

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 United States of America,  
10 Plaintiff,  
11 v.  
12 Michael Lacey et al.,  
13 Defendants.  
14

No. CR-18-00422-PHX-DJH  
**ORDER**

15 The United States (the “Government”) has filed a “Motion for Protective Order  
16 Containing Sensitive Victim Information” (Doc. 1948) (“Motion for Protective Order” or  
17 “Motion”). Defendant Spear filed a Response (Doc. 1982).<sup>1</sup> Non-party David M. Morgan  
18 (“Mr. Morgan”) filed an Intervenor’s Notice of Joinder to Defendant Spear’s Response  
19 (Doc. 1985). Upon consideration of the same, the Court will grant the Government’s  
20 Motion.

21 **I. Background and Procedure<sup>2</sup>**

22 From August 29–November 16, 2023, the parties proceeded to a public jury trial in  
23 a case involving allegations relating to Travel Act offenses and multiple money laundering  
24 accounts. The Travel Act offenses alleged that Defendants conspired to operate a for-profit

25  
26 <sup>1</sup> At the close of trial, the Court reminded the parties of the Government’s Motion for  
27 Protective Order Containing Sensitive Victim Information, noting that it had not received  
any response thereto. So, the Court extended the response filing time. Only Defendant  
Spear filed a Response.

28 <sup>2</sup> The Court’s docket is replete with the facts of the case so they need not be fully recited  
here.

1 webpage, Backpage.com, as a marketing platform for advertisers of sex for money in  
2 violation of multiple state statutes. During trial, the Government introduced exhibits of  
3 screenshotted advertisements that were listed on Backpage.com and allegedly offered sex  
4 for money. The exhibits included partially clothed females—the alleged victims—in  
5 various provocative poses. Some exhibits pictured the alleged victims while underage. All  
6 alleged victims testified at trial as adults and each identified themselves in the exhibits.  
7 Each admitted exhibit was published to the jury and the attending public. Upon return of  
8 the jury’s verdict, all admitted and non-admitted trial exhibits were returned to the  
9 Government.

10 The Government filed its Motion for Protective Order after non-party Mr. Morgan,  
11 who operates a webpage offering court documents for a fee, sought access to “admitted  
12 and non-admitted” trial exhibits. (Docs. 1948 at 2; 1948-3). Mr. Morgan’s request was  
13 not made in any court filing. Rather, they were made in email communications with the  
14 Clerk of the Court. (Docs. 1948-3; 1948-4).

## 15 **II. Discussion**

16 The Government’s Motion for Protective Order is based on two grounds: (1) to  
17 invoke the Court’s discretionary and supervisory power over its own record under Federal  
18 Rule of Criminal Procedure 16(d) (Doc. 1948 at 7–9); and (2) to protect the victims’ rights  
19 to privacy and dignity under the Crime Victims’ Rights Act, 18 U.S.C. § 3771, and the  
20 Child Victims’ and Child Witnesses’ Rights Act, 18 U.S.C. § 3509 (“Child Victims’ Act”)  
21 (Doc. 1948 at 9–13). The Government seeks a Protective Order that would require Defense  
22 Counsel to securely maintain and not disseminate the “identifying information” including  
23 the victims’ names, social security numbers, addresses, telephone numbers, and images of  
24 individuals contained in the discovery and exhibits. (Doc. 1948-1). The Government  
25 further seeks protection of exhibits not introduced in trial. (*Id.*)

26 Defendant Spear asserts, among other arguments, that the Government’s Motion  
27 lacks any evidentiary basis, violates the First and Sixth Amendments, is untimely, and is  
28 not narrowly tailored to protect any legitimate privacy interest. (Doc. 1982). The Court

1 disagrees.

2 **A. The Court’s Discretionary & Supervisory Powers Over its Own Records**

3 Because the impetus for the Government’s Motion was a reporter’s inquiry for  
4 exhibits, the Court will first address its associated arguments. The press has a  
5 constitutional interest in access to the courts and the judicial process described as “a right  
6 to gather information.” *Richmond Newspapers v. Virginia*, 448 U.S. 555, 576 (1980). But  
7 that right is to sit, listen, watch and report. *Id.*

8 The United States Supreme Court’s precedent *Nixon v. Warner Commc’n Inc.* is  
9 highly instructive for the Court’s purposes. 435 U.S. 589 (1978).<sup>3</sup> In *Nixon*, the Court  
10 stated that a common-law right of access to judicial records is not absolute; rather, whether  
11 to permit access is best left to the discretion of the trial court considering the relevant facts  
12 and circumstances of the particular case. *Id.* at 598–99. The Court further instructed that  
13 the First Amendment does not provide members of the press with a right to evidence “about  
14 a trial superior to that of the general public.” *Id.* at 609. So, *Nixon* disposes of any need  
15 to analyze a reporter’s request, such as Mr. Morgan’s, to access evidence not introduced or  
16 admitted during trial. Finally, *Nixon* stated that the release of trial evidence is not required  
17 by the Sixth Amendment because the guarantee of a public trial “confers no special benefit  
18 on the press” but such guarantee is satisfied by the public and the press’ ability to attend  
19 the trial and report on what they observed. *Id.* at 610; *see also KPNX Broadcasting Co., v.*  
20 *Superior Court*, 678 P.2d 431, 441 (Ariz. 1984) (en banc); *United States v. Hastings*, 695  
21 F.2d 1278, 1280 (11th Cir. 1983) (holding the press’ right of access is a right to attend, not  
22 to televise, a criminal trial).

23 The Court notes that during all unsealed pretrial and trial proceedings, the press,  
24 including Mr. Morgan, were present. Indeed, Mr. Morgan was present for what appeared  
25 to be the entirety of the trial. The Court was equipped with large video screens adjacent to  
26 the public viewing area on which the admitted trial exhibits were published. Mr. Morgan,  
27 the public, and all members of the press were able to view each admitted exhibit

28 <sup>3</sup> Of course, the congressional statute at issue in *Nixon* is not relevant here.

1 simultaneously with the jury. So, the Court is not convinced that this case presents some  
2 unique circumstance which would lead it to stray from *Nixon*'s guidance.<sup>4</sup> Based on *Nixon*  
3 and its progeny, the Court finds a Protective Order would not violate a First or Sixth  
4 Amendment right. Still, it finds further reason to protect the admitted and non-admitted  
5 exhibits of victim advertisements on Backpage.com.

6 **B. The Victims' Rights Act & the Child Victims' and Child Witnesses'**  
7 **Rights Act**

8 As noted, though the exhibits are not within the Court's custody, they remain a part  
9 of the Court's judicial record. Thus, there is an ongoing need to ensure that the Court's  
10 records are not accessed or distributed for some purely prurient interests, especially when  
11 involving minors identifying information.

12 The Crime Victims' Rights Act provides that a crime victim has "the right to be  
13 treated with fairness and with respect for the victim's dignity and privacy."  
14 18 U.S.C. § 3771(a)(8). Furthermore, "the court shall ensure that the crime victim is  
15 afforded the rights described. *Id.* § 3771(b). The statute provides that either the  
16 Government or a crime victim may seek to enforce its proscribed rights. *Id.* § 3771(d).  
17 The Court observes that, when viewing the evidence in a light most favorable to the  
18 Government, each subject victim, with rare exception, was under the control of a third  
19 person who photographed them, housed them, clothed them, advertised them, often  
20 transported them, and then paid them part of the proceeds accrued from a sex act. Thus,  
21 they are entitled to the protections of the Crime Victims' Rights Act because they meet the  
22 definition of crime victim. *Id.* § 3771(b)(2)(D).<sup>5</sup>

23 Similarly, the Child Victims' Rights Act provides protections for a "child"—that is,  
24

---

25 <sup>4</sup> Nor is the Court convinced by the First or Sixth Amendment right arguments advanced  
26 by Defendant Spear. Indeed, it is difficult to determine whether Defendant Spear has  
27 standing to assert the rights of Mr. Morgan or any third party, including the "Wayback  
Machine," "advertisers" on Backpage.com, or any media outlet. (*See* Doc. 1982 at 7).

28 <sup>5</sup> The Victims' Rights Act defines the term "crime victim" to mean "the person against  
whom the State offense is committed or, if that person is killed or incapacitated, that  
person's family member or other lawful representative." 18 U.S.C. § 3771(b)(2)(D).

1 “a person who is under the age of 18 [and] who is or is alleged to be a victim of a crime of  
2 physical abuse, sexual abuse, or exploitation[.]” *Id.* § 3509(a)(2). The statute further  
3 instructs that the Government, members of the jury, and *defense attorneys* “shall keep all  
4 documents that disclose the name or any other information concerning a child in a secure  
5 place to which no person who does not have reason to know their contents has access.”  
6 *Id.* § 3509(d)(1). The protections established by the Child Victims’ Rights Act apply even  
7 after the child becomes an adult. *See United States v. Gardner*, 2016 WL 5404207 at \*2  
8 (E.D. Mich. Sept. 28, 2016) (rejecting as disingenuous the argument that “[the victim]  
9 ‘[was] not truly underage’ because she was 17 at the time of the alleged offense and will  
10 be 18 at time of trial” because the victim was a minor when the alleged sexual misconduct  
11 occurred).

12 These statutes, taken together, indicate a Congressional intent to protect a crime  
13 victim, particularly children, from needless invasion of privacy that may impair his or her  
14 dignity or further psychological harm to him or her. *See United States v. Graham*, 2015  
15 WL 6161292 at \*10 (S.D.N.Y. Oct. 20, 2015) (finding a “‘legitimate and substantial’  
16 interest in protecting the victim and the uncharged victims from ‘likely adverse personal,  
17 professional and psychological consequences for publicly linking their identities’ to their  
18 prior prostitution activity warrants protection of their personal identifying information”).  
19 In *Graham*, the district court observed that withholding such information would not impair  
20 the defendant’s right to cross-examination. *Id.* The difference here is that the  
21 Government’s Motion for Protective Order was filed after the victims testified. So, it begs  
22 the question: what purpose is served by permitting a defense counsel or defendant from  
23 now reproducing or sharing a victim’s personal identifying information? The Court sees  
24 none.<sup>6</sup> *See United States v. Paris*, 2007 WL 1484974 at \*2 (D. Conn. May 8, 2007).

### 25 **III. Conclusion**

26 The Government’s Motion for Protective Order Containing Sensitive Victim  
27 Information is substantially supported. Access to non-admitted and admitted exhibits,

28 <sup>6</sup> This of course would not preclude any defendant from using the exhibits in this case or  
any other resulting judicial proceeding.

1 including identifying information, by the press for commercial purposes or a defendant for  
2 unspecified reasons does not amount to a protected constitutional right. Furthermore,  
3 Congress has indeed sought to protect victims, including minors, from unwarranted  
4 invasions of privacy through the Crime Victims' Rights Act and the Child Victims' and  
5 Witnesses' Rights Act.

6 Accordingly, and with good cause appearing,

7 **IT IS ORDERED** that the United States' Motion for Protective Order Containing  
8 Sensitive Victim Information (Doc. 1948) is **GRANTED**.

9 **IT IS FURTHER ORDERED** as follows:

10 1. Defense counsel shall securely maintain in their custody any and all "identifying  
11 information" including victims' names, social security numbers, addresses, telephone  
12 numbers, and images of individuals contained in the discovery and designated exhibits in  
13 this matter, namely advertisements that were posted on Backpage, including but not limited  
14 to the trial exhibits listed in Attachment A to this Order.

15 2. Reproduction and dissemination of such "identifying information" and images shall  
16 be limited to defense counsel and defense experts, as necessary, for purposes of this matter,  
17 with any such reproduced copies being returned to defense counsel at the conclusion of the  
18 case.

19 3. Defendants shall not possess the aforementioned "identifying information" and  
20 images outside of defense counsel's presence, and shall not maintain any such images in  
21 his or her custody.


22 4. The "identifying information" and images of the individuals depicted in the ads and  
23 exhibits are for use only in this case by counsel and the defendant, and may not be  
24 disseminated or used for any other purpose; and

25 5. All "identifying information" and images of the individuals depicted in the ads and  
26 exhibits shall be returned to the United States or destroyed at the conclusion of this case.  
27 If defense counsel chooses to destroy rather than return, each counsel shall provide a sworn  
28 statement to the United States stating the date on which the documents were destroyed and

1 the Bates numbers and/or Exhibit numbers of the documents destroyed.

2 6. This Order shall be presented to any individual to whom, under the terms of this  
3 Order, defense counsel discloses images covered by this Order. By accepting the covered  
4 images, such persons agree to submit to the jurisdiction of the United States District Court  
5 for the District of Arizona for the sole purpose of enforcing the terms of this Order.

6 Dated this 18th day of January, 2024.

7  
8   
9 \_\_\_\_\_  
10 Honorable Diane J. Humetewa  
11 United States District Judge  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28