms are currently filtered in their common forms and removed manually in their variations.”).

¹³⁰ App. 000280; see also App. 000337 (email and spreadsheet).

¹³¹ App. 000204; see also App. 000269.

¹³² App. 000301; see also App. 000329-53 (email and spreadsheet).

¹³³ App. 000213; see also App. 000266 (attachment).

¹³⁴ App. 000213; see also App. 000269 (attachment).

¹³⁵ App. 000213; see also App. 000272 (attachment).

¹³⁶ App. 000157.

Ferrer personally directed or approved the addition of new words to the Strip Term From Ad Filter,¹³⁷ and Backpage documents clearly show he understood their implications for child exploitation. For example, Ferrer told Padilla in a November 17, 2010 email that the word “Lolita” “is code for under aged girl [sic].”¹³⁸ A similar understanding led Ferrer to add the words “daddy” and “little girl” to the Strip Term From Ad filter. In February 2011, CNN ran a story about a 13-year-old girl named Selena who was sold for sex on Backpage.¹³⁹ The report noted that “suspect ads with taglines such as ‘Daddy’s Little Girl’ are common” on Backpage.com.¹⁴⁰ Ferrer’s remedy was to email the CNN story to Padilla and instruct him to add “daddy” and “little girl” to the “strip out” filter.¹⁴¹ Similarly, in a June 7, 2011 email, Ferrer told a Texas law enforcement official that a word found in one Backpage ad, “amber alert,” “is either a horrible marketing ploy or *some kind of bizarre new code word for an under aged person.*”¹⁴² He told the official that he would “forbid[]” that phrase—without explaining that, inside Backpage, this meant filters would simply conceal the phrase through automatic deletion.¹⁴³ Ferrer forwarded the same email chain to Padilla and noted that he had instructed a staff member to “add [amber alert] to strip out.”¹⁴⁴ A June 11, 2012 version of the filter word list indicates that “amber alert” was indeed deleted by the Strip Term From Ad filter.¹⁴⁵ In short, Backpage added such terms with full awareness of their implications for child exploitation.

Backpage also programmed the Strip Term From Ad filter to strip scores of words indicative of prostitution from ads before publication. For ads submitted to the section advertising escorts-for-hire, the filter deleted words describing every imaginable sex act.¹⁴⁶ Common terms of the trade such as “full service,”¹⁴⁷ “you

¹³⁷ See, e.g., App. 000156; App. 000213. Ferrer also personally supervised multiple “deep cleans” of previously published Backpage ads to scrub them of suspect words. At his direction, words indicative of underage prostitution and other crimes were stripped out from all ads. See App. 000754; App. 000213. On February 4, 2011, for example, Ferrer directed DesertNet to go through “all adult and personal ads and remove” words including “innocent, tight, fresh” and “schoolgirl, school girl, highschool, high school, cheerleader.” *Id.*; see also App. 000145; App. 000195.

¹³⁸ App. 000156. Ferrer initially debated whether to “ban or strip out” the word “lolita.” Padilla’s December 1, 2010 email and accompanying Strip Term From Ad spreadsheet confirms that Backpage did, in fact, strip the term from ads. See App. 000157.

¹³⁹ Amber Lyon & Steve Turnham, *Underage Sex Trade Still Flourishing Online*, CNN (Feb. 5, 2011), <http://www.cnn.com/2011/CRIME/01/20/siu.selling.girl.next.door.backpage/>.

¹⁴⁰ *Id.*

¹⁴¹ App. 000204.

¹⁴² App. 000280 (emphasis added).

¹⁴³ App. 000281.

¹⁴⁴ App. 000280.

¹⁴⁵ App. 000801 (email and attached spreadsheet).

¹⁴⁶ See, e.g., App. 000158 (email and attached spreadsheet); App. 000322 (email and attached spreadsheet).

PAY 2 PLAY,” and “no limits”¹⁴⁸ were likewise stripped from adult ads. In addition, Backpage programmed the filter to edit obvious prostitution price lists by deleting any time increments less than an hour (e.g., \$50 for 15 minutes)¹⁴⁹ and to strip references to a website called “The Erotic Review” or “TER”—a prominent online review site for prostitution.¹⁵⁰ Backpage thus designed the Strip Term From Ad filter to delete, without a trace, hundreds of words and phrases indicative of prostitution from ads before their publication.

To the extent Backpage still permitted moderators to reject entire ads due to indications of prostitution, it appears to have limited those rejections to (at most) egregious, literal sex-for-money offers. One current moderator, Backpage Employee B, stated that she personally removed rather than edited ads “[i]f anything [in the ad] was like blatantly, like, ‘I’m going to have sex for money,’” but that she could not speak for other moderators.¹⁵¹ Backpage documents indicate that the company permitted moderators to delete only a *de minimis* share of adult ads in their entirety. In January 2011, for example, Ferrer estimated that “[a]bout 5 [adult] postings are removed ‘sex for money’ aka illegal ads out of a 1000 [sic]”¹⁵²—that is, 0.5% of ads.

In fact, Backpage edited the language of the vast majority of ads in its adult section. On October 27, 2010, Sales and Marketing Director Dan Hyer wrote that “[w]ith the new changes, we are editing 70 to 80% of ads.”¹⁵³ By February 2011, Ferrer was boasting that “strip out affects almost every adult ad.”¹⁵⁴ “That’s pretty cool,” he continued, “to see how aggressive we are in using strip out.”¹⁵⁵ Backpage executives were pleased with the results of this extensive content-editing effort: “[T]he consensus is that we took a big step in the right direction,” Ferrer told Padilla and Hyer.¹⁵⁶ “The content looks great,” he continued, and the goal should be “to tame the content down even further while keeping good content and users.”¹⁵⁷

In some internal Backpage communications, company executives were candid about the purpose of their systematic editing. As Padilla explained in an October 10, 2010 email to moderators regarding editing of ads, “it’s the language in ads that

¹⁴⁷ App. 000158 (spreadsheet).

¹⁴⁸ App. 000322 (spreadsheet).

¹⁴⁹ App. 000188 (Padilla describing how the filter strips out rates for less than an hour).

¹⁵⁰ App. 000260 (Padilla: “We’ve been filtering out the terms ‘TER’ and ‘The Erotic Review.’”).

¹⁵¹ Employee B Dep. Tr. 109:21-25.

¹⁵² App. 000205.

¹⁵³ App. 000133.

¹⁵⁴ App. 000248.

¹⁵⁵ *Id.*

¹⁵⁶ App. 000156.

¹⁵⁷ *Id.*

is really killing us with the [state] Attorneys General.”¹⁵⁸ Similarly, Ferrer explained the need for a special “Clean up” in advance of a day on which he expected “AG [Attorney General] investigators will be browsing escorts.”¹⁵⁹ Moreover, Backpage designed its editing to conceal the true nature of ads, while leaving no record behind; the filter was structured in such a way that Backpage “wouldn’t run the risk of caching stripped terms,” as Padilla put it.¹⁶⁰ And Backpage did not save the original version of ads it edited.¹⁶¹

This practice raises questions about Backpage’s purported cooperation with law enforcement.¹⁶² Although Backpage often responds to grand jury subpoenas and other law enforcement requests for documents about criminal activity, including by providing copies of advertisements in the adult section, it may well have provided only the *edited* version of certain ads—without providing the original user-submitted content or disclosing that an ad may have been altered. Even if the original text of the advertisement was not retained, documents indicate that Backpage *did* keep records tracking each time a Backpage moderator viewed and/or edited an ad.¹⁶³ There is no indication, however, that Backpage has included such information in subpoena responses. And in general, the record indicates that

¹⁵⁸ App. 000799-800. To this email, Padilla attached a list of words that he stated were being banned or stripped. The list did not distinguish between banned and stripped terms. Padilla’s December 1, 2010 email was more specific. As explained above, that email included an attachment of terms being *stripped*, not banned.

¹⁵⁹ App. 000752.

¹⁶⁰ App. 000143.

¹⁶¹ See App. 000188-89 (internal correspondence indicating that Backpage did not have “any way of knowing what [an edited] ad looks like originally”); see also App. 000141 (“[W]ith an Edit we can only see what [the moderators have] left behind.”). It is important to note that Backpage’s list of filtered terms has changed over time. As noted above, Backpage converted words that were previously “banned”—that is, those that triggered rejection of an ad—to “stripped” terms starting in 2010. Later, starting in mid-2012, Backpage converted some previously stripped terms (such as “full service”) back to “banned.” See App. 000327; App. 000330. Backpage later added an “alert” feature for a small fraction of stripped terms, including “young,” “innocent,” “little girl,” and “lolita.” See App. 000261-75. This feature permitted moderators to review an ad using such terms before deleting the terms and publishing the ad. See App. 000354-57; see also App. 000289-90. Critically, however, as explained in Part I.D. below, Backpage executives ensured that even the use of a genuinely “banned” term would result in an error message instructing the user how to evade the company’s filters by rewriting the ad. See *infra* Part I.D.

¹⁶² See Liz McDougall, Op-Ed, *Backpage.com is an Ally in the Fight Against Human Trafficking*, SEATTLE TIMES (May 6, 2012), <http://www.seattletimes.com/opinion/backpagecom-is-an-ally-in-the-fight-against-human-trafficking/>.

¹⁶³ See App. 000785-91.

Backpage avoided providing law enforcement a clear view of its activities in documents it knew would be subpoenaed.¹⁶⁴

It is unclear whether and to what extent Backpage still uses the Strip Term From Ad filter. But emails indicate that the company still used the filter to some extent as of April 25, 2014.¹⁶⁵ Although Backpage appears to have discontinued most *manual* editing sometime in late 2012, *see* Part I.C., *infra*, the documents that Backpage has produced do not indicate that it similarly ended its use of the Strip Term From Ad filter.¹⁶⁶ The Backpage employees the Subcommittee interviewed stated that they did not know if or when the filter was discontinued,¹⁶⁷ and senior Backpage executives who might know have indicated through counsel that they will assert their right against self-incrimination to avoid answering Subcommittee questions.¹⁶⁸

C. Backpage Moderators Manually Deleted Incriminating Language That Company Filters Missed

Backpage's shift to automated deletion of words was accompanied by more far-reaching manual editing. The September 2010 closure of Craigslist's adult section prompted Backpage executives to briefly adopt a stricter policy against ads

¹⁶⁴ Ferrer took affirmative steps to ensure that subpoena responses did not disclose too much information about Backpage's moderation practices. He instructed that the administrative page view for ads should not contain moderation logs showing that a particular moderator "failed" or "approved" an ad because he "would rather not testify in court as to why my staff 'approved' a postings [sic]." App. 000201. Ferrer once explained that "[i]f I have a moderation log appear in the admin data box of an ad that I pull for a subpoena, it might say 'approved by BP31' and if the ad is illegal, I may find myself needlessly in the position of explaining that our admin users make mistakes." App. 000784; *see also* App. 000405 (undated and unsourced moderation guidelines stating: "when browsing please clean up the front page [of a particular city or category] –law enforcement rarely goes past page 2"); App. 000406 (Vaught asking whether subpoena response team "normally send[s] out evil empire and naked city links when [they] reply to cops? If you do, can you stop? We own those sites too.").

¹⁶⁵ App. 000384 (describing process for creating filters for links containing "porn, sex for money[,] etc.").

¹⁶⁶ *See, e.g.*, App. 000376 (email from user to Backpage about the word "daddy" being stripped from an ad title in December of 2012).

¹⁶⁷ *See* Interview with Backpage Employee C (Feb. 25, 2016); Interview with Backpage Employee A (Feb. 27, 2016); Backpage Employee B Dep. Tr. 159:10-160:15 (Oct. 18, 2016).

¹⁶⁸ *See* Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Nov. 16, 2015); Letter from Steven R. Ross, Counsel for Backpage, to Senate Permanent Subcommittee on Investigations (Dec. 30, 2016); Letter from Stephen M. Ryan to Senate Permanent Subcommittee on Investigations (Dec. 30, 2016); Letter from Stephen M. Ryan to Senate Permanent Subcommittee on Investigations (Aug. 31, 2015); Letter from Stephen M. Ryan to Senate Permanent Subcommittee on Investigations (Oct. 7, 2016); Letter from Stephen M. Ryan to Senate Permanent Subcommittee on Investigations (Apr. 28, 2016).

proposing illegal transactions. The company's "Adult Advertising and Posting Policy" instructed moderators that "any discussion about [sex for money] must result in an immediate rejection of any advertising or posting from such person or entity."¹⁶⁹ As of October 5, 2010, backpage was still instructing its contract moderators to "'Fail' an[y] ads with text that suggest sex for money."¹⁷⁰ Ads failed by contract moderators would then go to in-house moderators for additional review and potential editing.¹⁷¹ Padilla instructed in-house moderators to "still avoid Deleting ads when possible" but delete ads that "make[] a clear reference to sex for money."¹⁷² Less glaring violations should simply be edited out, moderators were told.¹⁷³

But that policy soon collided with the company's profit motives, and backpage abandoned it.¹⁷⁴ By late October 2010, the new default response to ads proposing illegal transactions was simply to edit out the evidence of illegality and approve the ad. On October 25, 2010, Padilla emailed the supervisor of backpage's contract moderators to inform her of the editing policy. The email subject line was "your crew can edit" and it read in relevant part:

[Your team] should *stop Failing ads and begin Editing...*As long as your crew is editing and not removing the ad entirely, we shouldn't upset too many users. Your crew has permission to edit out text violations and images and then approve the ad.¹⁷⁵

Notably, as with ads altered through the Strip Term From Ad filter, manual editing caused the original version of the ad to be lost.¹⁷⁶

Manual editing involved the deletion of language similar to the words and phrases that the Strip Term From Ad filter automatically deleted—including words and phrases indicative of criminality. Padilla outlined some of the types of words and images that moderators should delete in an October 26, 2010 email to a moderation supervisor, copying Ferrer and Vaught.¹⁷⁷ In the personals section,

¹⁶⁹ App. 000005.

¹⁷⁰ App. 000105.

¹⁷¹ App. 000106 (Ferrer wrote to the contract moderators: "If you [sic] staff finds something violating our rules, they will click fail. It will move to a US Staff who will determine what to do (edit, reduce user's rights, or remove ad)[.]").

¹⁷² App. 000124.

¹⁷³ *Id.*

¹⁷⁴ See Padilla Dep. Tr. 48:17-24.

¹⁷⁵ App. 000132 (emphasis added).

¹⁷⁶ See App. 000141 ("[W]ith an Edit we can only see what [the moderators have] left behind.").

¹⁷⁷ See App. 000129.

moderators were to delete “rates for service” and “mention[s] of money.”¹⁷⁸ In the “Adult jobs” section, moderators were to delete indications of “sex act[s] for money.”¹⁷⁹ This understanding is confirmed by a December 2010 list of phrases regularly deleted by moderators. On December 1, 2010, Padilla asked all in-house moderators to send him a list of words that they “manually remove on a regular basis” so that he could add those words to the Strip Term From Ad filter and help “avoid the repetitive task of manually removing the same phrases every day.”¹⁸⁰ The list of regularly removed words confirms that moderators were deleting exactly the types of words Padilla had listed on October 26, 2010, including evidence of prostitution and (to a lesser degree) sex with minors.¹⁸¹ The terms regularly deleted by moderators before approving ads included:

- “\$\$\$j,” “\$\$j,” “\$j,” “bang for your buck,” and other terms indicative of prostitution;
- “all access,” “all inclusive,” “full service”;
- “yung”;¹⁸² and
- numerous blatant sex act terms.¹⁸³

As Padilla explained to Ferrer, these words were among the terms regularly deleted by moderators in Backpage’s Phoenix and Dallas offices.¹⁸⁴ Ferrer and Padilla evidently approved of moderators’ deletion of these words; they quickly added all of the words above (and dozens more) to the Strip Term From Ad filter to ensure automatic deletion.¹⁸⁵ Ferrer also personally directed the deletion of the word “teen” from new ads in November 2011.¹⁸⁶

¹⁷⁸ *Id.*

¹⁷⁹ *See id.*

¹⁸⁰ App. 000157.

¹⁸¹ Meanwhile, Ferrer was conveying a different explanation about moderation to Village Voice executive Scott Spear—who had expressed concerns about stopping illegal ads. An October 26, 2010 email from Ferrer to Padilla indicates that Ferrer told Spear that “sex act for money ads are deleted[.]” App. 000130-31. That was not true.

¹⁸² App. 000186 (parent email) & App. 000168-76 (attached spreadsheet).

¹⁸³ *Id.*

¹⁸⁴ App. 000753.

¹⁸⁵ App. 000186 (parent email) & App. 000168-76 (attached spreadsheet). In February 2011, Backpage executives appear to have considered whether certain terms should result in deletion of an entire ad, rather than the ad being edited and posted to the site. *See* App. 000252. For example, on February 16, 2011, Ferrer sent Padilla a potential “delete whole ad terms” list and asked if Padilla agreed that certain terms should be removed from the list “because they are not prostitution terms.” *Id.* The list included terms such as “barely legal,” full service,” “GFE,” “little girl,” and “lolita.” *See*

The Strip Term From Ad filter appears to have been ineffective at deleting suspicious pricing due to the many possible variations involved. Accordingly, Backpage instructed moderators to edit price lists for adult services by deleting rates indicative of sex-for-money transactions.¹⁸⁷ On October 26, 2010, Ferrer explained that moderators “will not remove ads with rates under an hour, just the text with minimum rates.”¹⁸⁸ Ferrer repeatedly instructed the supervisor for Backpage’s contract moderators to remove rates for less than an hour, such as “15 minute and 30 minute pricing.”¹⁸⁹ In addition, Backpage instructed moderators to manually strip out references to the prostitution-review site “TER,” as described above.¹⁹⁰

Backpage’s instruction regarding its “edit lock out” feature further confirms the company’s routine deletion of sex-for-money references. The site’s default setting permitted users to edit their own live ads after publication. But Backpage executives instructed moderators to “lock” any ads that had been edited by moderators, to prevent users from re-entering the language removed during moderation.¹⁹¹ This allowed moderators to edit and release an ad to the site and then block the user from any further editing.¹⁹² In a February 16, 2011 email titled “locking ads from editing,” Padilla instructed a moderation supervisor to “reserve locking ads to instances where *there is a clear offer of sex-for-money* or graphic

id. The next day, Padilla sent the list (which included the terms Ferrer raised in his email to Padilla) to Scott Spear, noting that they “are the terms we would delete an ad for rather than edit.” App. 000256-58 (email and attachment). It does not appear that such a change was made at that time. See, e.g., App. 000293 (Padilla noting in October 2011 that “barely legal” still was a “strip out” term).

¹⁸⁶ App. 000300-01 (Ferrer: “Remove ads with teens or remove the text teen from an ads [sic].” Padilla: “I [deleted] anything older than two months and edited the rest.”). Padilla had earlier told a Backpage moderator that he was “not comfortable editing the word ‘teen.’” App. 000287. But in January 2012, Padilla signed off on the practice of editing out “tean” from an ad and allowing the ad to post. See App. 000305.

¹⁸⁷ See App. 000137.

¹⁸⁸ *Id.* Backpage moderators routinely deleted pricing, including when prices were not attached to time increments. See App. 000188 (“[I]f they’re putting rates for less than an hour and a filter catches it, they wind up with an ad that effectively has blank pricing. [A]nd then a moderator browsing the site is going to pull the numbers left behind in the menu.”).

¹⁸⁹ App. 000153; see also App. 000139.

¹⁹⁰ App. 000260 (Padilla: “Effective immediately, any variation of, or reference to, TER is banned. If you find it in an ad, remove the phrase and update the ad[.]”).

¹⁹¹ See App. 000124 (Padilla: “To make your [moderation] efforts count, you’ll want to lock any ad you have to edit.”); see also App. 000089-95.

¹⁹² See App. 000089-95; see also App. 000127 (“We want to edit some ads and immediate [sic] lock the ad from being re-edited by the user.”). Users who were blocked from editing received an error message: “We’re sorry! You can not [sic] edit the post at this time since this post had previously violated our terms of use[.]” App. 000093.

images of sex act.”¹⁹³ The plain implication of this instruction is that moderators routinely edited out “clear offer[s] of sex for money,” locked out further editing, and allowed the ad to go live.¹⁹⁴ (By definition, locked ads were approved to go live, *not* rejected.) Padilla recognized that these instructions were too candid to convey directly to rank-and-file moderators. Instead, he suggested that this “more lenient policy can’t necessarily be easily conveyed to our moderation crews but I feel the general attitude change should be communicated in some form.”¹⁹⁵

Moderators appear to have received the message loud and clear. Testimony by two former moderators and one current moderator corroborates the fact that Backpage instructed moderators to systematically remove words indicative of criminality before publishing an ad. Backpage Employee A, who worked as a Backpage moderator from 2009 through 2015,¹⁹⁶ 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.”¹⁹⁷ The goal was to delete “any words that sounded like it made the ad into a prostitution ad. No sex for money, no slang referring to sex[.]”¹⁹⁸ “[W]e were just to delete the sex for money information but keep the ads,” Backpage Employee A explained.¹⁹⁹

Testimony under oath by former Backpage moderator Adam Padilla, brother of Backpage executive Andrew Padilla, tracks Backpage Employee A’s account. In an August 2, 2016 deposition, Adam Padilla testified that he removed words that “clearly stated that that person wanted to have sex with somebody for money.”²⁰⁰ According to Padilla, the company instructs moderators during training that “those are the words you need to pull.”²⁰¹ Asked if he was told why he should remove those terms, he explained that “those terms made it clear that the person was asking for, you know, money for prostitution.”²⁰² Padilla further explained that deleting ads for illegal conduct, rather than editing out the indicia of illegality, would have cut into company profits:

¹⁹³ App. 000250 (emphasis added).

¹⁹⁴ *See id.*

¹⁹⁵ *Id.*

¹⁹⁶ Interview with Backpage Employee A (Feb. 27, 2016).

¹⁹⁷ Correspondence with Backpage Employee A (Sept. 29, 2016).

¹⁹⁸ Correspondence with Backpage Employee A (Nov. 16, 2016).

¹⁹⁹ *Id.*

²⁰⁰ Padilla Dep. Tr. 17:8-9; *see also id.* at 49:7-12 (“Q: What is the basis for your belief that your job at Backpage.com was to make sure that the ads were okay to run live rather than simply deleting ads that had images or content that suggested the ad was an advertisement for sex for money? A: Because the supervisors told us.”).

²⁰¹ Padilla Dep. Tr. 17:14-16.

²⁰² *Id.* at 17:22-23.

A: [M]y responsibility was to make the ads okay to run live on the site, because having to get rid of the ad altogether was bad for business. And so you would want to, you know, make it — take out any of the bad stuff in the ad so that it could still run....

Q: When you say that you viewed your job responsibility to be to take out the bad stuff in ads, you're referring to what we discussed earlier with regard to images that suggested that the ad was advertising money for sex or content that suggested the ad was for an advertisement for money for sex, correct?

A: That is exactly correct.²⁰³

Padilla further testified that moderators even edited live ads that were reported for “Inappropriate Content” by users. According to Padilla, if moderators saw “an ad that had inappropriate content that suggested sex for money or images that suggested sex for money,” they would remove the offending language and repost the ad.²⁰⁴

Padilla testified that it was “common knowledge” that removing sex-for-money language before posting does not change the illegal nature of the advertised transaction:

A: [I]t would be pretty much common knowledge that it's still going to run. So a person is still going to ... do what they wanted to do, regardless.

Q: And do you agree with me if you removed language from an ad that blatantly sells—or says that “I’m willing to have sex with you for money,” and then you post the remainder, you know as the person who edited the ad, that the ad is someone who is trying to sell sex for money, correct?

A: Yes.²⁰⁵

When asked whether his “job as a moderator for Backpage.com was to basically sanitize ads for prostitution, to remove terms or images that suggested the ads were advertisements for sex for money,” Adam Padilla agreed: “Yeah.”²⁰⁶

²⁰³ *Id.* at 48:3-16.

²⁰⁴ *Id.* at 84:12-85:8.

²⁰⁵ *Id.* at 72:13-23.

²⁰⁶ *Id.* at 80:2-6.

Current Backpage moderator Backpage Employee B provided testimony that substantially tracks the testimony of Adam Padilla and Backpage Employee A. In an October 18, 2016 deposition, Backpage Employee B testified that, for a limited period from 2010 through 2012, Backpage moderators were instructed to edit out indicia of illegality.²⁰⁷ Backpage Employee B further stated that she deleted “Banned terms” from ads before their publication.²⁰⁸ A long list of words referring to prostitution and youth comprised Backpage’s “banned terms” list from 2010 through 2012.²⁰⁹ Backpage Employee B further explained that, beyond the banned terms list, moderators used their judgment to delete other terms that in “context” “show[] any sort of prostitution.”²¹⁰ “[I]f there’s, you know, money signs, stuff like that, I would delete it,” she explained, and then the ad would post.²¹¹ She testified that even a phrase as literal and explicit as “sex for money” “would be deleted” by moderators before posting the ad,²¹² elaborating that “[a]s long as [the terms in an ad were] not anything underage, if it had anything of illegal activity, we could remove it.”²¹³ Backpage Employee B repeatedly stated that she entirely deleted ads that she believed were for an underage person,²¹⁴ but she also stated that she would not know if a word had been removed by the Strip Term From Ad filter before it reached her screen.²¹⁵

Later in her deposition, Backpage Employee B sought to “clarify” her testimony on several points. Specifically, she stated that while she edited out words suggestive of prostitution, her practice was to remove an entire ad “[i]f anything [in the ad] was like blatantly, like, ‘I’m going to have sex for money’” or “‘I am a prostitute, I am going to have sex with [sic] money.’”²¹⁶ She stated that this was her personal approach to moderation but she could not speak for other moderators.²¹⁷

²⁰⁷ Backpage Employee B Dep. Tr. 49:20-50:4; 59:12-60:14.

²⁰⁸ *Id.* at 47:7-48:13.

²⁰⁹ *See* App. 0000795-97 (“quickie,” “happy ending,” “full service”); App. 000125; App. 000196; App. 000138; App. 000157; App. 000177; App. 000261-62; App. 000323-26; App. 000359-67; App. 000368-70.

²¹⁰ Backpage Employee B Dep. Tr. 105:22-106:1. Backpage Employee B further testified that Backpage deleted “any sort of terms of illegal activity” from ads prior to posting. *Id.* at 60:8-15.

²¹¹ *Id.* at 105:21-106:19.

²¹² *Id.* at 76:13-21.

²¹³ *Id.* at 70:11-17. Regarding underage terms, Backpage Employee B testified that she was unfamiliar with the Strip Term From Ad filter, which as described above stripped terms such as “lolita” and “little girl” from ads *before* moderator review. Backpage Employee B testified that upon reviewing ads, she did not know what words had been stripped. *Id.* at 65:13-17.

²¹⁴ *See, e.g., id.* at 51:16-17.

²¹⁵ *Id.* at 83:9-19.

²¹⁶ *Id.* at 109:24-111:5.

²¹⁷ *See id.* at 111:17-25.

Documents and testimony conflict regarding when moderators stopped their editing of evidence of illegality. The record suggests that Backpage *has* ended the most egregious manual editing of its ads, but it is unclear when this policy change occurred. For example, Backpage Employee A told the Subcommittee that editing out words suggestive of illegality continued through approximately November 2014.²¹⁸ In contrast, Backpage Employee B testified that she “believ[ed]” manual editing of ads ended sometime in 2012, but she was “not positive.”²¹⁹ Documents suggest that most manual editing by rank-and-file moderators ended by late 2012. On April 5, 2012, for example, Padilla instructed moderators to stop editing and start failing ads that contain certain banned terms—120 of the most egregious words indicating sex for money or child exploitation.²²⁰ Manual editing appears to have been further curtailed by fall of 2012. An October 13, 2012 email from one moderator to another suggests that Backpage had ended manual editing “except in the case of a bad link or picture,”²²¹ and that is broadly consistent with the absence of discussion of manual editing in documents from 2013 through the present. Without testimony from Backpage executives, however, it is impossible to state with certainty when or if (and to what extent) manual editing ended.

D. Backpage Coached Its Users On How To Post “Clean” Ads for Illegal Transactions

While Backpage claims its filters and moderation policies actively prohibit and combat illegal content, the company guided its users on how to easily circumvent those measures and post “clean” ads. In a 2012 email, Ferrer complained to Padilla that a user was not properly informed which term in his ad prompted its rejection: “[The website] did not give the user a message. So, [the offending term] results in the user getting an error message *with no help*. I would like to verify all ban messages have errors that say, ‘Sorry this term ‘xxxxxxx’ is a banned term.’”²²²

At Ferrer’s instruction, when a user attempted to post ads with even the most egregious banned words, the user would receive an error message identifying the problematic word choice. For example, in 2012, a user advertising sex with a “teen” would get the error message: “Sorry, ‘teen’ is a banned term.”²²³ Through simply

²¹⁸ Correspondence with Backpage Employee A (Nov. 16, 2016).

²¹⁹ Backpage Employee B Dep. Tr. 136:2-13.

²²⁰ App. 000312.

²²¹ App. 000371.

²²² App. 000328 (emphasis added).

²²³ App. 000801 (Forbidden Term List attachment and accompanying email of the same date).

redrafting the ad, the user would be permitted to post a sanitized offer. Documents from as recently as 2014 confirm the continued use of these same error messages.²²⁴

Backpage employed a similarly helpful error message in its “age verification” process for adult ads. In October 2011, Ferrer directed DesertNet to create an error message when a user supplied an age under 18. He stated that, “An error could pop up on the page: ‘Oops! Sorry, the ad poster must be over 18 years of age.’”²²⁵ With a quick adjustment to the poster’s putative age, the ad would post.²²⁶

Backpage executives recognized that their filter would alert users to the use of a banned word and alter their future word choice, thereby resulting in a clean ad. In 2012, for example, Ferrer stated, “Many of these banned terms [e.g. first time, pure, innocent, school girl, etc.] are stripped out or banned so users can just modify their postings.”²²⁷

Backpage also worked directly with users whose ads were rejected or whose text was deleted. As early as 2007, users contacted Ferrer himself regarding content removal. In a November 6, 2007 email with the subject line “Your ads on backpage.com,” Ferrer explained to a user that the site’s terms of use prohibited “any illegal service exchanging sexual favors for money.”²²⁸ He wrote, “Could you please clean up the language of your ads before our abuse team removes the postings?”²²⁹ Likewise, in June 2009, Ferrer instructed a user that she should stop posting “sex act pics” to avoid having her ads removed.²³⁰

This direct contact with users—much like the automatic filtering process—was also successful in helping users post “clean” content despite the illegality of the underlying transactions. According to a December 2010 email written from “sales@backpage.com” to Ferrer, roughly “75% of the users we contact are converted to compliant.”²³¹

Finally, as Backpage changed its content guidelines, the company recognized that users would need time to adjust their word choice and therefore refrained from

²²⁴ App. 000397.

²²⁵ App. 000297.

²²⁶ Yiota Souras, NCMEC General Counsel, testified at the Subcommittee’s 2015 hearing that Backpage also has “more stringent rules to post an ad to sell a pet, a motorcycle, or a boat. For these ads, you are required to provide a verified phone number.” Testimony of Yiota G. Souras, Senior Vice President & General Counsel, National Center for Missing & Exploited Children, before Permanent Subcommittee on Investigations (Nov. 19, 2015).

²²⁷ App. 000302.

²²⁸ App. 000004.

²²⁹ *Id.*

²³⁰ App. 000017.

²³¹ App. 000187.

removing ads or blocking users for failing to immediately comply. For example, after prohibiting users from posting rates for services lasting under one hour in 2010, Backpage stated that it would only be editing the offending text and not removing ads altogether.²³² Padilla explained to the moderators, “We have to be fair to the users and give them time to adapt.”²³³ Ferrer also agreed that “[u]sers need time to react to this change” and that the offending ads should not be removed.²³⁴ Backpage recognized that its users would need time to learn how to write ads for illegal transactions that appeared “clean.”

II. Backpage Knows That It Facilitates Prostitution and Child Sex Trafficking

The editing and moderation practices described above make clear that Backpage knew of, and facilitated, illegal activity taking place on its website. But in addition, the Subcommittee’s investigation has revealed additional evidence showing that Backpage is acutely aware that its website facilitates prostitution and child sex trafficking.

A. Backpage Knows Its Site Facilitates Prostitution

Information the Subcommittee has reviewed demonstrates that senior Backpage executives are aware that the site’s adult section is used extensively to advertise prostitution. On March 1, 2011, for example, Ernie Allen, NCMEC’s then-President and CEO, met with Village Voice and Backpage representatives, including James Larkin, Scott Spear, Michael Lacey, and Carl Ferrer.²³⁵ Allen’s notes summarizing this meeting, produced to the Subcommittee, reflect that when Allen asked about adult prostitution, Michael Lacey “lit into me with a vengeance.... He said that his company agreed to eliminate underage kids on their site being sold for sex.... However, he said that adult prostitution is none of my business.”²³⁶

The Subcommittee’s investigation has also revealed that lower level Backpage employees know about the site’s role in facilitating prostitution. Backpage Employee C, a former moderator, told Subcommittee staff that all employees involved in adult moderation knew that the ads they reviewed offered sex for money.²³⁷ According to her, moderators “went through the motions of

²³² App. 000138.

²³³ *Id.*

²³⁴ App. 000137.

²³⁵ See PSI-000004 (on file with the Subcommittee).

²³⁶ PSI-000005 (on file with the Subcommittee).

²³⁷ Interview with Backpage Employee C (Feb. 25, 2016).

putting lipstick on a pig, because when it came down to it, it was what the business was about”—that is, moderating ads for prostitution.²³⁸

Another former Backpage moderator, Backpage Employee A, similarly told the Subcommittee that “everyone” knew that the Backpage adult advertisements were for prostitution, adding that “[a]nyone who says [they] w[ere]n’t, that’s bullshit.”²³⁹ Backpage Employee A also explained that Backpage wanted everyone to use the term “escort,” even though the individuals placing the ads were clearly prostitutes.²⁴⁰ According to this moderator, Backpage moderators did not voice concerns about the adult ads for fear of losing their jobs.²⁴¹

Both Backpage Employee A and Backpage Employee C also told the Subcommittee that Backpage employees sometimes used prostitution services advertised on Backpage. Backpage Employee C explained that at least one of her coworkers contacted and visited prostitutes using Backpage ads and told his colleagues about the encounters.²⁴² Similarly, Backpage Employee A told Subcommittee staff that some Backpage moderators visited massage parlors that advertised on Backpage and provided sexual favors to clients.²⁴³

Although Backpage’s role in facilitating prostitution was apparent to its employees, company management reprimanded employees who memorialized this role in writing. An October 8, 2010 email exchange between Padilla and a Backpage moderator makes that point clear.²⁴⁴ The exchange concerns a moderator who had placed a note in the account of a user who had been a “long time TOU [*i.e.*, Terms of Use] violator” after concluding that she was evading content restrictions; the note apparently suggested the user was a prostitute.²⁴⁵ In response, Padilla rebuked the moderator:

Until further notice, DO NOT LEAVE NOTES IN USER ACCOUNTS.

Backpage, and you in particular, cannot determine if any user on the site in [sic] involved with prostitution. Leaving notes on our site that *imply that we’re aware of prostitution*, or in any position to define it, *is enough to lose your job over*.

²³⁸ *Id.*

²³⁹ Interview with Backpage Employee A (Feb. 27, 2016).

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² Interview with Backpage Employee C (Feb. 25, 2016).

²⁴³ See Interview with Backpage Employee A (Feb. 27, 2016).

²⁴⁴ App. 000111.

²⁴⁵ *Id.*

There was not one mention of prostitution in the power point presentation. That was a presentation designed to create a standard for what images are allowed and not allowed on the site. If you need a definition of “prostitution,” get a dictionary. Backpage and you are in no position to re-define it.

This isn’t open for discussion. If you don’t agree with what I’m saying completely, you need to find another job.²⁴⁶

In January 2013, a moderator copied similar notes into an email to a supervisor: “Could not delete ad. An escort ad suggested that they don’t want a non GFE²⁴⁷ so I am assuming they are promote [sic] prostitution.”²⁴⁸ After an apparent telephone discussion, the moderator wrote the supervisor to “apologize,” saying that she had to remove the offending picture and “didn’t want to lose the notes.”²⁴⁹ The supervisor suggested that “this one you could of [sic] just sent it to me in gtalk.”²⁵⁰ Within an hour of that exchange, another supervisor sent an email to moderators “stress[ing]” that emails “follow the protocol” of only listing the specific “key word” or “alert term” leading to deletion.²⁵¹ The supervisor instructed that moderators “[p]lease do not go into detailed explanation [sic].”²⁵² And as recently as August 2016, moderation supervisor Vaught requested that contract moderators “not use the phrase ‘promoting sex’ they should say ‘adult ad’ instead. There is a big difference.”²⁵³

Despite these admonitions, the language of adult ads (both edited and unedited) leave little doubt that the underlying transactions involve prostitution.²⁵⁴ For example, a March 2016 internal email reminded moderation supervisors that the following terms “are allowed” but were being wrongly removed: “PSE (porn star experience)[.] Porn Star[.] Full Pleasure[.] Full Satisfaction[.] Full Hour.”²⁵⁵ In

²⁴⁶ *Id.* (italicized emphasis added).

²⁴⁷ “GFE” means “girlfriend experience.” App. 000316.

²⁴⁸ App. 000377.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ App. 000379.

²⁵² *Id.*

²⁵³ App. 000431.

²⁵⁴ Some examples of ad titles that apparently were approved for posting include: “My Mouth Says I Am The Best At Qvs Special This Week, 30 Incall Safe, Clean, Private, Discrete”; “Ftish and fanay prostate massage, sensual relaxation, and more toys available”; “1 mouth therapist highly addictive”; “80 car visit come pick me up 30 minutes of ecstasy”; and “down for whatever long as u got tha cash.” App. 000424-28. In October 2015, moderators also approved an ad in which the poster explained, “His disinterest in sex just isn’t cutting it anymore so I am working a side job, if you know what I mean.” App. 000411.

²⁵⁵ App. 000419.

March 2016, Backpage also decided to begin allowing users to use a term—“GFE,” which stands for “girlfriend experience”—it had previously identified as a code word for prostitution.²⁵⁶ Another March 2016 email clarified that the term “quickie”—which Ferrer, in a 2010 email, called a “code” for a sex act²⁵⁷—“is ok to leave [live on the site] even with a price” accompanying it.²⁵⁸

B. Backpage Knows Its Site Facilitates Child Sex Trafficking

The Subcommittee’s investigation reveals that Backpage clearly understands that a substantial amount of child sex trafficking takes place on its website. Backpage itself reports cases of suspected child exploitation to the National Center for Missing and Exploited Children; in some months Backpage has transmitted hundreds of such reports to NCMEC.²⁵⁹

Backpage is also aware of its inability to detect the full extent of child exploitation occurring on the website. In 2011, for example, NCMEC engaged in a test of what it called Backpage’s “Ineffective Image Safeguarding.”²⁶⁰ NCMEC paid Backpage \$3000 to host ads for eight underage girls, including one 13-year-old girl advertised in hundreds of cities across the United States; NCMEC later claimed that the image of the 13-year-old was posted online instantly and received over 30 calls within seven minutes of going live.²⁶¹ Although Ferrer disputed NCMEC’s claim in an internal email a week later, asserting that the ad triggered a fraud alert and was removed from the site in less than two minutes, he admitted: “NCMEC posted 8 underage pics. We have not found all of them.”²⁶²

Internal correspondence also suggests Backpage believes it is better that child sex trafficking take place on its website than elsewhere. In 2011, in response to a request from the Seattle Police Chief to require photo ID whenever a user submits a photo for an ad, Padilla expressed doubt to Ferrer and Hyer that such a system would be useful—it might create a “false sense of security.”²⁶³ But he went on to add the following:

²⁵⁶ App. 000423; App. 000136.

²⁵⁷ App. 000792.

²⁵⁸ App. 000418. The record contains many other examples. *See, e.g.*, App. 000409 (supervisor instructing moderator not to remove certain terms that the moderator considered to be “plain English” for sex acts).

²⁵⁹ *See, e.g.*, App. 000769 (Backpage reported 214 ads to NCMEC in May 2011); App. 000781 (Backpage reported 508 ads to NCMEC in January 2012).

²⁶⁰ App. 000793-94.

²⁶¹ *Id.*

²⁶² App. 000794.

²⁶³ App. 000286.

And even if an age verification was a deterrent to someone hoping to post an ad on Backpage to traffic a minor, it doesn't mean they're going to stop trying to traffic a minor. It only means they won't be doing it on our site, where Backpage, NCMEC and law enforcement are in the best position to put an actual stop to the crime.²⁶⁴

The record also contains substantial evidence that, as a matter of policy, Backpage often chose to err against reporting potential child exploitation. As the Subcommittee reported in connection with its November 2015 hearing, in June 2012 Backpage instructed its outsourced third-party moderators only to delete suspected child-sex advertisements **"IF YOU REALLY VERY SURE THE PERSON IS UNDERAGE."**²⁶⁵ In a similar email, a Backpage supervisor instructed internal moderation staff: **"Young ads do not get deleted unless they are clearly a child."**²⁶⁶

In a similar exchange dated July 11, 2013, Vaught took issue with a moderator's decision to report an ad to NCMEC due to "inappropriate content" and the moderator's belief that the person in the ad "look[ed] young."²⁶⁷ Vaught explained that she "probably wouldn't have reported this one."²⁶⁸ The moderator responded that the girl or woman in the ad "looked drugged and has bruises"—obvious indications of trafficking—which led her to send the report.²⁶⁹ Vaught replied that the person in the ad did not look under 18 years old, adding that "[t]hese are the kind of reports the cops question us about. I find them all the time, it's just usually you who sends them [(to NCMEC)]."²⁷⁰ Basing reporting on the appearance of the individual advertised, alone, may result in underreporting, however; as NCMEC has noted, "it is virtually impossible to determine how old the young women in these ads are without an in-depth criminal investigation. The pimps try to make the 15 year olds look 23. And the distinction of whether the person in the ad is 17 or 18 is pretty arbitrary."²⁷¹

Relatedly, Backpage executives also apparently hesitated to accept at face value reports from third parties that an advertised escort was a minor. For example, in April 2012, a woman complained to Backpage that individuals in a particular ad "are only 17 n [sic] 16 years of age they have been trying to recruite

²⁶⁴ *Id.*

²⁶⁵ Nov. 2015 Staff Report at 20.

²⁶⁶ App. 000319.

²⁶⁷ App. 000381.

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ PSI-000005 (on file with the Subcommittee).

[sic] my 15 yr old daughter I do not like this if it continues I will take this to the news...”²⁷² Padilla told the moderator to not “worry about expediting the [complaint]. she isn’t claiming her own daughter is in the ad.”²⁷³ And in February 2010, a detective emailed Backpage to alert the company that a 17-year-old girl who tried to get Backpage to take down an advertisement *of herself* had been rebuffed: According to the detective, the girl “tried asking for [the ads] to be removed but was told they couldnt [sic] be until enough people reported her as potentially underage.”²⁷⁴

Part of Backpage’s reluctance to act on reports of underage advertisements may have stemmed from concerns about escorts submitting false or fraudulent complaints of child exploitation to interfere with the business of their competitors. In a 2009 email exchange, for example, after receiving “numerous complaints about the client posting minors,” Ferrer wrote: “I need verification like law enforcement or multiple complaints from trusted sources. It probably was a competitor trying to punish them so one anonymous email to support means we look at the pic and make a judgement [sic] call.”²⁷⁵ Ferrer went on to instruct an employee to restore the client’s ads if the individuals in the picture “don’t look like minors” and to “set one of their ads at the top today.”²⁷⁶

Backpage documents also suggest the company failed to use its evaluation and training procedures to impress the seriousness of child exploitation upon its employees. As part of its investigation, Subcommittee staff examined several performance reviews for Backpage moderators. Three of those reviews listed as “cons” that the moderator “does not report young looking escorts,” but nevertheless provided a positive overall evaluation.²⁷⁷ Two of those moderators were declared “very good moderator[s]” and told “Great Job.”²⁷⁸ The overall review of the third moderator was more critical—but only because “[h]e could use additional training on the pricing standards and user’s links”; the final summary of his performance did not mention his failure to report young escorts.²⁷⁹ Employees also received training instructions that suggested a surprising lack of urgency in response to reports of child exploitation. An internal training guide, for example, explains that Backpage will “escalate” review of an advertisement for child exploitation when “users claim their underage *immediate* family member is being exploited” and when “users claim

²⁷² App. 000318.

²⁷³ *Id.*

²⁷⁴ App. 000069.

²⁷⁵ App. 000023-24.

²⁷⁶ *Id.*

²⁷⁷ App. 000779; App. 000307-08; App. 000310.

²⁷⁸ App. 000307; App. 000310-11.

²⁷⁹ App. 000779.

they are a minor being exploited.”²⁸⁰ The guide clarifies that it will not escalate claims that a slightly less immediate minor relative is being exploited: “Neice [sic], nephew, grandchild, cousin, etc. doesn’t count.”²⁸¹

Finally, even when Backpage identifies instances of child exploitation, an internal company email suggests Backpage may artificially limit the number of ads it sends to NCMEC each month.²⁸² In an email to Vaught, Padilla wrote, “if we don’t want to blow past 500 [reports] this month, we shouldn’t be doing more than 16 a day. [W]e can’t ignore the ones that seem like trouble but if we start counting now it might help us on the ones where we’re being liberal with moderator reports.”²⁸³

III. Backpage Was Sold to Its CEO Carl Ferrer Through Foreign Shell Companies

In December 2014, the *Dallas Business Journal* reported that Backpage had been sold to a Dutch company for an undisclosed amount.²⁸⁴ The Subcommittee’s investigation reveals, however, that the company’s true beneficial owners are James Larkin, Michael Lacey, and Carl Ferrer. Acting through a series of domestic and international shell companies, Lacey and Larkin loaned Ferrer over \$600 million for the purchase. While Ferrer is now the nominal owner of Backpage, Lacey and Larkin retain near-total debt equity in the company, continue to reap Backpage profits in the form of loan repayments, and can exert control over Backpage’s operations and financial affairs pursuant to loan agreements that financed the sale and other agreements. Meanwhile, the company’s elaborate corporate structure—under which Ferrer purchased Backpage through a series of foreign entities—appears to provide no tax benefit and serves only to obscure Ferrer’s U.S.-based ownership.

A. Corporate Origins of Backpage

In 1970, James Larkin and Michael Lacey founded the *Phoenix New Times*, an alternative newsweekly, and subsequently grew the company “into the largest group of newsweeklies in the United States.”²⁸⁵ In 1991, Larkin became CEO of New Times Media, and he retained this position after the company purchased *The*

²⁸⁰ App. 000416 (emphasis added).

²⁸¹ *Id.*

²⁸² See App. 000309.

²⁸³ *Id.*

²⁸⁴ Korri Kezar, *Backpage.com Sold to Dutch Company for Undisclosed Amount*, DALLAS BUSINESS JOURNAL (Dec. 30, 2014), <http://www.bizjournals.com/dallas/news/2014/12/30/backpage-com-sold-to-dutch-company-for-undisclosed.html>.

²⁸⁵ App. 000725.

Village Voice weekly newspaper in 2006 and renamed itself Village Voice Media Holdings.²⁸⁶ Village Voice Media Holdings' portfolio included over a dozen newswEEKlies, including *LA Weekly*, *The Village Voice*, *Denver Westward*, and *Miami New Times*.²⁸⁷

Carl Ferrer began working in the classified advertising industry in 1987 and joined Village Voice Media Holdings in 1996 as the *Dallas Observer's* director of classified advertising.²⁸⁸ In 2003, Ferrer "lobbied" Village Voice Media Holdings to diversify its print classified advertising business into an online model.²⁸⁹ The following year, Village Voice founded Backpage.com "to counter the loss of print classified advertising to Craigslist."²⁹⁰ Backpage.com was named after the classified advertisements, including those involving adult subject matter, which appeared on the "back page" of Village Voice Media print publications.²⁹¹

From its inception in 2004, Backpage.com "seeded" its content with print classified ads from Village Voice publications.²⁹² From 2004 to 2006, the site's traffic was "driven by referrals from search engines and Village Voice newspaper sites."²⁹³ According to a management presentation from 2011, the company experienced "steady growth" from 2006 to 2008, as its expansion was "driven by [a] growing city site portfolio" and the launch of "Owned and Operated city sites," referring to Backpage's various sites devoted to classified ads in a given geographical area.²⁹⁴

Beginning in 2008, Backpage experienced a period of "explosive growth" by "[o]ptimizing [its] geographic strategy" and "capitalizing on displaced Craigslist ad volume."²⁹⁵ Gross revenue increased from \$5.3 million in 2008, to \$11.7 million in 2009, and to \$29 million in 2010.²⁹⁶ Revenue continued to grow significantly in the next decade, from \$71.2 million in 2012, to \$112.7 million in 2013, to \$135 million in 2014.²⁹⁷ Due to its "highly profitable and scalable platform," Backpage's EBITDA

²⁸⁶ App. 000715.

²⁸⁷ App. 000725.

²⁸⁸ App. 000715.

²⁸⁹ App. 000659. Village Voice Media Holdings, like many other newspaper companies, entered a period of declining revenues that continues to the present.

²⁹⁰ App. 000750.

²⁹¹ App. 000725.

²⁹² App. 000715.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ App. 000727.

²⁹⁶ App. 000654.

²⁹⁷ App. 000638.

margin (a measurement of operating profitability) was an enviable 69% in 2011²⁹⁸ and a staggering 82% in 2014.²⁹⁹

Internal Backpage documents make clear that this growth was attributable to “adult” advertisements. In a 2011 internal memorandum, for example, the company stated that it “possesse[d] the most popular adult online classified site on the Internet” and that it “use[d] the Adult categories to drive traffic to other categories [of classified ads].”³⁰⁰ According to internal documents, Backpage reported that although ads in the adult section represented only 15.5% of total ad volume in 2011, the company generated 93.4% of its average weekly paid ad revenue from adult ads.³⁰¹ Backpage’s adult section dwarfed other categories on the site in the number of paid ads, with over 700,000 as of May 2011, compared to just over 3,000 for “Jobs” and 429 for “Automotive.”³⁰² Adult ads also received significantly more page views than the ads in other categories: As of May 2011, ads in the “Jobs” section had approximately 2 million page views and “Automotive” had approximately 580,000.³⁰³ By contrast, adult ads had over one *billion* page views, and no other single category had more than 16 *million* page views.³⁰⁴

As its revenue grew, Backpage changed and expanded its operations in other ways. The company’s center of operations migrated from Arizona to Dallas, reflecting a shift in control from Lacey and Larkin (who operated New Times Media and Village Voice Media Holdings from Phoenix) to Ferrer (who lived near Dallas).³⁰⁵ Backpage also established a management structure, led by Ferrer as President/CEO, that included a Chief Financial Officer, Director of Sales and Marketing, Director of Operations, and Chief Technology Officer.³⁰⁶ Meanwhile, Backpage’s employee headcount increased significantly, from 73 employees in 2011³⁰⁷ to 180 employees—120 of whom were devoted to moderation alone—in June 2015.³⁰⁸ And Backpage began operating additional commercial-advertising websites, including several—Evilempire.com, Bigcity.com, and Nakedcity.com—

²⁹⁸ App. 000654.

²⁹⁹ App. 000639.

³⁰⁰ App. 000839.

³⁰¹ App. 000664.

³⁰² App. 000719.

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ App. 000740 (internal memorandum noting that the “team is mainly in Dallas but we have some moderators working from home in Phoenix”).

³⁰⁶ *Id.*

³⁰⁷ App. 000695.

³⁰⁸ Interview of Elizabeth McDougall (June 19, 2015).

whose content consisted solely of escort ads containing photos, videos, and text.³⁰⁹ Backpage also expanded into international markets: As of January 2017, Backpage had 943 location sites on 6 continents and operated in 97 countries in 17 languages.³¹⁰

B. Corporate Ownership and Valuation Prior to Sale

By 2012, Village Voice Media Holdings had changed into Medalist Holdings LLC,³¹¹ a privately-held Delaware entity owned by Lacey, Larkin, Scott Spear, John “Jed” Brunst, and two of Larkin’s children.³¹² A February 2015 Agreement and Plan of Recapitalization for Medalist stated that Larkin served as CEO of the company, and Larkin and Lacey retained 42.76% and 45.12% of Medalist shares, respectively.³¹³ Brunst, who served as CFO, owned 5.67% of the company, and Spear owned 4.09%.³¹⁴

At the time, Medalist was Backpage.com LLC’s ultimate corporate parent—five layers removed. Medalist owned Leeward Holdings LLC, which owned Camarillo Holdings LLC, which owned Dartmoor Holdings LLC, which owned IC Holdings LLC, which owned Backpage.com LLC.³¹⁵ (According to Backpage’s tax accountant, Medalist and all its subsidiaries filed a single corporate tax return.³¹⁶) In addition, Backpage.com LLC had a service agreement with another of Medalist’s ultimate subsidiaries, Website Technologies LLC, under which Website Technologies performed most of Backpage’s outward-facing operations through “[a]n arm-length business contract.”³¹⁷ Below is an organizational chart of Backpage’s corporate structure prior to its sale:³¹⁸

³⁰⁹ See Permanent Subcommittee on Investigations, *Recommendation To Enforce Subpoena Issued to the CEO of Backpage.com, LLC*, at 26-28 (November 20, 2016) (discussion of BigCity.com, EvilEmpire.com, and NakedCity.com).

³¹⁰ App. 000733; <http://www.backpage.com/>.

³¹¹ App. 000438.

³¹² *Id.*

³¹³ App. 000469.

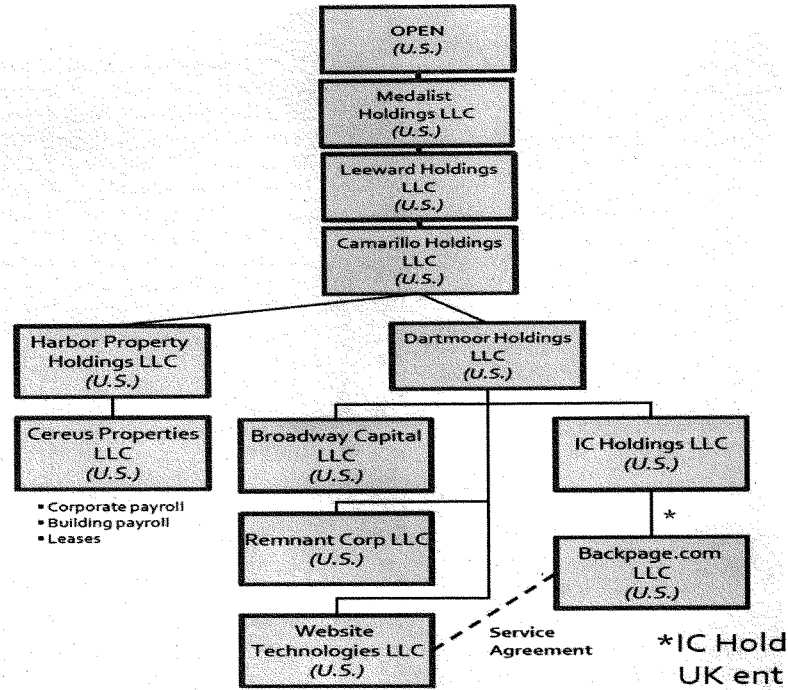
³¹⁴ *Id.*

³¹⁵ App. 000633; App. 000441.

³¹⁶ Interview with Backpage Consulting Firm (Aug. 2, 2016).

³¹⁷ App. 000441.

³¹⁸ App. 000633.



C. Lacey and Larkin Finance Ferrer's Buyout of Backpage

On December 29, 2014, Medalist entered into a Letter of Intent for the sale of Backpage for \$600 million to a Dutch corporation.³¹⁹ Backpage has long sought to obscure the identity of the purchaser. According to a contemporaneous report in the *Dallas Business Journal*, the "purchasing company's name was not disclosed, pending regulatory filings in the European Union."³²⁰ And when questioned about the sale in a June 19, 2015 interview with the Subcommittee, Backpage General

³¹⁹ App. 000455-56.

³²⁰ Korri Kezar, *Backpage.com Sold to Dutch Company for Undisclosed Amount*, DALLAS BUSINESS JOURNAL (Dec. 30, 2014), <http://www.bizjournals.com/dallas/news/2014/12/30/backpage-com-sold-to-dutch-company-for-undisclosed.html>.

Counsel Elizabeth McDougall claimed she had no information about the transaction except that Backpage had been sold to a Dutch entity.³²¹ McDougall added that she did not even know the name of the new holding company.³²²

In fact, the purchaser was McDougall's boss, CEO Carl Ferrer. The December 2014 Letter of Intent listed the buyer as UGC Tech Group C.V., a Dutch company domiciled in Curacao and headed by Ferrer, and the seller as the intermediate holding company Camarillo Holdings, a Delaware-based limited liability company.³²³ The transaction was styled as a sale of the membership interests in Dartmoor Holdings, another holding company that owned Backpage.com, as well as Website Technologies.³²⁴ The signatories on the Letter of Intent were Brunst, named as "CFO" of Camarillo Holdings, and Ferrer, acting as "Director" of UGC Tech Group C.V.³²⁵ The sale was to be financed with a five-year loan at 7% interest from the seller to the buyer for the full amount of the \$600 million purchase price.³²⁶

A consulting firm engaged by Medalist concluded, however, that the sale was not an arms-length transaction.³²⁷ Rather, Lacey and Larkin loaned Ferrer, as Backpage CEO, hundreds of millions of dollars in an entirely seller-financed employee buyout.³²⁸ Under the Letter of Intent, moreover, Lacey and Larkin retained significant financial and operational control over Backpage.³²⁹ The pair, for example, are entitled to amortized loan repayments, earn-outs on future profits, and a 30% participation in any future sale of the company in excess of the purchase price.³³⁰ And they retained a security interest over all Backpage assets, all membership and stock interests in Backpage, and all Backpage bank accounts.³³¹

³²¹ Interview of Elizabeth McDougall (June 19, 2015).

³²² *Id.*

³²³ App. 000455. As explained below, the buyer of Backpage's U.S. operations was ultimately Atlantische Bedrijven C.V., another Dutch entity domiciled in Curacao. UGC Tech Group C.V. purchased only Backpage's foreign operations.

³²⁴ App. 000455.

³²⁵ App. 000465.

³²⁶ App. 000458.

³²⁷ The consulting firm noted in a subsequent valuation of Medalist: "Given that the anticipated transaction is between the Company and its existing employee (or a related party) where the Company will be providing financing for the full amount of the purchase price, it would not be classified as an arm's length transaction for purposes of the fair market value analysis." App. 000637

³²⁸ App. 000478; App. 000457.

³²⁹ App. 000461 (For example, the Letter of Intent provided that Backpage's annual business plan and annual budget is to be approved by the lenders, Lacey and Larkin, who must also consent before any changes in organizational structure take place.).

³³⁰ App. 000478.

³³¹ *Id.*

The Letter of Intent subjects Ferrer to significant restrictions on his management of the company until the loan is repaid. He cannot sell Backpage, assign the loan to another borrower, or even change accountants or outside counsel without approval from Lacey and Larkin.³³² The sale was conditional on Ferrer providing a “five-year business plan satisfactory to Seller in its sole and absolute discretion,”³³³ and Ferrer also committed to submit to Lacey and Larkin for approval an annual budget, monthly and quarterly balance sheets, and annual audited financial statements.³³⁴ Ferrer also made covenants to give Lacey and Larkin electronic access to Backpage’s bank accounts and full access to its books and records.³³⁵ In addition, Ferrer could not without approval change the company’s organizational structure, salaries, banking relationships, or place of domicile.³³⁶ Moreover, according to a loan agreement later executed in connection with the sale, Ferrer could not “engage in any line of business other than the businesses engaged in on the date” of the sale.³³⁷

Subsequent reports appear to confirm the significant level of operational control—as well as financial interest—Lacey and Larkin retain over Backpage. The declaration supporting the September 2016 California arrest warrants for Lacey, Larkin, and Ferrer, for example, states that “[w]hile FERRER currently runs the day-to-day operations for BACKPAGE, he and other high level personnel in BACKPAGE’s structure report regularly to LARKIN and LACEY.”³³⁸ According to the declaration, moreover, Lacey and Larkin also “regularly receive ‘bonuses’ from BACKPAGE’s bank accounts. For instance, in September 2014, LACEY and LARKIN each received a \$10 million bonus.”³³⁹

D. The Transaction Results in Ferrer Owning Backpage Through U.S. Entities

The sale contemplated in the December 29, 2014 Letter of Intent was executed in a series of transactions on April 22, 2015 for a total purchase price of \$603 million.³⁴⁰ With the help of a consultant called the Corpag Group, a fiduciary

³³² App. 000461.

³³³ App. 000457.

³³⁴ App. 000461.

³³⁵ *Id.*

³³⁶ App. 000462.

³³⁷ App. 000515.

³³⁸ Declaration in Support of Arrest Warrant and Warrant, *The People of the State of California v. Carl Ferrer, Michael Lacey, and James Larkin*, Case No. 16FE019224 (Cal. Super. Ct. Sept. 26, 2016).

³³⁹ *Id.*

³⁴⁰ See App. 000550; App. 000582. The sale documents, which have been obtained by the Subcommittee from sources other than Backpage itself, included a Membership Interest Purchase

and trust company based in Curacao,³⁴¹ Ferrer actually created two entities to serve as the direct buyers of Backpage's domestic and foreign operations, respectively: Atlantische Bedrijven C.V. (which purchased Backpage's U.S. operations) and UGC Tech Group C.V. (which purchased its foreign operations).³⁴² Each was a Dutch limited partnership domiciled in Curacao³⁴³ and ultimately owned and controlled by Ferrer through five Delaware-based parent companies: Amstel River Holdings, Lupine Holdings, Kickapoo River Investments, CF Holdings GP, and CF Acquisitions.³⁴⁴

Atlantische Bedrijven bought Backpage's domestic operations for \$526 million by purchasing the assets of Dartmoor Holdings LLC (one of Backpage's layered corporate parents) from Delaware-based Vermillion Holdings LLC, which also loaned it the money for the purchase.³⁴⁵ As a consequence, Atlantische Bedrijven now owns Backpage and Website Technologies, among other entities.³⁴⁶ For the sale of Backpage's foreign operations, the parties executed a similar series of transactions, involving slightly different corporate entities on the buyer's side, for a purchase price of approximately \$77 million.³⁴⁷ For purposes of these transactions, the buyer and borrower was UGC Tech Group, whose sole general partner was CF Holdings GP, a Delaware-based limited liability company.³⁴⁸ Ferrer is UGC Tech Group's Chief Executive Officer.³⁴⁹

According to a tax partner at a consulting firm engaged on Backpage-related matters, this unusual structure—involving multiple layers of holding companies, both domestic and foreign—provided no tax benefit to Backpage.³⁵⁰ In fact, all profits within this corporate structure flow up to the U.S.-based Amstel River Holdings (which is 100% owned by Ferrer) for tax purposes; all Dutch entities are ignored.³⁵¹ Brunst confirmed in an email to the consulting firm, obtained by the Subcommittee, that Atlantische Bedrijven is subject to U.S. tax on its earnings and

Agreement, a Membership Interest Assignment Agreement (transferring the interest in the loan to yet another corporate entity controlled by Lacey and Larkin), a Loan Agreement, a Promissory Note, an Earn-Out Agreement, and an Employment and Non-compete Agreement executed by Ferrer.

³⁴¹ Email from the Corpag Group to the Permanent Subcommittee on Investigations (Apr. 12, 2016).

³⁴² See App. 000550; App. 000582.

³⁴³ App. 000455.

³⁴⁴ See Corporate Disclosure Statement, *Jane Doe No. 1 v. Backpage.com, LLC*, No. 14-13870-RGS, ECF No. 18 (D. Mass. Nov. 25, 2014); see also App. 000485.

³⁴⁵ App. 000550.

³⁴⁶ App. 000551.

³⁴⁷ App. 000582.

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ Interview with Backpage Consulting Firm (Aug. 2, 2016).

³⁵¹ *Id.*

serves merely as a “pass through” entity “owned indirectly by Carl Ferrer, a U.S. citizen.”³⁵²

³⁵² App. 000580.

**Written Statement of Sara Loe,¹
Mother of a Child Sex Trafficking Victim from Massachusetts**

Prepared for

**The United States Senate Committee on Homeland Security and Governmental Affairs
Permanent Subcommittee on Investigations**

**Hearing on Backpage.com's Knowing Facilitation of Online Sex Trafficking
January 10, 2017**

Thank you for the opportunity to submit this statement on behalf of me and my family. I am a stay-at-home mom from Boston, Massachusetts. My husband and I have three children, two boys and a girl. Our only daughter has always been artistic, lively, and funny. Growing up, she had many friends and enjoyed spending time with them. Three years ago, we were like any other family in America; she was like any young girl. Then, when my daughter was just fifteen-years-old, she was raped as a result of being trafficked on Backpage.com.

We later learned that what happened to our daughter on Backpage.com is not an isolated incident. She is just one of many children who have been sold for sex on Backpage.com. Parents like me and leading organizations, such as the National Center for Missing and Exploited Children, have repeatedly told Backpage that they are participants in child sex trafficking, initially giving them the benefit of the doubt. Yet, they have refused to change their business model and continue to reap huge financial benefit from the suffering of our children.

In an effort to hold them accountable for their actions, my daughter, husband, and I brought a civil case against the company and its executives in the U.S. District Court for the District of Massachusetts for, among other things, sex trafficking in violation of the Trafficking Victims Protection Reauthorization Act. We were joined by two other brave young women who were also sold on the website while teenagers. We brought this lawsuit, and chose to relive this horror, in order to bring Backpage to justice and prevent other children in the U.S. from being trafficked for sex. Unfortunately, the courts have so far allowed Backpage to hide behind Section 230 of the Communications Decency Act, a law that was initially intended to protect our children on the internet. We have been heartened to see the Senate take an interest in ending domestic child sex trafficking and attempt to learn more about Backpage's role in this abomination. However, we were not surprised that Backpage has refused to cooperate with the Senate. Out of respect for my daughter who still struggles every day with the weight of what happened to her, I will not reveal her or my identity in this submission, and we will not be present at today's hearing; but with her full support, and to show how Backpage has destroyed the lives of children and their families, I share our story.

In late December 2013, I dropped off our fifteen-year-old daughter at her friend's house. My husband and I thought she and her friend would be heading to the mall for some holiday

¹ Sara Loe is the pseudonym that I have used in the case *Jane Doe No. 1 et al. v. Backpage.com et al.*

shopping. I told her to give me a call when she was ready for us to pick her up. When we didn't receive a call from her, my husband and I grew concerned. It was very unlike her not to stay in touch. I called her cell phone repeatedly that day, but received no answer. We called the police and FBI to report our daughter missing. My husband and I frantically searched for our child, petrified that we would never see her again. I pulled the records of calls made to and from her cell phone and began calling the numbers of those who had called my child. At one telephone number, a man picked up and informed me that my daughter was for sale on Backpage.com.

My husband and I had never heard of Backpage.com, but we immediately logged onto the website. Under the heading of "Massachusetts," we clicked on "Boston" and saw a variety of categories, one of which was titled "Adult." We clicked on the "Escorts" link under the "Adult" category and entered a disturbing world previously unknown to us. Our hearts stopped as we realized what was going on in this virtual public space. There were hundreds of links with titles full of thinly-veiled references to sex. We clicked each one and found that they contained advertisements with details about appearance, services, prices, and locations. The ads also contained explicit photographs. It was immediately clear to us what was occurring on Backpage.com: the website sold sex. We continued to click on the links, searching for our daughter, until we finally found the photographs of her. She was advertised as "new," "sweet," and "playful," and her pictures featured her in her underwear. I cannot describe the horror we felt at that moment upon discovering that our young daughter was being sold for sex.

I emailed Backpage.com to alert them that a minor was being sold for sex on their website and demanded that they take the advertisement down. Backpage.com did not provide any help to us in locating or rescuing our daughter. In fact, Backpage.com refused to take down the ad, even though I had informed them that the ad depicted an underage girl.

The ensuing hours were pure anguish for me and my husband. Before then, we had always known where our children were and we were able to protect them. We could see our daughter in this virtual brothel, in various states of undress and being advertised for sex, but unlike if she were in a physical "red light" district, we couldn't grab hold of her to bring her home. And those who ran the online brothel were unwilling to help us recover her, even though they knew she was a minor.

When our daughter finally returned home, she immediately locked herself in her room. We tried to talk with her, tried to figure out what happened, if she had been hurt. She would not talk to us. My husband and I were relieved to have her back under our care, but something had clearly changed. We feared for what had happened to her, and, eventually, our worst fears were confirmed. Shortly after her return, we began the journey of seeking the necessary medical attention.

My husband and I later found out more heartbreaking details about what happened to our beloved daughter. While at her friend's home, a man and woman (whom she had met through another friend) had picked her up and took her to an apartment in the city. There, the pair posted advertisements of my daughter on Backpage.com, which included the lewd photos of her and her cell phone number. Almost immediately after the advertisements were posted, men started calling and texting her number, asking to buy her for sex. The man and woman then drove our

daughter to a hotel in a nearby town. In that hotel room, while the traffickers waited outside for their money, our daughter was raped.

After being raped, our daughter became reclusive and angry. She felt ashamed and didn't want to talk to me – or anyone – about what happened. A week after she came home, a detective checked Backpage.com and the advertisements of our daughter were still posted on the site. I am not sure if, or when, those advertisements ever came down.

This painful experience took a huge toll on our family. Her father and two brothers struggled to understand what was wrong and how to make it better. I suffered severe anxiety as a result of knowing that my daughter had been so terribly violated and that she may never be herself again. One way I have dealt with this pain is to try to hold accountable those responsible for my child's rape and to prevent other children from being trafficked and violated in the way that she was. That is why I am submitting these remarks about Backpage and why we continue to push forward in our case against Backpage despite the obstacles.

Three years after her rape, our daughter has made great strides. She is able to talk to me and to medical and legal professionals about that night without shutting down or hiding her face in shame. I am proud that she was the one who made the decision to bring the case against Backpage, not just for herself, but for all other girls who have been, or will be, abused because of that company and its executives. She still isn't ready to share her face and name with the world, and she may never be, but to now be able to speak about what happened with those she trusts is a huge step forward.

What Backpage has done changed the lives of my family forever. What happened to my daughter and my family because of Backpage should never have happened, and I sincerely hope that, in speaking out against the company and its actions, we are helping other young girls and their families avoid the tragedy we have been through these past few years. We appreciate what the Senate is doing and hope you will take the steps necessary to stop Backpage from victimizing any more children.



ROPES & GRAY LLP
PRUDENTIAL TOWER
800 BOYLSTON STREET
BOSTON, MA 02199-3600
WWW.ROPESGRAY.COM

January 9, 2017

John T. Montgomery
T +1 617 951 7565
john.montgomery@ropesgray.com

The Honorable Rob Portman, Chairman
The Honorable Claire McCaskill, Ranking Member
Permanent Subcommittee on Investigations
Committee on Homeland Security & Governmental Affairs
United States Senate
Russell Senate Office Building, SR-199
Washington, DC 20510

Re: Backpage.com

Dear Chairman Portman and Ranking Member McCaskill:

My firm represents the plaintiffs in *Jane Doe No. 1 et al. v. Backpage.com et al.*, a case brought by three child victims of sex trafficking against Backpage.com under the Trafficking Victims Protection Reauthorization Act (TVPRA). I am writing to bring to the Subcommittee's attention an important development. This morning, the Supreme Court denied our petition for certiorari seeking review of the decision of the First Circuit Court of Appeals affirming dismissal of the case.¹ As the Subcommittee already is aware, the First Circuit determined in March 2016 that the defendants were immune from liability under Section 230 of the Communications Decency Act (CDA) – even for claims under the TVPRA against Backpage.com for intentional criminal participation in sex trafficking. Today's decision finalizing the dismissal of our claims has broadly negative consequences for the fight against child sex trafficking and internet crime generally. The CDA was enacted in 1996 to achieve an important policy objective – to support the development of the internet by protecting website operators from liability for objectionable content published by third parties. Subsequently, Congress enacted the TVPRA, which criminalized child sex trafficking by both “perpetrators” and “participants,” with an enforcement scheme that includes a private right of action for victims.² The First Circuit's decision, however, interprets Section 230 of the CDA to express the intention of Congress to grant virtually unlimited protection from civil liability for

¹ The First Circuit decision is reported at 817 F.3d 12, and the Supreme Court docket number is 16-276.

² Congress has frequently included such private rights of action to enhance criminal statutory enforcement schemes. For example, the Anti-Terrorism Act contains a civil liability provision, 18 U.S.C. § 2333(a), that allows victims of “act[s] of international terrorism” to recover damages for their injuries. *See also* 18 U.S.C. § 1964(c) (authorizing private plaintiffs to sue for violations of the Racketeer Influenced and Corrupt Organizations Act); 18 U.S.C. § 2252A (authorizing private plaintiffs to sue for violations of the Child Pornography Prevention Act of 1996); 18 U.S.C. § 1030(g) (authorizing private plaintiffs to sue for violations of the Defend Trade Secrets Act of 2016).

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January 9, 2017

intentional criminal conduct by website operators themselves, including for claims made under other federal statutes, such as the TVPRA. This shocking determination regarding the intent of Congress is not supported by the language of Section 230 or by its legislative history, and it is inconceivable that Congress would adopt such an interpretation today.

We understand that the Subcommittee intends to make recommendations to Congress regarding legislative changes designed to harmonize the CDA with various statutes addressing sex trafficking of children and others. On behalf of our clients, we respectfully request that Congress promptly clarify that Section 230 does not provide immunity from claims asserted under criminal statutes, including the TVPRA, providing private rights of action to victims of sex trafficking.

Respectfully submitted,

/s/

John T. Montgomery

STATEMENT ON WITNESSES' ASSERTION OF PRIVILEGES

January 10, 2017

Robert Corn-RevereCounsel to Backpage.com LLC, Carl Ferrer, Michael Lacey, James Larkin,
Andrew Padilla, and Elizabeth McDougall

My name is Robert Corn-Revere, and I serve as counsel to the witnesses appearing today before the Subcommittee, as well as Backpage.com. As the Subcommittee is aware, and as further described in the attached letter that was sent to the Subcommittee last evening, the witnesses are declining to testify today pursuant to their rights under the First and Fifth Amendments to the U.S. Constitution.

Over the course of the past approximately 20 months, Backpage.com and certain of the witnesses appearing today have consistently asserted their First Amendment rights with respect to the Subcommittee's demands for information regarding Backpage's core editorial function: the determination of what third party content the website would publish, and what content it would not. These issues have been discussed extensively with Subcommittee staff, and while the Subcommittee has made its position on this matter known, the validity of these assertions of constitutional rights is currently pending before the U.S. Court of Appeals for the D.C. Circuit.

Although the Subcommittee has taken the position that the First Amendment does not apply to decisions by Backpage.com about how to publish or edit third-party content, courts across the country have held such choices by Backpage.com, Google, and other online intermediaries are essential to maintaining an open Internet and are fully protected by the First Amendment. The Constitution protects decisions about whether to accept or reject a submission, how and where to display it, and how it should be edited, and it also protects against the forced disclosure of editorial policies. The Subcommittee has ruled that the witness' assertion of their First Amendment rights does not constitute an adequate basis to excuse their appearance and testimony at today's hearing, but it is inappropriate for the Subcommittee to compel these witnesses to testify today regarding a subject matter currently before a court of law.

In addition, Backpage.com and these witnesses have objected to the Subcommittee's inquiry on the ground that it lacks a valid legislative purpose—a fundamental prerequisite for invoking the Senate's authority to compel testimony. As the Supreme Court has ruled, congressional oversight must be conducted pursuant to a valid legislative purpose—not the mere semblance of a purpose—for an inquiry to be justified in the face of the Bill of Rights. The actions of the Subcommittee reveal that whatever purpose may have been contemplated at the outset of this inquiry has become nothing more than an effort to “get” Backpage and to impugn the company and those associated with it. Moreover, the Subcommittee's inquiry has not been carefully defined or narrowly framed with due regard for the constitutional interests involved. The Supreme Court has held that such specificity is necessary to prevent inquiries from becoming inquisitions.

The Subcommittee has previously been informed by counsel for the witnesses that they will further decline to testify based on their rights under the Fifth Amendment of the Constitution. The Subcommittee's insistence that they do so in public is unnecessary and unbecoming of this Subcommittee and can serve no valid legislative purpose.

Lastly, because this Subcommittee has taken the extraordinary position that a witness risks waiving common law privileges not asserted contemporaneously with constitutional rights, even when inappropriate or impractical to do so, the witnesses specifically reserve any and all rights that arise from the Constitution, the common law, the Rules of the Senate, the Committee and the Subcommittee, and the laws of the United States.

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United States Senate

COMMITTEE ON
 HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
 WASHINGTON, DC 20510-6250

October 20, 2015

VIA U.S. MAIL AND EMAIL (sross@akingump.com)

Carl Ferrer, CEO
 Backpage.com, LLC
 2501 Oak Lawn Ave.
 Dallas, TX 75219

c/o Steve Ross, Esq.
 Akin Gump Strauss Hauer & Feld, LLC
 1333 New Hampshire Ave., NW
 Washington, DC 20036

Dear Mr. Ferrer:

As part of its investigation of matters related to human trafficking, the U.S. Senate Permanent Subcommittee on Investigations issued to you a subpoena on October 1, 2015, requiring the production of documents. As you know, the subpoena commands your personal appearance, which is waived if the documents named in the attached schedule are produced on or before the return date of October 23, 2015.

We understand from your attorneys that you will file and explain any objections to the documentary subpoena by the return date of October 23. Your personal appearance is therefore continued to a date to be determined later to permit the Subcommittee to consider any objection you wish to submit. The requested documents along with any objections remain due on the return date at 10:00AM.

Please contact Mark Angehr (Senator Portman) or Brandon Reavis (Senator McCaskill) at (202) 224-3721 if you have any questions about this matter. Thank you for your assistance.

Sincerely,



Rob Portman
 Chairman
 Permanent Subcommittee on Investigations



Claire McCaskill
 Ranking Member
 Permanent Subcommittee on Investigations

RON JOHNSON, WISCONSIN, CHAIRMAN
 JOHN McCAIN, ARIZONA
 ROB PORTMAN, OHIO
 RAND PAUL, KENTUCKY
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United States Senate

COMMITTEE ON
 HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
 WASHINGTON, DC 20510-6250

November 3, 2015

VIA U.S. MAIL AND EMAIL (sross@akingump.com)

Carl Ferrer, CEO
 Backpage.com, LLC
 2501 Oak Lawn Avenue
 Dallas, TX 75219

c/o Steve Ross, Esq.
 Akin Gump Strauss Hauer & Feld, LLC
 1333 New Hampshire Avenue, NW
 Washington, DC 20036

Re: Ruling on Objections to Subcommittee Subpoena

Dear Mr. Ferrer:

On October 1, 2015, the Permanent Subcommittee on Investigations issued a subpoena to you, as Chief Executive Officer of Backpage.com, LLC ("Backpage"), requiring Backpage to produce eight categories of documents to the Subcommittee. In response, Backpage produced twenty-one pages of publicly available documents and raised a number of objections to the subpoena. On behalf of the Subcommittee, we have reviewed those objections carefully and now overrule them. Backpage is ordered and directed to produce all responsive documents by November 12, 2015, at 10:00 a.m.

BACKGROUND

Pursuant to its authority under Senate Resolution 73, § 12(e), 114th Congress, the Subcommittee is currently investigating the problem of human trafficking.

1. Under federal law, human trafficking includes, *inter alia*, the unlawful practice of selling the sexual services of minors, or of adults who have been coerced into participating in the commercial sex trade.¹ Over eight in ten suspected incidents of human trafficking in the United States involve sex trafficking,² and reports have shown

¹ 18 U.S.C. § 1591.

² U.S. Dep't of Justice, Bureau of Justice Statistics, *Characteristics of Suspected Human Trafficking Incidents, 2008-2010*, at 1 (Apr. 2011), <http://bjs.ojp.usdoj.gov/content/pub/pdf/cshiti0810.pdf>.

that more than half of sex-trafficking victims are 17 years old or younger.³ In recent years, sex trafficking has migrated to the Internet,⁴ where it has flourished in part because of the high profitability and relatively low risk associated with advertising trafficking victims' services online.⁵

Sex traffickers have made extensive use of websites that serve as marketplaces for ordinary commercial sex and escort services. Backpage.com is a market leader in that area: It reportedly nets more than 80% percent of all revenue from online commercial sex advertising in the United States, from nearly 400 cities throughout the country.⁶ Unsurprisingly, then, Backpage has also been linked to an alarming number of sex trafficking cases. According to Shared Hope International, "[s]ervice providers working with child sex trafficking victims have reported that between 80% and 100% of their clients have been bought and sold on Backpage.com."⁷

To better understand this phenomenon, the Subcommittee is reviewing what measures commercial sex advertising sites, including Backpage, have taken to prevent the use of their websites for sex trafficking and whether those measures are effective. Careful fact-finding in this area is vital as Congress considers what action, if any, should be taken to protect exploited women and children from those making illicit use of the facilities of interstate commerce. To that end, the Subcommittee issued a subpoena to Backpage for the production of documents related to the Subcommittee's investigation. Backpage has failed to comply with that subpoena.

2. The Subcommittee initiated an inquiry into Internet sex trafficking in April 2015. As part of that investigation, the Subcommittee has conducted interviews and briefings with many relevant parties, including victims' rights groups, nonprofit organizations, technology companies, financial institutions, academic researchers, federal, state, and local law enforcement officials, and several other advertising websites similar to Backpage.

The Subcommittee first contacted Backpage on April 15, 2015, to request an interview to discuss Backpage's business practices. On June 19, 2015, after extensive communication with Backpage's outside counsel regarding the specific topics that the

³ U.S. Dep't of Justice, Office of Juvenile Justice & Delinquency Prevention, *Literature Review: Commercial Sexual Exploitation of Children / Sex Trafficking*, at 3 (2014), <http://www.ojjdp.gov/mpg/litreviews/CSECSexTrafficking.pdf>.

⁴ See M. Dank, et al., Urban Institute Research Report, *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities*, at 234 (Mar. 2014), <http://www.urban.org/research/publication/estimating-size-and-structure-underground-commercial-sex-economy-eight-major-us-cities> ("[T]he Internet has transformed the street-based sex market.").

⁵ U.S. Dep't of Justice, *National Strategy for Child Exploitation Prevention and Interdiction: A Report to Congress*, at 31 (Aug. 2010), <http://www.justice.gov/psc/docs/natstrategyreport.pdf>.

⁶ Advanced Interactive Media Group, *Online Prostitution-ad Revenue Crosses Craigslist Benchmark* (July 2013), <http://aimgroup.com/2013/07/10/online-prostitution-ad-revenue-crosses-craigslist-benchmark/>.

⁷ Shared Hope International, *White Paper: Online Facilitation of Domestic Minor Sex Trafficking*, at 1 (Aug. 2014), <http://sharedhope.org/wp-content/uploads/2014/09/Online-Faciliator-White-Paper-August-2014.pdf>.

Subcommittee wished to discuss, the Subcommittee interviewed Backpage's General Counsel, Elizabeth McDougall. During the interview, Ms. McDougall could not answer several critical questions about Backpage's ownership, statistics on reporting to law enforcement and to the National Center for Missing and Exploited Children ("NCMEC"), and the "moderation" procedures Backpage uses to review and screen advertisements. After the interview, on June 22, 2015, the Subcommittee sent Backpage follow-up questions and requests for information. Despite initially indicating that it would do so, Backpage failed to provide answers or documents.

3. The Subcommittee first issued a subpoena to Backpage on July 7, 2015, with a return date of August 7, 2015. The subpoena requested materials related to Backpage's basic corporate structure, the steps it takes to review advertisements for illegal activity, interaction with law enforcement, and data retention policies, among other relevant subjects. The subpoena sought no information about the identity of Backpage users and specifically provided for redaction of all personally identifying user information.⁸

On August 6, Backpage submitted a letter to the Subcommittee explaining that it would not produce any documents in response to the subpoena. Backpage contended that the subpoena was overbroad and violated the First Amendment. Backpage asked the Subcommittee to defer the subpoena so that Backpage could present "a more fulsome discussion of the constitutional infirmities and concerns regarding the Subcommittee's subpoena," and so that Backpage could seek leave of an unnamed federal court to produce a sealed judicial opinion that Backpage contended would be persuasive authority.⁹

In response, the Subcommittee sent a letter to Backpage explaining that the cases relied upon in Backpage's August 6 letter were inapposite: They concerned either state laws imposing content-based restrictions on advertisements¹⁰ or investigational demands seeking personally identifying information about individual speakers' political beliefs (*e.g.*, their membership in the NAACP or sympathy with the Communist Party).¹¹ The Subcommittee's subpoena, by contrast, was scrupulously drawn to avoid such concerns.

The Subcommittee invited Backpage to better explain its constitutional objections.¹² On September 14, 2015, counsel for the Subcommittee and counsel for

⁸ See Letter and Subpoena from PSI to Backpage (July 7, 2015).

⁹ See Letter from Backpage to PSI at 5 (Aug. 6, 2015). Subcommittee staff responded immediately to encourage Backpage to seek leave to produce the opinion.

¹⁰ *E.g.*, *Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262 (W.D. Wash. 2012).

¹¹ See generally *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963); *NAACP v. Alabama*, 357 U.S. 449 (1958); *Watkins v. United States*, 354 U.S. 178 (1957).

¹² In an attempt to continue its fact-finding, the Subcommittee issued subpoenas for the depositions of two Backpage employees, Andrew Padilla and Joye Vaught, to discuss their job duties. According to Ms. McDougall, Mr. Padilla is the head of Backpage's moderation department—the division of employees who, among other things, review advertisements to screen them for evidence of illegal activity—and Ms. Vaught is in charge of training line moderators to perform those functions. Both Mr. Padilla and Ms. Vaught retained individual counsel and, invoking their Fifth Amendment

Backpage met for the purpose of discussing the company's constitutional objections to the July 7 subpoena. During that meeting, counsel for Backpage conceded that the subpoena did not seek any type of information that triggered heightened First Amendment scrutiny in the cases cited in Backpage's August 6 letter. The company objected to no particular request in the subpoena schedule. Instead, Backpage objected to the entirety of the subpoena on First Amendment grounds based on two considerations: (i) the "breadth" of the subpoena as a whole; and (ii) the "context" in which Backpage received the Subcommittee's subpoena—i.e., the fact that other governmental actors have recently taken an interest in Backpage. When Subcommittee counsel asked Backpage counsel for authorities to support that position, Backpage counsel demurred and committed to following up in writing. That response never arrived.

4. On October 1, 2015, the Subcommittee withdrew its original subpoena and issued a new, more targeted subpoena focused on its areas of principal interest. In the letter accompanying the subpoena, the Subcommittee explained that "we continue to see no legal merit in Backpage's explanation for its categorical refusal to comply with the Subcommittee's subpoena. Nevertheless, in the hope of overcoming the current impasse, we are withdrawing the Subcommittee's July 7 subpoena and issuing the attached subpoena seeking a narrower subset of documents."¹³ We explained that the withdrawal of the earlier subpoena "does not reflect, in any way, our agreement with the merits of Backpage's expansive claim of privilege; rather, it represents a good-faith effort to address Backpage's expressed concerns."¹⁴

The October 1 subpoena required you to produce documents named in the schedule, or else appear personally, on October 23, 2015.¹⁵ Specifically, the new subpoena seeks the production of eight categories of documents previously sought in the initial subpoena, including information about Backpage's review and moderation procedures; its practices with respect to verifying user accounts; documents concerning human trafficking and similar offenses; data-retention practices; and statistical information concerning its advertisements, review practices, and revenue.¹⁶ The subpoena provides that the company should exclude any personally identifying information concerning Backpage users.

The Subcommittee notified Backpage that it must "assert any claim of privilege or other right to withhold documents from the Subcommittee by October 23, 2015, the return date of the subpoena, along with a complete explanation of the privilege or other right to withhold documents" and that "[t]he Subcommittee will rule on any objections to the subpoena, including any claim of privilege, based on submissions in the record at that time."¹⁷ The Subcommittee cautioned you that failure to comply with the

privilege, declined to testify on the ground that it might tend to incriminate them. On that basis, the Subcommittee released them from their obligation to personally appear for their depositions.

¹³ Letter from PSI to Backpage at 2 (Oct. 1, 2015).

¹⁴ *Id.*

¹⁵ Subpoena, Oct. 1, 2015.

¹⁶ Subpoena, Schedule A (Oct. 1, 2015).

¹⁷ Letter from PSI to Backpage at 3 (Oct. 1, 2015) (emphasis added).

subpoena, or to raise a legitimate privilege, could lead to civil enforcement of the subpoena or criminal contempt.¹⁸ Counsel for Backpage committed to submitting a complete explanation for any noncompliance by the return date.¹⁹ In light of that, on October 20, the Subcommittee continued your personal appearance “to permit the Subcommittee to consider any objection you wish[ed] to submit.” The Subcommittee reminded you, however, that “[t]he requested documents along with any objections remain due on the return date.”²⁰

5. On October 23, 2015, Backpage submitted a response to the subpoena, along with a production of twenty-one pages of publicly available documents. That response asserts (i) that the First Amendment constrains the Subcommittee’s jurisdiction to conduct this investigation²¹ and (ii) that the subpoena is not pertinent to a proper investigation within the Subcommittee’s jurisdiction.²² On those two bases, Backpage objected to five of the document requests in the subpoena: Requests One, Two, Three, Five, and Eight.²³

Backpage did not specifically object to Requests Four, Six, or Seven. But neither did it produce any documents responsive to those Requests. Instead, as to Request Four—“documents concerning human trafficking, sex trafficking, human smuggling, prostitution, or the facilitation or investigation thereof”—Backpage explained that it would eventually produce certain items (“its many records regarding its *cooperation* with law enforcement, including responses to subpoenas * * * and communication with law enforcement *commending* Backpage.com for its work and support on human trafficking”)²⁴ but made no commitment about any other responsive documents. As to Requests Six and Seven (seeking data about Backpage’s advertisement volume and law-enforcement reporting), Backpage represented that it does not regularly maintain the information requested by the Subcommittee, but that it will “investigate whether compilation and production of [the information] are possible.”²⁵ Despite the fact that the company has been on notice since the original July 7 subpoena of the Subcommittee’s interest in this information, Backpage offered no explanation for why it did not produce documents responsive to these three Requests before the return date of the subpoena; nor did it offer any excuse for its untimely compliance or its failure to seek an extension.²⁶

¹⁸ *Id.*; see 2 U.S.C. §§ 192, 194.

¹⁹ E-mail from Steven Ross to PSI (Oct. 15, 2015).

²⁰ Letter from PSI to Backpage at 1 (Oct. 20, 2015).

²¹ Letter from Backpage to PSI at 3 (Oct. 23, 2015).

²² *Id.* at 6.

²³ *Id.* at 6–8.

²⁴ *Id.* at 7 (emphasis added).

²⁵ *Id.*

²⁶ Backpage’s submission contained no additional information about a sealed judicial opinion discussed in its August 6 letter. At the September 14 conference between Subcommittee counsel and counsel for Backpage, Backpage explained that it had moved the relevant district court to unseal the opinion to permit the Subcommittee to review it, but that the motion was denied in part because either the court or the Department of Justice was unsure that the Subcommittee had a genuine

DISCUSSION

In its October 23 submission, Backpage lodged objections to several of the document requests in the Subcommittee's subpoena. Those objections are not meritorious. First, Backpage asserts that several items in the subpoena violate the First Amendment, but it does not attempt to show either (i) that any request for documents seeks information that infringes recognized First Amendment interests; or (ii) that those requests are not supported by an adequate legislative interest. Instead, Backpage contends that First Amendment concerns counsel against construing the Subcommittee's authorizing resolution to encompass this investigation and the challenged subpoena. As we will explain, there are circumstances under which such an argument would be plausible—but this is not one of them. The Subcommittee's subpoena to Backpage, and its investigation of human trafficking on the Internet, is plainly encompassed by specific language in our authorizing resolution. See S. Res. 73, § 12(e), 114th Cong. The First Amendment cases cited by Backpage are inapposite and do not alter that result. Second, Backpage objects that some document requests in the subpoena are not pertinent to a proper investigation by this Subcommittee. That too lacks merit: Each category of requested information is directly related to the legitimate legislative inquiry authorized by Senate Resolution 73.

In the discussion that follows, we will first describe why the challenged subpoena is within the scope of the Subcommittee's investigative authority. We will then explain why Backpage has not demonstrated any constitutional infirmity in the subpoena or given any persuasive First Amendment reason to read our authorizing resolution not to encompass this investigation. Finally, we will address Backpage's response to each of the subpoena's specific document requests, and explain why those requests seek information directly related to the Subcommittee's valid investigative interests. Those interests would justify the requests even if they triggered heightened scrutiny under the First Amendment.

interest in the opinion. Backpage therefore asked the Subcommittee to provide it with a letter in support of its unsealing request, so that it could file a motion to reconsider. After notifying the Department of Justice, we provided that letter to counsel for Backpage on September 18.

Counsel for Backpage, however, later informed the Subcommittee that they did not file the motion to reconsider until October 6, 2015—three weeks after we provided the requested letter, and nearly a week after we issued the new, October 1 subpoena. Backpage offered no explanation for the delay in filing.

I. The Subpoena is Within the Subcommittee's Authority.

The Subcommittee is investigating the problem of human trafficking; how those who commit that crime have made use of the Internet and other facilities of interstate commerce to commit it; the role that private-sector enterprises play in facilitating, or should play in preventing, domestic and international sex trafficking; and the adequacy of existing federal laws and federal programs at combating the problem. That investigation, along with the subpoena we have issued to Backpage in furtherance of it, is within the Subcommittee's authority.

A. Congress's Investigative Power.

"The power of the Congress to conduct investigations is inherent in the legislative process." *Watkins v. United States*, 354 U.S. 178, 187 (1957). Congress's investigatory power "is broad," *id.*, reaching "the whole range of national interests concerning which Congress might legislate or decide upon due investigation not to legislate." *Barenblatt v. United States*, 360 U.S. 109, 111 (1959). "It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes," as well as "surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them." *Watkins*, 354 U.S. at 187-88.

That authority includes the power of legal process. *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927). "It is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action. It is their unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees and to testify fully with respect to matters within the province of proper investigation." *Watkins*, 354 U.S. at 187-188. In that respect, "[a] legislative inquiry may be as broad, as searching, and as exhaustive as is necessary to make effective the constitutional powers of Congress." *United States v. Orman*, 207 F.2d 148, 153 (3d Cir. 1953) (quotation marks and citation omitted). Unlike in a lawsuit, which "relates to a case, and [in which] the evidence to be admissible must be measured by the narrow limits of the pleadings * * * * [a] legislative inquiry anticipates all possible cases which may arise thereunder and the evidence admissible must be responsive to the scope of the inquiry, which generally is very broad." *Id.* (quoting *Townsend v. United States*, 95 F.2d 352, 361 (D.C. Cir. 1938)).

B. The Subcommittee's Subpoena Is Proper.

1. The Senate has entrusted the Subcommittee with significant investigative power. Specifically, the Senate has authorized the Subcommittee to conduct investigations into a broad range of matters of potential legislative interest. Those subjects include:

- (A) the efficiency and economy of operations of all branches of the Government;

* * * * *

(C) *organized criminal activity which may operate in or otherwise utilize the facilities of interstate or international commerce* in furtherance of any transactions and the manner and extent to which, and the identity of the persons, firms, or corporations, or other entities by whom such utilization is being made, and further, to study and investigate the manner in which and the extent to which persons engaged in organized criminal activity have infiltrated lawful business enterprise, and *to study the adequacy of Federal laws to prevent the operations of organized crime in interstate or international commerce; and to determine whether any changes are required in the laws of the United States in order to protect the public against such practices or activities; [and]*

(D) *all other aspects of crime and lawlessness within the United States which have an impact upon or affect the national health, welfare, and safety; including but not limited to investment fraud schemes, commodity and security fraud, computer fraud, and the use of offshore banking and corporate facilities to carry out criminal objectives.*

S. Res.73, § 12(e)(1), 114th Cong. (emphasis added).

2. The Subcommittee's authority to investigate crime, its effects on public welfare and safety, and how the facilities of interstate commerce are used to commit it, places this investigation squarely within its jurisdiction. To repeat, the Subcommittee is authorized to investigate "all * * * aspects of crime" within the United States that affect the "national health, welfare, safety," *id.* § 12(e)(1)(D), and is specifically tasked with examining "organized criminal activity which may operate in or otherwise utilize the facilities of interstate or international commerce," *id.* § 12(e)(1)(C). Human trafficking is a federal crime. *See* 18 U.S.C. §§ 1581–1592. Importantly, Congress has specifically recognized human trafficking as an activity of *organized crime*; the Trafficking Victims Protection Reauthorization Act of 2003 declared human trafficking offenses are predicates to liability under the Racketeer Influenced Corrupt Organizations (RICO) Act. *See* Pub. L. 108-193, 117 Stat. 2875, 2879, § 5(b); 18 U.S.C. § 1961(1). And the Internet, an important facility of interstate commerce, has become an increasingly central marketplace for human trafficking in the United States.²⁷ The Subcommittee seeks to understand how individuals are utilizing the Internet, including commercial sex advertising websites like Backpage.com, to further their illicit trafficking schemes, as well as what mechanisms websites can use to prevent such abuse of interstate facilities.

²⁷ *See generally*, Latonero, M., et al., USC Annenberg Ctr. on Comm'n Leadership & Policy, *Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds* (2011), https://technologyandtrafficking.usc.edu/files/2011/09/HumanTrafficking_FINAL.pdf.

Based on the available public record, Backpage, in particular, appears to be an epicenter of illegal sex trafficking. A federal district court recently observed that “Backpage’s adult services section overwhelmingly contains advertisements for prostitution, including the prostitution of minors.” *Backpage.com, LLC v. Dart*, No. 15-C-06340, 2015 WL 5174008, at *2 (N.D. Ill. Aug. 24, 2015) (finding that Backpage is “the leading forum for unlawful sexual commerce on the Internet and that the majority of advertisements [on Backpage] are for sex”); *see also Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d. 1262, 1267 (W.D. Wash. 2012) (“Many child prostitutes are advertised through online escort advertisements displayed on Backpage and similar websites.”). The Subcommittee’s own investigation and study of the public record support that conclusion. Indeed, Backpage forthrightly acknowledges that its website is used by sex traffickers; its General Counsel has lamented publicly, “we are being abused by these criminals.”²⁸ That criminal “abuse,” along with the strategies used by Backpage to combat it, is a subject of this investigation. Information regarding Backpage’s anti-trafficking measures, contact with law enforcement, and basic corporate revenue are all important to the Subcommittee’s understanding of how sex trafficking occurs on the Internet. That information will also enable the Subcommittee to evaluate the cost-effectiveness of mechanisms employed by websites to combat sex trafficking and whether legislative action is needed to incentivize or require more effective strategies.

Importantly, the Subcommittee’s investigative jurisdiction does not depend on whether Backpage *itself*, or its officers or employees, bear any criminal liability under existing federal law. Rather, the matter is straightforward: Criminal sex trafficking is happening on Backpage, and the Subcommittee is investigating the nature and quality of Backpage’s efforts to stop it, in order to better understand the role online marketplaces can play in facilitating or preventing this criminal activity.²⁹

3. In addition to its authority to investigate crime, the Subcommittee’s power to examine “the efficiency and economy of operations of all branches of the Government,” S. Res. 73 § 12(e)(1)(A), supplies an independent basis for our jurisdiction to investigate human trafficking on the Internet. The federal government has an array of anti-

²⁸ Committee on Women’s Issues, City Council of New York, Tr. 92 (Apr. 25, 2012), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1078130&GUID=D1C2D58A-C5A2-48A1-BB64-7AF44AFDC030&Options=&Search>.

²⁹ Backpage suggests that the Subcommittee’s investigation is outside its jurisdiction because it is a “law enforcement inquir[y]” or because the Subcommittee’s findings may assist law enforcement agencies. Letter from Backpage to PSI at 6 (Oct. 23, 2015). Of course the Subcommittee has no authority to engage in “law enforcement inquiries.” The Subcommittee does, however, have authority to examine the problem of crime in order that Congress may better address it through legislation. This Subcommittee has a rich history of doing that through investigations of criminal activity, including money laundering, narcotics trafficking, child pornography, labor racketeering, and organized crime. *See, e.g.*, S. Hrg. 112-597 (July 17, 2012); S. Hrg. 109-25 (Mar. 16, 2005); S. Hrg. 104-604 (May 15, 1996); S. Hrg. 102-346 (Nov. 5-6, 1991); S. Hrg. 100-654 (Jan. 28, 1988); S. Hrg. 99-18 (Nov. 29-30, 1984). A full listing of Subcommittee hearings concerning organized crime and other types of crime or fraud is too voluminous to detail here, but can be found on the Subcommittee’s website. *See* U.S. Senate, PSI: Resources, List of Permanent Subcommittee on Investigations Hearings & Reports (1947-Present), <https://www.hagac.senate.gov/subcommittees/investigations/resources>.

trafficking forces, including federal departments and agencies,³⁰ cross-agency task forces such as the Internet Crimes Against Children Task Force, and major public-private partnership such as the NCMEC. The federal anti-money laundering regime has taken recent steps to target proceeds of human trafficking.³¹ And significant federal funds are devoted to serving victims of trafficking and providing grants for related academic research.³² Congress has an interest in whether these authorities and resources are being effectively deployed. A better understanding of how sex trafficking has migrated to the Internet—and whether federal efforts are well-adapted to this new reality—unquestionably relates to the “efficiency and economy” of these interrelated government agencies and programs.

* * *

In short, careful fact-finding about the problem of human trafficking on the Internet will assist Congress in its consideration of potential legislation in a number of legitimate areas of legislative interest, including interstate and international human trafficking and the federal law enforcement policies and resources devoted to combatting it. Because that is precisely what the Subcommittee’s authorizing resolution contemplates, the Subcommittee’s work is plainly within its jurisdiction. See S. Res. 73 § 12(e)(1)(C) (Subcommittee empowered to investigate crime in order to “determine whether any changes are required in the laws of the United States in order to protect the public against [illegal] practices or activities”).

II. Backpage’s First Amendment Arguments Lack Merit.

Backpage’s response relies extensively on the First Amendment in defense of its noncompliance with the Subcommittee’s subpoena. But Backpage offers only a vague discussion of the First Amendment interests with which it believes the subpoena interferes—either those of its users or its own. We do not believe the subpoena threatens either. As to Backpage’s users, the subpoena is carefully drawn to avoid seeking any information about any individual engaged in commercial speech on Backpage.com.³³ As to Backpage itself, much of what the company publishes is indeed

³⁰ Federal departments and agencies involved in anti-trafficking efforts include the Departments of Justice, Homeland Security, Health and Human Services, State, Defense, Commerce, Education, and Agriculture, as well as the Federal Trade Commission, Federal Communications Commission, U.S. Postal Inspection Service, and NASA. See generally U.S. Dep’t of Justice, *National Strategy for Child Exploitation Prevention and Interdiction: A Report to Congress* (Aug. 2010), <http://www.justice.gov/psc/docs/natstrategyreport.pdf>.

³¹ See U.S. Dep’t of Treasury, Financial Crimes Enforcement Network, Advisory, FIN-2014-A008, *Guidance on Recognizing Activity That May Be Associated with Human Smuggling or Human Trafficking – Financial Red Flags* (Sept. 11, 2014), https://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2014-A008.pdf.

³² See, e.g., Federal Strategic Action Plan for Victims of Human Trafficking in the United States, 2013-2017, <http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf>.

³³ Backpage is a publisher of third-party commercial advertisements; commercial speech is protected by the First Amendment, even if it is validly subject to much more extensive restriction, than the core political speech at issue in the cases relied on by Backpage. See *Central Hudson Gas & Electric Corp. v. Pub. Serv. Comm’n of New York*, 447 U.S. 557, 564 (1980); see also *Florida Bar v. Went For*

the protected commercial speech of third parties; but that does not immunize Backpage from legitimate investigations into the *unlawful* activity marketed through its site, which enjoys no First Amendment protection. But in any case, as Part III explains, the information sought by the Subcommittee's subpoena bears a direct relationship to the Subcommittee's investigative needs, and the governmental interests served by the subpoena are adequate to justify any incidental burden on Backpage's commercial-speech rights. Backpage also invokes the First Amendment in support of a slightly different argument: that we should adopt a narrow construction of the Subcommittee's authorizing resolution so that it does not include the power to issue the subpoena to "a business that provides a platform for online speech."³⁴ That argument also fails.

1. Documentary subpoenas by government agencies can, in relatively rare circumstances, raise First Amendment concerns. See *NAACP v. Alabama*, 357 U.S. 449, 462–63 (1958); *Gibson v. Florida Legislative Investigative Committee*, 372 U.S. 539, 546 (1963). Under these cases, a subpoena will be subjected to First Amendment scrutiny if it creates a "likelihood of a substantial restraint upon the exercise" of First Amendment rights, and then should be sustained only if the demand for information is supported by governmental interests "sufficient to justify the deterrent effect" on speech." *NAACP*, 357 U.S. at 463; see *Gibson*, 372 U.S. at 546 (in case where subpoena sought information about identity of those engaged in political expression, government had to "convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest"). In other cases, the Court has avoided the need to conduct that balancing of interests because it construed a congressional investigative demand to be outside the scope of a valid authorizing resolution. See *Watkins*, 354 U.S. at 199–206; *United States v. Rumely*, 345 U.S. 41, 44–48 (1953).

But in *each* of these cases the investigative demand was aimed at discovering information about people who actually engaged in protected speech or associational activity—for example, southern States trying to find out the identity of NAACP members (*Gibson*, 372 U.S. at 540–41; *NAACP*, 357 U.S. at 451); the House Un-American Activities Committee trying to discover the identity of a witness's Communist associates (*Watkins*, 354 U.S. at 184–85); the House of Representatives trying to discover who is reading disfavored books (*Rumely*, 345 U.S. at 42); or prosecutors trying to obtain personally identifying information about individuals who worked on particular issues of a publication issued by the Black Panther Party (*Bursey v. United States*, 466 F.2d 1059, 1068–71 (9th Cir. 1972)). In those cases, compelling the disclosure of such information would risk chilling core political speech. In other words, the central First Amendment evil, the "official suppression of ideas[, was] afoot," *R.A.V. v. St. Paul*, 505 U.S. 377, 390 (1992).

Backpage makes no effort to explain how the Subcommittee's subpoena poses any similar danger to those of its users who are engaged in protected commercial speech. As we have reminded Backpage repeatedly, the Subcommittee's subpoena was

It, Inc., 515 U.S. 618, 623 (1995) ("[W]e engage in 'intermediate' scrutiny of restrictions on commercial speech.").

³⁴ Letter from Backpage to PSI at 3 (Oct. 23, 2015).

carefully drawn to avoid the possibility of deterring protected speech by excluding any information that could personally identify its advertisers.³⁵ This subpoena bears no resemblance to those used fifty years ago to investigate political dissenters: It seeks no information about individual users—what speech they engage in, what organizations they belong to, what books they read, or the like. A subpoena seeking information about the business practices of a company whose facilities are undisputedly being used for criminal activity is far afield from the kinds of investigative demands that courts have invalidated for trenching on core First Amendment protections.

Backpage also contends that its status as a publisher of commercial speech—along with, it appears, the simple fact that its activities take place on the Internet—means that the Subcommittee cannot investigate what occurs on its website. But the mere presence of protected speech on Backpage does not prevent the Subcommittee from investigating criminal activity that *also* occurs there. See *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 707 (1986) (holding that statute regulating establishments hosting prostitution did not trigger First Amendment concerns merely because books were also sold on the premises); cf. *Pittsburgh Press Co. v. Human Relations Comm'n*, 413 U.S. 376, 388 (1973) (“We have no doubt that a newspaper constitutionally could be forbidden to publish a want ad proposing a sale of narcotics or soliciting prostitutes.”).³⁶

Relatedly, Backpage also argues that “the Subcommittee cannot legitimately expand its authority to investigate by inappropriately trying to conflate online advertising with illegal activity.”³⁷ Nor have we done so. The illegal activity we are investigating is not advertising; it is selling children, or coerced adults, online for sex.

In any event, “the First Amendment” is not a talismanic incantation. Even where subpoenas seek information raising First Amendment concerns, the question becomes whether the subpoena is supported by an adequate governmental interest. See

³⁵ See, e.g., Letter from PSI to Backpage at 1 (July 7, 2015); Letter from PSI to Backpage at 4 (Aug. 26, 2015); Letter from PSI to Backpage, at 2 (Oct. 1, 2015).

³⁶ Backpage also urges (Letter from Backpage to PSI at 4 (Oct. 23, 2015)) that that the financial records of a publisher cannot be discovered without trenching on the First Amendment. Specifically, Backpage contends that, “[i]n *Rumely*, the committee sought ‘pertinent financial records’ to determine whether lobbying laws were being circumvented, but the Court held that the First Amendment did not permit the investigatory mandate to be read so expansively.” *Id.* That seriously misreads *Rumely*. As described below, *Rumely* concerned a House committee’s attempt to learn the identity of purchasers of disfavored books. 345 U.S. at 42. In its opinion, the court of appeals made clear that “as the case comes to us, *there was no refusal to produce financial records*. Over and over again *Rumely* asserted before the Committee that he had given, and was willing to give, all records except the names and addresses of the purchasers of the books. * * * [The prosecutor] insisted, and the [district] court sustained his view, that, *so long as the names of purchasers of books were not given, financial records on contributions and loans were immaterial to the issues in the case.*” 197 F. 2d 166, 172 (D.C. Cir. 1952) (emphasis added). Unsurprisingly, then, the Supreme Court’s opinion in *Rumely* does not mention these financial records (though the concurrence does); and nothing in the Court’s analysis turned on them. In any event, the financial records in *Rumely*, unlike those sought in our subpoena, were designed to assist a House committee in identifying the readers of “political[ly] tendentious[]” literature. See *Rumely*, 345 U.S. at 544. Our subpoena does not raise similar concerns.

³⁷ Letter from Backpage to PSI at 4 (Oct. 23, 2015).

NAACP, 357 U.S. at 461. Backpage does not dispute the gravity of Congress's interest in combating the scourge of interstate sex trafficking by means of well-informed legislation. And the company does not address, in its objections, whether the First Amendment interests it asserts are sufficient to overcome the governmental interests in obtaining the requested information. The closest it comes to doing so is by lodging terse objections to the *pertinence* of the Subcommittee's particular requests—*i.e.*, that the requests are insufficiently connected to a legitimate investigation.³⁸ We will address the direct connection between the requests and the Subcommittee's investigative interests in Part III. That connection satisfies both the pertinence requirement and any required First Amendment showing that the requests are directed at legitimate investigative interests.

2. In short, Backpage has not shown any violation of First Amendment rights. Instead, relying on *Rumely*, Backpage invokes the canon of constitutional avoidance to argue that “First Amendment tensions”³⁹ compel a cramped reading of the Subcommittee's authorizing resolution that excludes this subpoena. That argument has no support in *Rumely* or in the text of our authorizing resolution.

As an initial matter, *Rumely*, like Backpage's other cases, involves an attempt to obtain personally identifying information about individuals engaged in core political speech. In *Rumely*, a congressional committee was authorized to evaluate the efficacy of lobbying laws. As part of those efforts, the committee demanded of a witness “the names of those who made bulk purchases” of “books of a particular political tendentiousness.” 345 U.S. at 42. The Supreme Court concluded that the power to make such a demand threatened First Amendment interests because it would permit Congress to “inquire into all efforts of private individuals to influence public opinion through books and periodicals, however remote the radiations of influence which they may exert upon the ultimate legislative process.” *Id.* at 46. The Court, however, avoided the need to balance those First Amendment interests against Congress's investigative power because it construed the relevant language in its authorizing investigation—the word “lobbying”—not to include what books people buy. Instead, the Court held that “lobbying” should be given its “commonly accepted” meaning: representations made directly to the Congress, its members, or its committees, and [not to] attempts ‘to saturate the thinking of the community.’” *Id.* at 47 (citation omitted).

Backpage relies on *Rumely* to argue that First Amendment concerns militate against interpreting Senate Resolution 73 to authorize this investigation and the challenged subpoena. That argument is wrong for two independent reasons. First, as explained above, the Subcommittee's subpoena does not threaten First Amendment interests, much less the core political speech at issue in *Rumely*, so its enforcement raises no “serious constitutional doubt.” 345 U.S. at 47. Second, in *Rumely*, the natural reading of the word “lobbying” did indeed exclude, “[a]s a matter of English,” the House committee's investigation into book-reading. *Id.* Our authorizing resolution, by contrast, cannot be read to bar the challenged subpoena. Indeed, it plainly embraces the subject of this investigation:

³⁸ Letter from Backpage to PSI at 7-8 (Oct. 23, 2015).

³⁹ *Id.* at 4.

organized criminal activity which may operate in or otherwise utilize the facilities of interstate or international commerce in furtherance of any transactions * * * and to study the adequacy of Federal laws to prevent the operations of organized crime in interstate or international commerce; and to determine whether any changes are required in the laws of the United States in order to protect the public against such practices or activities.

S. Res. 73, § 12(e)(1)(C), 114th Cong. That is a crystal-clear statement of the Senate’s intention to authorize investigations into the use of interstate facilities to commit organized crime, and Congress has defined human trafficking as a racketeering offense. 18 U.S.C. § 1961(1). No permissible construction of that language excludes the challenged subpoena. *Cf. Virginia v. American Booksellers Ass’n*, 484 U.S. 383, 397 (1988) (“The key to application of [the avoidance canon] is that the statute must be readily susceptible to the limitation; we will not rewrite a * * * law to conform it to constitutional requirements.”).

3. Backpage also relies on a number of cases invalidating state statutes seeking to criminalize the advertising of sexual services on the Internet. *See Backpage.com, LLC v. Hoffman*, 2013 WL 4502097, at *9 (D.N.J. Aug. 20, 2013); *Backpage.com, LLC v. Cooper*, 939 F. Supp. 2d 805, 830–33 (M.D. Tenn. 2013); *Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262, 1280–81 (W.D. Wash. 2012). Those cases are unavailing here. First, unlike the state laws at issue in those cases, the Subcommittee’s subpoena does not regulate the content of speech, which automatically triggers First Amendment scrutiny. *See Brown v. Entertainment Merchants Ass’n*, 131 S. Ct. 2729, 2738 (2011). Second, these cases are also distinguishable because the challenged state laws were held to be preempted by Section 230 of the Communications Decency Act (CDA), 47 U.S.C. § 230. *See Cooper*, 939 F. Supp. 2d at 817, 822–24 (holding that the CDA preempts a state criminal ban on knowingly “advertising commercial sexual abuse of a minor”); *McKenna*, 881 F. Supp. 2d at 1273 (same). The CDA “overrides the traditional treatment of publishers [and] distributors . . . under statutory and common law” by immunizing certain internet-based businesses from state-law liability for content created by third parties. *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1176 (9th Cir. 2008) (citation omitted). But having preempted traditional state police powers in this area, and reserved the task of regulation to itself, Congress has a heightened responsibility to marshal the “facts needed for intelligent legislative action.” *Watkins*, 354 U.S. at 187.

Indeed, legislative fact-finding is necessary to ensure that any potential future legislation on this issue is carefully tailored to protect a free and open Internet and respect First Amendment rights. The cases cited by Backpage only underscore the peril of enacting imprecise or ill-informed legislation on this issue. In *Cooper* and *McKenna*, for example, courts enjoined state statutes for, *inter alia*, vagueness and overbreadth; a better informed legislative effort might have prevented those legislatures from drafting invalid statutes. *See McKenna*, 881 F. Supp. 2d at 1280 (recognizing that the challenged statute “might find itself on better constitutional footing if the statute included [more clear] definitions”); *Cooper*, 939 F. Supp. 2d at 832–33 (holding that

overly expansive definition of “commercial sex at” rendered statute overbroad). Congress cannot be expected to legislate with a “scalpel”⁴⁰ if it must operate blindly.⁴¹

III. The Subpoena’s Document Requests Are Directly Related to the Subject of the Subcommittee’s Investigation.

The Subcommittee’s investigation is designed to serve Congress’s interest in well-informed legislation to combat sex trafficking on the Internet, including the sale of minors for sexual services through online marketplaces. Backpage cannot dispute the validity or weight of that interest. But it has objected to several document requests in the subpoena—Requests One, Two, Three, Five, and Eight—on the ground that they are not pertinent to the investigation. Like its jurisdictional objection, Backpage blends this objection with vague references to the First Amendment. It has not, however, offered any analysis of any document request in the subpoena—either to explain why Backpage believes the documents sought do not pertain to our investigation, *see Orman*, 207 F.2d at 154–55; or why the requests are not supported by an adequate governmental interest, *see NAACP*, 357 U.S. at 461. As explained below, however, the subpoena’s requests are directly related to the subject matter of the Subcommittee’s legitimate investigation. *See Sinclair v. United States*, 279 U.S. 263, 299 (1929) (“The matter for determination . . . [is] whether the facts called for by the question were so related to the subjects covered by the Senate’s resolutions that such facts reasonably could be said to be ‘pertinent to the question under inquiry.’”).

A. Requests One, Two, and Three.

1. Backpage groups Requests One, Two, and Three together for the purpose of its response. These items require the production of documents concerning (1) “Backpage’s reviewing, blocking, deleting, editing, or modifying of advertisements in Adult Sections, either by Backpage personnel or by automated software processes, including but not limited to policies, manuals, memoranda, and guidelines”; (2) “advertising posting limitations, including but not limited to the ‘Banned Terms List,’ the ‘Grey List,’ and error messages, prompts, or other messages conveyed to users during the advertisement drafting or creation process”; and (3) “reviewing, verifying, blocking, deleting, disabling, or flagging user accounts or user account information, including but not limited to the verification of name, age, phone number, payment information, email address, photo, and IP address,” subject to the reminder that it “does not include the personally identifying information of any Backpage user or account holder.”

⁴⁰ Letter from Backpage to PSI at 1 (Oct. 23, 2015).

⁴¹ Backpage also relies on two cases in which courts invalidated investigative demands because of procedural foot-faults. In *Russell v. United States*, the Supreme Court reversed a contempt conviction because the indictment failed to “identify[] the topic under inquiry.” 369 U.S. 749, 759, 771–72 (1962). And in *Shelton v. United States*, the D.C. Circuit reversed a conviction because the underlying subpoena was not issued pursuant to the committee’s rules. 327 F.2d 601, 606–07 (D.C. Cir. 1963). These cases do not bear on the question whether First Amendment concerns are present here.

In response to these requests, Backpage produced its Terms of Use, Posting Rules, User Agreement, and testimony given by Ms. McDougall before the New York City Council. These items are all publicly available. Backpage then asserted that “[t]o the extent the Subcommittee seeks further documents in this regard, Backpage.com objects to the request that it violates the First Amendment, is overbroad, and is not pertinent to a proper legislative inquiry by this Subcommittee.”⁴²

2. We have already addressed and rejected Backpage’s First Amendment objections to the subpoena. It is equally clear that these requests are pertinent to our investigation. In her interview with Subcommittee staff, Ms. McDougall confirmed that Backpage’s moderation practices have included the ability to edit or modify advertisements that are being reviewed by moderators. Other information acquired by the Subcommittee has supported this finding. Gathering more information about these practices is important to understanding what steps can be taken to identify criminal activity on the Internet and to assessing whether Backpage’s moderation practices are helping or hindering that effort. Backpage publicly touts its moderation efforts as an effective way to prevent illegal content from appearing on its site.⁴³ Ms. McDougall’s testimony from 2012 stated that “Backpage leads the industry in” its moderation methods.⁴⁴ If indeed Backpage’s moderation practices are the gold standard, it would be useful for lawmakers to better understand those practices and whether they should be adopted or incentivized more broadly.⁴⁵

Requests Two and Three ask for more specific information about Backpage’s review practices for advertisements and accounts. In Request Two, the Subcommittee seeks documents concerning an advertising moderation method described by Ms. McDougall in her interview with Subcommittee staff. Ms. McDougall stated that Backpage maintains a “black list” of more than 95,000 items, including emails, IP addresses, and specific words. Further, Ms. McDougall describes Backpage’s automated filter designed “to preclude ads with suspect words, phrases, codes and data.”⁴⁶ Again, these are procedures and methods that Backpage itself highlights as an

⁴² Letter from Backpage to PSI at 7 (Oct. 23, 2015).

⁴³ Liz McDougall, SEATTLE TIMES, *Backpage.com is an Ally in the Fight Against Human Trafficking*, May 6, 2012, <http://www.seattletimes.com/opinion/backpagecom-is-an-ally-in-the-fight-against-human-trafficking/>.

⁴⁴ BP-PSI-000016 (“A key to disrupting and eventually ending human trafficking via the World Wide Web is therefore an online service provider community—of business including Backpage.com—that aggressively monitor for and trace potential trafficking cases and promptly report to and cooperate with frontline law enforcement. As stated, Backpage.com leads the industry in these measures.”).

⁴⁵ Backpage’s submission asserts that it “does not maintain policies or procedures regarding its moderation process.” Letter from Backpage to PSI at 2 (Oct. 23, 2015). It is not clear to us whether that is also an assertion that Backpage has no responsive documents in its possession. We have reason to believe otherwise: In her interview with Subcommittee staff, Ms. McDougall explained that Backpage previously did have a written moderation policy, but has since abolished it in favor of hands-on apprenticeship-style training of its moderators. Another witness interviewed by the Subcommittee has also confirmed that documents containing moderation guidelines did once exist at Backpage.

⁴⁶ BP-PSI-000016.

effective tool to combat trafficking that the Subcommittee seeks to understand. Request Three seeks documents about how Backpage reviews, verifies, blocks, deletes, disables, or flags user accounts—but specifically reminds Backpage not to produce information that could identify specific users. All this information will enable Congress to assess how effectively it has “encourag[ed] service providers to self-regulate” as Congress intended in the CDA. *Zeran v. America Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997).

3. Finally, Backpage leaves completely unexplained its assertion that Requests One, Two, and Three (but evidently no other Requests to which it objects) are “overbroad.” Nowhere else in its submission does Backpage supply any argument relating to the breadth of the subpoena. It does not identify the burden imposed by the Requests or explain what information would be captured by them that would raise special problems. In any event, the Requests are not overbroad. They are targeted at information concerning practices at the core of the Subcommittee’s investigation.

B. Request Five.

Request Five concerns documents about Backpage’s policies regarding data retention, metadata removal or retention, and hashing of images⁴⁷ in the adult section.⁴⁸ Backpage’s objection to the pertinence of this Request has no merit. In fact, Ms. McDougall’s 2012 testimony details its value. In a section titled “Backpage.com’s Combat of Online Trafficking,” Ms. McDougall stated, “When traffickers use the Internet, especially in a financial transaction, they leave forensic footprints that create unprecedented tools and evidence that law enforcement can use to locate and rescue victims of exploitation and to investigate, arrest and convict pimps and their criminal networks.”⁴⁹ “Forensic footprints” described by Ms. McDougall in her testimony include metadata⁵⁰ and image hashing technology that law enforcement and investigators use to conduct investigations into sex trafficking. The retention of that data is also vital to those efforts. As companies make decisions to purge data, those forensic footprints vanish—often along with law enforcement’s ability to find new leads. The details of Backpage’s efforts to maintain, archive, and otherwise limit access to this valuable data are relevant to this inquiry. It will enable the Subcommittee to understand whether existing retention policies are adequate for law enforcement needs.

⁴⁷ Image hashing refers to reducing an image file to a numeric value, which serves as a unique fingerprint for each photo. This technique permits one to search for identical photos in other places, including on different web pages.

⁴⁸ Subpoena, Schedule A (Oct. 1, 2015).

⁴⁹ BP-PSI-000016.

⁵⁰ Metadata summarizes basic information about data, which can make finding and working with particular instances of data easier. For example, *author*, *date created*, *date modified*, and *file size* are examples of very basic document metadata.

C. Request Eight.

Request Eight seeks information about Backpage's annual revenue and profit over the last five years. In particular, the request calls for information that will identify what proportion of Backpage's annual revenue and profit derives solely from advertisements in its "adult" section. This information is important to the Subcommittee's ability to assess the impact on the profitability of online advertising sites on voluntary anti-trafficking measures, and to evaluate the resources available to commit to other potential efforts. When considering changes to any regulatory system, it is a basic task of any legislative or regulatory body to assess the compliance costs, and available resources, of the regulated industry. The requested information will also enable Congress to assess the financial incentives for effective private efforts against human trafficking on the Internet.

IV. Backpage Has Not Timely Produced Documents In Connection With Other Requests To Which It Has Not Objected.

Backpage has lodged no specific objection to Requests Four, Six, or Seven. But neither has it produced any documents, sought an extension of its time to do so, or certified that it has no responsive materials. To the contrary, Backpage suggests it may produce some materials responsive to these requests on an unknown future date.

Request Four seeks documents concerning "human trafficking, sex trafficking, human smuggling, prostitution, or the facilitation or investigation thereof, including but not limited to policies, criteria, manuals, procedures, memoranda, instructions, guidelines, and communications." Backpage has announced it will produce to the Subcommittee certain documents responsive to Request Four: "its many records regarding its cooperation with law enforcement, including responses to subpoenas, testimony provided by Backpage.com personnel, voluntary investigations by Backpage.com, and communication with law enforcement commending Backpage.com for its work and support combatting human trafficking."⁵¹ But Request Four encompasses more than these records. It requires the production of *all* documents concerning the enumerated illegal activities, not just those Backpage selects. Accordingly, the Subcommittee expects Backpage to produce all responsive materials.

Requests Six and Seven seek basic statistical data about the number of advertisements posted, blocked, and reported to law enforcement over the past three years. Backpage has not asserted that it has no documents responsive to these requests; instead, it represents that it does not routinely maintain records of this information.⁵²

⁵¹ Letter from Backpage to PSI at 7 (Oct. 23, 2015).

⁵² We have reason to doubt that Backpage lacks documents responsive to this request. Backpage has made several public and private statements about the volume of advertisements on its website. In an interview with Subcommittee staff, for example, McDougall stated that only 12% of the advertisements placed on the site were placed in the adult section. And while Backpage claims it does "not routinely maintain ad volume information as requested by the Subcommittee," it was able to state that ad volume has recently increased. In any event, given that advertisements in

Because Backpage's submission did not articulate any specific objections to Requests Four, Six, or Seven, we do not understand the company to be asserting any basis for withholding those documents. If, however, Backpage is relying on general objections to withhold documents responsive to these requests, then those objections are overruled for the reasons stated above. In either case, Backpage must produce documents responsive to these requests by November 12, 2015, at 10 a.m.

CONCLUSION

On behalf of the Subcommittee, we overrule each of your objections to the October 1 subpoena. We understand those objections to apply only to Requests One, Two, Three, Five, and Eight. You are ordered and directed to produce all documents responsive to each of the subpoena's eight requests by November 12, 2015, at 10:00 a.m., in accordance with the instructions attached to the subpoena.

Your personal appearance is further continued until November 19, 2015, at 10:00 a.m., at 342 Dirksen Senate Office Building. We strongly caution you that further noncompliance may be treated as contempt of the Subcommittee's subpoena and may subject you to civil enforcement or criminal penalties.

Sincerely,



Rob Portman
Chairman
Permanent Subcommittee on Investigations



Claire McCaskill
Ranking Member
Permanent Subcommittee on Investigations

Backpage's adult section are a significant source of its revenue, we think it unlikely that Backpage does not regularly maintain some documents about advertising volume.

Akin Gump

STRAUSS HAUER & FELD LLP

STEVEN R. ROSS
202.887.4343/fax: 202.887.4288
sross@akingump.com

November 16, 2015

VIA ELECTRONIC DELIVERY

The Honorable Rob Portman, Chairman
The Honorable Claire McCaskill, Ranking Member
Permanent Subcommittee on Investigations
Committee on Homeland Security & Governmental Affairs
United States Senate
Russell Senate Office Building, SR-199
Washington, DC 20510

Re: October 1, 2015 Subpoena Issued to Backpage.com

Dear Chairman Portman and Ranking Member McCaskill:

On behalf of Backpage.com, LLC ("Backpage.com"), we write in further regard to the subpoena for documents issued by the Permanent Subcommittee on Investigations (the "Subcommittee") on October 1, 2015 (the "Subpoena"), and specifically in response to an email from Subcommittee Chief Counsel Matt Owen on November 14, 2015.

While our sense of the conversation I had on November 13, 2015 with Subcommittee staff differs from Mr. Owen's email description—a matter I sought to clarify both during that conversation and again in writing shortly thereafter in an email to Subcommittee staff—Backpage.com continues to object to the Subcommittee's efforts to compel production of an alarmingly vast amount of documents and information regarding the First Amendment protected activities of Backpage.com and those individuals who engage in First Amendment protected activities on its internet platform. As clearly outlined in our numerous letters to the Subcommittee, Backpage.com's objections are based on the overbreadth of the demands, the lack of pertinence to any constitutionally valid legislative purpose, the burden of compliance with the Subcommittee's demands, as well as Backpage.com's core First Amendment objections.

Notwithstanding these objections, in its continuing effort to be of assistance to the Senate—just as it has assisted law enforcement efforts directed at the scourge of human trafficking—Backpage.com has provided the Subcommittee with extensive information regarding its endeavors to assist in efforts to combat human trafficking. First, Backpage.com's general counsel provided a lengthy briefing to Subcommittee staff in June 2015, and the

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Page 2

company has since submitted more than 16,000 pages of documents and information compiled by the company relating to the Subcommittee's requests for information. As I stated in my phone call with Subcommittee staff on November 13, 2015, the only request to which the company has declined to provide *any* information is Request Eight, which seeks extensive revenue and profit information regarding Backpage.com's business.

As counsel for Backpage.com, we have not represented, and do not now represent, that the company's submissions of information and documents to date constitute either the fruits of a complete search of every bit of data possessed by Backpage.com or by all of its employees over the full (nearly six year) time period covered by the Subpoena. Indeed, to be required to conduct such a search and review in light of the significant overbreadth and First Amendment infirmities of the Subpoena would in itself be constitutionally inappropriate.

Rather, the November 13, 2015 submission, as explained in the accompanying cover letter, was made because Backpage.com was "willing to provide certain additional documents and information to the Subcommittee as a gesture of good faith." In its effort to be helpful to the stated purpose of the Subcommittee's inquiry, Backpage.com did compile and, in some instances, did collect information and documents from the employees most likely to have the relevant information and documents. Backpage.com strove to include the documents most relevant to the Subcommittee's professed inquiry concerning potential legislation regarding human trafficking, and the company undertook significant efforts to collect over five million pages of documents specifically responsive to the Subpoena's document request regarding suspected human trafficking or other illegal activities and the investigation of such activities. In his November 14, 2015 email, Mr. Owen instructed us to suspend the production of these documents.

In addition to Backpage.com's clearly and consistently stated constitutional objections to the Subpoena, our recent communications with the Subcommittee and its staff continue to raise concerns regarding the actual purpose and intent of the Subcommittee's inquiry.

It is in light of these concerns and of the ongoing dispute over documents that Subcommittee staff informed us on November 13, 2015 that the Subcommittee has published notice of a public hearing to be held on November 19, 2015 and commanded the personal appearance of Carl Ferrer, Backpage.com's Chief Executive Officer. Respectfully, Mr. Ferrer will decline to provide testimony on the First Amendment and related constitutional grounds outlined in this and our prior letters, as well as his Fifth Amendment rights. Accordingly, we ask that his personal appearance—which would necessitate Mr. Ferrer's international travel solely for the assertion of his constitutional rights—be waived by the Subcommittee. If the Subcommittee insists upon a personal appearance by Mr. Ferrer, we would ask that it be scheduled following November 22, 2015 to accommodate Mr. Ferrer's schedule.

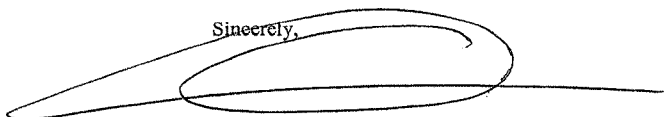
November 16, 2015
Page 3

As we have said in our past correspondence, the concerns we raise with regard to the First Amendment implications of the Subcommittee's investigation of an entity engaged in speech and publication activities are far from trivial. The legal seriousness of these concerns is evidenced by the quashing of one subpoena, which sought similar information, by one federal district court, and, in a separate matter, by the issuance of an injunction earlier today by the Federal Court of Appeals for the Seventh Circuit.

In its very language, the First Amendment constitutes a textual limitation on the authority of Congress. It is therefore uniquely the case that a determination of the limits imposed by the First Amendment on the actions of a congressional subcommittee should be made not by that subcommittee itself, but by the judicial branch which bears the responsibility of interpreting the First Amendment in a manner to protect the rights of citizens. While we had hoped that Backpage.com's significant production of information and documents would have satisfied any legitimate need for information regarding human trafficking, our recent communications with the Subcommittee belie that hope. Therefore, we repeat our suggestion that if the Subcommittee seeks additional documents and information from Backpage.com, Subcommittee counsel and Backpage.com's counsel should next discuss the presentation of this issue to the courts for resolution. As we have stated before, a civil statutory mechanism exists for the Subcommittee to present the constitutional issues for judicial determination, and Backpage.com would abide by a final judicial determination of these constitutional questions.

Thank you for your consideration.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to be 'S. Brand', written over the word 'Sincerely,'.

Steven R. Ross
Stanley M. Brand
Akin Gump Strauss Hauer & Feld
Counsel for Backpage.com, LLC

Robert Corn-Revere
Davis Wright Tremaine, LLP
Counsel for Backpage.com, LLC

RON JOHNSON, WISCONSIN, CHAIRMAN
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 KEITH B. ASHDOWN, STAFF DIRECTOR
 GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
 HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
 WASHINGTON, DC 20510-6250

November 18, 2015

VIA ELECTRONIC MAIL

Mr. Steven R. Ross
 Akin, Gump, Strauss, Hauer & Feld LLP
 1333 New Hampshire Avenue, N.W.
 Washington, D.C. 20036

Dear Mr. Ross:

We write in response to your November 18, 2015, letter informing us that Mr. Ferrer will not appear before the Subcommittee tomorrow, November 19, 2015, despite being under subpoena to do so. Your letter offers two separate reasons why Mr. Ferrer will likely not appear. As explained below, neither reason is sufficient.

First, according to your letter, Mr. Ferrer is presently out of the country for business and will not return until November 22.¹ At this late date, that is not an adequate excuse. Mr. Ferrer has been subject to a subpoena requiring his personal appearance since October 1,² and on notice of the time and place of his appearance since November 3. As you will recall, on October 15, you informed Subcommittee staff that you would file objections to the subpoena by the return date, October 23. For that reason, on October 20, we continued Mr. Ferrer's personal appearance "to a date to be determined later to permit the Subcommittee to consider any objection [he] wish[ed] to submit."³ We considered those objections and overruled them on November 3 by a letter order addressed to Mr. Ferrer.⁴ That order further continued Mr. Ferrer's appearance "until November 19, 2015, at 10:00 a.m., at 342 Dirksen Senate Office Building," the Subcommittee's hearing room.⁵

That same day, Subcommittee staff spoke with you and Ms. Greer by phone. During that phone call, Subcommittee staff called your attention to Mr. Ferrer's appearance date and informed you that he should make travel arrangements to appear before the Subcommittee on that date. Subcommittee staff expressly cautioned that it would not accept logistical impediments as an excuse for Mr. Ferrer not to appear. Despite that, and despite extensive communications between you and Subcommittee staff in the interim, Mr. Ferrer only suggested today—the day before the hearing—that he would refuse to appear regardless of whether the Subcommittee continued his appearance.

¹ See Letter from Steven R. Ross to Permanent Subcommittee on Investigations, at 1-2 (Nov. 18, 2015).

² Subpoena, Oct. 1, 2015.

³ Letter from Permanent Subcommittee on Investigations to Carl Ferrer, at 1 (Oct. 20, 2015).

⁴ Letter from Permanent Subcommittee on Investigations to Carl Ferrer, at 19 (Nov. 3, 2015).

⁵ *Id.* at 19.

Last Friday, November 13, in a letter to us, you explained that the company and Mr. Ferrer continued to object to the October 1 subpoena on First Amendment grounds. In that letter, you said nothing about any planned international travel by Mr. Ferrer or any other logistical impediment to his appearance. In fact, you first mentioned that travel on Monday, November 16—two days ago. Even then, you did not say that Mr. Ferrer’s travel plans would prevent his appearance; instead you simply “ask[ed] that his personal appearance—which would necessitate Mr. Ferrer’s international travel solely for the assertion of his constitutional rights—be waived by the Subcommittee.”⁶ The Subcommittee denied that request within hours, acting promptly because of the urgent nature of the request. The next day, November 17, the Subcommittee asked you to confirm that Mr. Ferrer would appear for the hearing.

In short, Mr. Ferrer has received more than adequate notice that his appearance is legally required tomorrow. If Mr. Ferrer scheduled his travel prior to November 3—the date on which he received notice that he was required to appear on November 19—he had an obligation to inform the Subcommittee as soon as possible. If Mr. Ferrer scheduled his travel after November 3, he did so despite knowing that he was required to appear on November 19.

Second, you contend that, because it is your understanding that Mr. Ferrer will invoke his Fifth Amendment rights if questioned by the Subcommittee, it is inappropriate to require his appearance.⁷ That is not so. As you know, this Subcommittee is not a criminal tribunal, and a witness before the Subcommittee is not a criminal defendant. The witness has no right to avoid questioning before the Subcommittee. It is proper and consistent with the practice of the Senate to require a witness to appear, hear the questions put to him, and then invoke his Fifth Amendment right to not answer if he has a good-faith belief that the answer will tend to incriminate him—a judgment that depends upon the question asked. In addition, witnesses may choose to answer questions despite their lawyers’ previous representation that they will not, or even their own previous intention not to do so. For those reasons, we decline to continue Mr. Ferrer’s November 19 appearance. If he validly invokes the Fifth Amendment in response to specific questions, however, the Subcommittee will respect his privilege to do so.

In short, we deny your client’s untimely request for a further continuance. We strongly caution Mr. Ferrer that failure to abide by his obligation to appear before the Subcommittee tomorrow may subject him to criminal penalties for contempt.

Sincerely,



Rob Portman
Chairman
Permanent Subcommittee on Investigations



Claire McCaskill
Ranking Member
Permanent Subcommittee on Investigations

⁶ *Id.*

⁷ Letter from Steven R. Ross to Permanent Subcommittee on Investigations, at 2 (Nov. 18, 2015).

Akin Gump
STRAUSS HAUER & FELD LLP

STEVEN R. ROSS
202.887.4343/fax: 202.887.4288
sross@akingump.com

November 18, 2015

VIA ELECTRONIC DELIVERY

The Honorable Rob Portman, Chairman
The Honorable Claire McCaskill, Ranking Member
Permanent Subcommittee on Investigations
Committee on Homeland Security & Governmental Affairs
United States Senate
Russell Senate Office Building, SR-199
Washington, DC 20510

Re: October 1, 2015 Subpoena Issued to Backpage.com

Dear Chairman Portman and Ranking Member McCaskill:

On behalf of Backpage.com, LLC ("Backpage.com"), we write in further regard to the subpoena for documents issued by the Permanent Subcommittee on Investigations (the "Subcommittee") on October 1, 2015 (the "Subpoena"), and specifically in response to emails from Subcommittee Chief Counsel Matt Owen on November 16 and 17, 2015.

On Friday, November 13, 2015, Subcommittee staff informed us by email that a *public* hearing would be held on November 19, 2015 and that Backpage.com's Chief Executive Officer, Carl Ferrer, "should plan to appear." By letter on November 16, 2015 to the Subcommittee, we (as counsel to Backpage.com) formally repeated Backpage.com's request Mr. Ferrer's personal appearance be waived or continued, on the basis that Mr. Ferrer will decline to provide testimony on the First Amendment and related constitutional grounds, as well as on the basis of his Fifth Amendment rights. By email sent Monday evening, Mr. Owen denied our request.

Again, we write today to confirm that Mr. Ferrer will, on the basis of his constitutional rights, decline to answer any and all questions posed the Subcommittee. As explained further below, we believe it is inappropriate for the Subcommittee to require Mr. Ferrer's personal appearance. As we have also previously informed the Subcommittee, Mr. Ferrer is presently out of the country for business. He will not be in Washington, D.C. on November 19, 2015.

To be clear, Mr. Ferrer has never agreed to appear before the Subcommittee on November 19, 2015. As we explained in our November 16, 2015 letter, Mr. Ferrer is on

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important international business travel, and does not return until November 22, 2015. We note that these travel plans were made well before the Subcommittee decided—without any attempt to consult Mr. Ferrer regarding his availability—commanded his personal appearance on November 19, 2015 regarding the Subpoena.¹ Multiple times since, we requested Subcommittee staff to continue the personal appearance date, both by email and in discussion. Subcommittee staff indicated that they would only entertain such a request once Backpage.com provided documents in response to the Subpoena. As the Subcommittee is aware, Backpage.com has now voluntarily produced more than 16,000 pages responsive to the Subpoena's requests. It also collected more than five million additional pages of documents directly related to human trafficking before the Subcommittee staff instructed Backpage.com to cease production.

Notwithstanding the foregoing, if the Subcommittee—in a departure that echoes the ignominious approach of an earlier era of Senate inquiries—elects to engage in the unnecessary exercise of requiring a private citizen to attend a public hearing to assert his constitutional rights, Mr. Ferrer will do so after his return to the United States this weekend. Indeed, we are presently able to obtain and convey Mr. Ferrer's agreement to a specific future date on which he will personally appear before the Subcommittee.

Backpage.com is well aware that its business, particularly the advertisements posted by users in its Adult section, is unpopular with some audiences. Because some do not approve of the content of the speech that occurs on Backpage.com's internet platform, multiple branches of the government have attempted and still continue to attempt to disrupt its business. But protected speech is protected speech. Therefore, to protect the First Amendment, the courts—most recently the U.S. Court of Appeals for the Seventh Circuit—have enjoined inappropriate attempts to use the government's authority to disrupt Backpage.com's internet speech-based business, and the judicial branch has quashed subpoenas that were, like this Subcommittee's subpoena, overly broad and intrusive. Thus, the Subcommittee's investigation of Backpage.com must be viewed in the context of concerted government actions to shut the company down, particularly when there have been efforts by some in the Senate to collaborate or coordinate with those other government entities engaged in these targeted and non-legislative matters.

Despite the disapproval of some in the government, however, the fact remains that both Backpage.com and Mr. Ferrer are engaged in the business of speech. This business is specifically protected by the limits specifically imposed upon Congress by the First Amendment to the U.S. Constitution, and we believe the Subcommittee's investigation is outside of these

¹ We note that the Subpoena itself contemplates that the personal appearance be waived upon the production of documents.

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constitutional bounds. Throughout this inquiry, we have attempted to raise these concerns with the Subcommittee respectfully, consistently, and in the manner requested by Subcommittee staff.

While the Subcommittee has itself rejected Backpage.com's constitutional objections to the Subpoena, we believe the appropriate arbiter of such a dispute is the federal judiciary. Over the past months, we have suggested to Subcommittee staff that we pursue such a course. Indeed, we would welcome a proper judicial review of whether or not the Subcommittee's inquiry is within proper constitutional bounds. If the Subcommittee would like to pursue a civil contempt against Backpage.com—an action which would provide an opportunity for judicial review of the Subpoena—a sufficient foundation has already been established through our writings, and through Backpage.com's objections to the Subpoena's requests.²

Accordingly, the Subcommittee need not conduct a public spectacle attempting to shame Mr. Ferrer in order to advance this matter. Indeed, requiring his appearance on November 19, 2015 would be a further denigration of his rights, and an action unbecoming of the Subcommittee and its recent history of conducting fair and serious investigations.³ Given the existing record, and given that the Subcommittee has received written notice that Mr. Ferrer will decline to testify before the Subcommittee on the basis of his constitutional rights, we believe there is no legitimate reason to compel his appearance.

Thank you for your consideration.

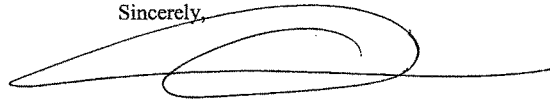
² We have further indicated to the Subcommittee that Backpage.com will comply with any production or disclosure requirements found in a final judicial decision to be constitutionally proper.

³ In Opinion 31, the Rules Review Committee of the District of Columbia Bar has stated that a congressional staff attorney violates ethical rules where he or she knows that summoning a witness to appear (1) will provide no information to the committee and (2) is intended merely to degrade a witness. *See* D.C. Bar Ethics Opinion 31 (1977). According to this opinion, a lawyer violates the D.C. Rules of Professional Conduct if he or she summons a witness to appear when "it is known in advance that no information will be obtained and the sole effect of the summons will be to pillory the witness." *Id.* In 2011, in Ethics Opinion 358, the D.C. Rules Review Committee rejected a request to vacate Opinion 31, holding that the Rules of Professional Conduct are violated "if there is no substantial purpose in calling a witness other than embarrassment, burden, or delay." D.C. Bar Ethics Opinion 358 (2011).

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Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line.

Steven R. Ross
Stanley M. Brand
Akin Gump Strauss Hauer & Feld
Counsel for Backpage.com, LLC

Robert Corn-Revere
Davis Wright Tremain, LLP
Counsel for Backpage.com, LLC

Akin Gump

STRAUSS HAUER & FELD LLP

STEVEN R. ROSS
202.887.4343/fax: 202.887.4288
sross@akingump.com

January 9, 2017

VIA ELECTRONIC DELIVERY

The Honorable Rob Portman, Chairman
The Honorable Claire McCaskill, Ranking Member
Permanent Subcommittee on Investigations
Committee on Homeland Security & Governmental Affairs
United States Senate
Russell Senate Office Building, SR-199
Washington, DC 20510

Dear Chairman Portman and Ranking Member McCaskill:

We are in receipt of your letter of January 5, 2017 denying our request that Messrs. Ferrer, Larkin, Lacey, Padilla and Ms. McDougall be excused from appearing at a hearing of the Subcommittee scheduled for today for a variety of reasons concerning the preservation of their constitutional rights and legal privileges. While your continued insistence that the witnesses appear is extremely unfortunate, it comes as no surprise given the Subcommittee's prior pronouncements with respect to Backpage.

Since mid-2015, the Subcommittee has, for reasons unrelated to the legislative responsibilities of the Congress, sought to compel Backpage, an online publisher of third party-created advertisements, to provide a virtually unlimited amount of information regarding the company's core editorial decisions: what material it would publish and what material it would not publish. Backpage strongly believes that this core activity lies at the very heart of the protection against government interference afforded to publishers of both print and on-line speech by the First Amendment. Backpage believes that the Subcommittee's quest for this information is not for the purpose of informing the legislative work of the Senate, but rather is part of a coordinated effort to drive Backpage out of business. As Judge Richard Posner has described efforts by others in government with whom the Subcommittee has coordinated, the goal is to either "suffocate" Backpage out of existence or to use the awesome powers of the government to force Backpage to follow in the footsteps of Craigslist and to abandon its Adult advertising section.

We understand that the Subcommittee disagrees and does not believe that Backpage's publication activities are worthy of the protections against government attack provided by the

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Bill of Rights. In this sense, the Subcommittee has discounted any argument that its investigative activities are subject to constitutional subject-matter constraints. But Backpage's insistence on vindicating its rights—rights that have been upheld in a series of federal court cases across the nation—is simply a proper and appropriate effort to obtain a judicial determination before it capitulates to what it believes to be unconstitutional efforts to harass it out of existence.

And yes, this Subcommittee and those with whom it has coordinated to subvert Backpage's constitutional rights have now achieved their objective. Today, throughout the United States, the entire Adult Section of the Backpage on-line classified advertising website has been censored and shut down. As Judge Posner observed in invoking an email written by a senior member of the staff of Cook County Sheriff Dart—the very same office with which the Subcommittee coordinated in conducting its inquiry—the government has deployed unconstitutional means to crush Backpage by pursuing a campaign of suffocation. The official predicted: "It's unsustainable for them to maintain all of the lobbying, legal battles and all the money it takes for their server space without revenue coming in." Judge Posner described such tactics as "a formula for permitting unauthorized, unregulated, foolproof, lawless government coercion ... [i]n other words, Backpage is doomed." This goal has been achieved.

Before the Subcommittee and others who have worked to do away with the Adult portion of Backpage's published content congratulate themselves and proclaim that the company's legal arguments are without merit, we would urge that one should not discount the decisions of the many courts that have struck down prior efforts to censor Backpage. *People v. Ferrer*, No. 16FE019224 (Cal. Sup. Ct., Dec. 9, 2016); *Backpage.com, LLC v. Dart*, 807 F. 3d 229 (7th Cir. 2015), *cert. denied*, 137 S. Ct. 46 (2016); *Backpage.com, LLC v. McKenna*, 881 F.Supp.2d 1262 (W.D. Wash. 2012); *Backpage.com, LLC v. Cooper*, 939 F.Supp.2d 805, 830 (M.D. Tenn. 2013); *Backpage.com, LLC v. Hoffman*, 2013 WL 4502097 (D.N.J. Aug. 20, 2013); *M.A. ex rel. P.K. v. Village Voice Media Holdings, LLC*, 809 F. Supp. 2d 1041 (E.D. Mo. 2011). Nor should they overlook the pending expedited appeal of the subpoena enforcement order in this case, soon to be heard and decided by the United States Court of Appeals for the D.C. Circuit. And lest anyone fail to recognize that the First Amendment freedoms at risk are critical not just for this one intermediary to preserve a free and open Internet, they should read the briefs filed in support of Backpage's position in the pending D.C. Circuit Court of Appeals case by the Cato Institute, the DKT Liberty Project, the Reason Foundation, and the Center for Democracy and Technology and the Electronic Frontier Foundation.

The Subcommittee has decided to treat a disagreement on important principles of law as an unlawful affront, even as private citizens are properly seeking a final judicial determination of their rights. Given its history, this Subcommittee should especially recognize and respect the constitutional rights of citizens and the propriety of seeking a final judicial resolution before one

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is ordered to submit to the demands of the government. The Senate has entrusted this Subcommittee with a very broad mandate to conduct investigations intended to inform the body's legislative functions. But when those powers are used without proper respect for the rights of citizens and the confines of Congress's legislative (rather than prosecutorial) role, it poses a great danger to our system of government and greatly undermines the brighter history of this Subcommittee. Unfortunately, the Subcommittee's recent conduct harkens back to the darkest days of its history, when many dozens of witnesses were brought before this Subcommittee during investigations based on the most tenuous of legislative purposes and forced to assert their First and Fifth Amendment rights.

Let us be clear: Backpage and the people who work for the company agree that human trafficking is abhorrent and should be eradicated. This is why Backpage has spent thousands of hours and millions of dollars working with, and at times training, the front lines of law enforcement in seeking to bring to justice those who have impermissibly sought to use the Internet as a platform to commit abhorrent crimes. The importance, and unfortunately the rarity, of this assistance to law enforcement efforts regarding human trafficking is why Backpage's CEO received a commendation from the Director of the FBI, and why the Company has been thanked by front line law enforcement officials around the country. Those law enforcement professionals at the federal and local levels actively engaged in the fight against human trafficking have often praised Backpage for its supportive efforts. For example, an officer from the Denver Police Department stated: "I wanted to personally thank you again for all you have done to assist with this matter. I know your company is vilified nationally because it is an easy target. I have told numerous people that Backpage is law enforcement friendly and does not support human trafficking." Or, as one FBI Special Agent succinctly put it: "Thank you! I appreciate your proactive efforts to protect our children."

Just as importantly, Backpage firmly believes that those who have been unwillingly forced into a life of virtual slavery should receive the assistance they need and deserve. This is why, in addition to its assistance to law enforcement, Backpage has donated to and has worked cooperatively with one of the leading rescue and shelter groups in the nation—the Children of the Night organization. That cooperation has included providing outreach advertising and assisting in numerous interventions.

There is an unfortunate irony to the "success" of the Subcommittee and the others with whom it has worked in closing down Backpage's Adult section. As others have observed, shutting down the Adult section will not end the scourge of human trafficking. Those who posted ads in furtherance of such activities will rapidly find other less transparent avenues on the Internet to pursue their illegal schemes—but both law enforcement and those seeking to help the victims will be deprived of their most active and cooperative partner in mitigating such

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activity. It is unfortunate that the Subcommittee specifically disclaimed any interest in Backpage's cooperation with law enforcement and instructed the company to stop providing information about this important part of the Backpage story. The coercive evil of human trafficking did not start with creation of Backpage or the Internet, and unfortunately it will not end with today's government censorship of Backpage's Adult section.

Although we think they are mistaken, we do recognize that there are those who believe that shuttering Backpage's Adult section will advance the fight against human trafficking, and we certainly understand that demonizing Backpage is a politically popular objective. But, as this very Subcommittee's history vividly demonstrates, it is when the Subcommittee believes it is in pursuit of a righteous and politically popular result that the greatest danger of disregard for the rights of witnesses is presented. Unfortunately, while the Members of the Subcommittee may not today be willing to acknowledge it, we hope that upon further reflection you will recognize that it is unworthy of the Senate and this Subcommittee to compel the appearance of witnesses at a broadcast hearing to publicly assert their constitutional rights under both the First and Fifth Amendments as they face yet another unlawful criminal proceeding in California brought by the newest Member of this Committee. The current Members of this Subcommittee might take the time to review the introduction to a historical collection of this Subcommittee's work in the early 1950's, issued fifty years later in 2003, by former Chairs Senator Carl Levin and Senator Susan Collins. In the Subcommittee's introduction to that extensive historical collection, the Senate Historian observed that "Senator McCarthy explained to witnesses that they could take the Fifth Amendment only if they were concerned that telling the truth would incriminate them, a reasoning that redefined the right against self-incrimination as incriminating in itself."

Perhaps the passage of time will also allow Members of this Subcommittee to recognize that our honest disagreement with your staff about the limitations imposed by the First Amendment deserved to be presented to, and resolved by, the judicial branch, as we urged should be done in a cooperative fashion starting with our first meeting during the summer of 2015. And with respect to a more recent decision, perhaps time will let some Members of the Subcommittee recognize that it was inappropriate to use your senatorial powers to force individual Americans to choose between acceding to your demand that they attend this hearing or attending an already-set court proceeding in an effort to promptly have—for the second time—the unconstitutional charges filed against them thrown out.

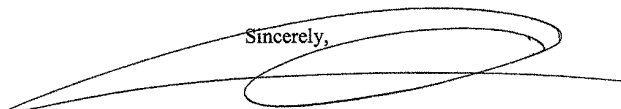
But the Subcommittee has determined that the "hearing" must go on, and it has rejected our various objections. The witnesses will indeed appear (though not testify), but we do not accept that the Subcommittee's determinations on its present legal authority under either the Constitution or the Rules of the Senate are correct and we specifically reserve and do not waive any and all objections to the forced appearance and questioning of Messrs. Ferrer, Larkin, Lacey,

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Padilla and Ms. McDougall. This includes, but is not limited to, any and all objections under the Constitution, common law (including the attorney-client privilege and attorney work product doctrine), the Rules of the Senate, the Rules of the Committee and the Subcommittee and any other law applicable to this Subcommittee's proceedings.

Sincerely,



Steven R. Ross
Stanley M. Brand
Akin Gump Strauss Hauer & Feld
Counsel for Backpage.com, LLC; Carl Ferrer;
James Larkin; Michael Lacey; Andrew Padilla; and
Elizabeth McDougall

Robert Corn-Revere
Davis Wright Tremaine, LLP
Counsel for Backpage.com, LLC; Carl Ferrer;
James Larkin; Michael Lacey; Andrew Padilla; and
Elizabeth McDougall

cc: The Honorable Ron Johnson, Chairman, Committee on Homeland Security &
Governmental Affairs
The Honorable John McCain
The Honorable Rand Paul
The Honorable James Lankford
The Honorable Michael Enzi
The Honorable John Hoeven
The Honorable Steve Daines
The Honorable Tom Carper
The Honorable Jon Tester
The Honorable Heidi Heitkamp
The Honorable Gary Peters
The Honorable Maggie Hassan
The Honorable Kamala Harris