



person, [or] a member of the immediate family . . . of that person . . . shall be punished as provided in section 2261(b).

Id. To prove a violation of Section 2261A(1), the government must prove that:

- (1) the defendant traveled in interstate commerce as charged in the indictment;
- (2) the defendant traveled in interstate commerce with the intent to harass or intimidate the victim; and
- (3) in the course of or as a result of such travel, the victim was placed in reasonable fear of the death of or serious injury to himself or a member of his immediate family.

See 18 U.S.C. § 2261A(1); Modern Federal Jury Instructions-Criminal § 63.03; United States v. Bowker, 372 F.3d 365, 388 (6<sup>th</sup> Cr. 2004), vacated on other grounds 543 U.S. 1182 (2005); United States v. Wills, 346 F.3d 476, 493-94 (4<sup>th</sup> Cir. 2003), cert. denied, 542 U.S. 939 (2004); United States v. Al-Zubaidy, 283 F.3d 804, 808 (6<sup>th</sup> Cir. 2002).

The Court rejects the Defendant's position. The government has recited in its brief substantial facts to show that it will prove at trial that the Defendant did in fact cross state lines and if the government's testimony is believed, the jury may be able to find that the Defendant violated the statute. The Court distinguishes this statute from that in Lopez because it has a direct link between interstate travel and harm to another person. Although it does not appear that the Third Circuit has specifically ruled on this claim, no court has held the statute unconstitutional. The Court believes that Defendant's argument can be more intelligently ruled upon if the Defendant is convicted and desires to present this claim in a post-trial setting, when the trial record can be considered.

The Defendant's next claim is that no federal jurisdiction exists. Numerous statutes, such

as mail fraud and RICO, provide for criminal liability based on interstate activity. Once again, if the government presents evidence at trial as it proffers in its brief, there will be sufficient evidence of the Defendant's involvement in interstate commerce.

Lastly, Defendant asserts prosecutorial delay. The Court has had pretrial hearings in this case and the record will show that various motions have been filed in good faith by both Defendant and the government that have warranted postponements of the trial. The delays have not been so prejudicial as to constitute a denial of due process. The government's brief recites lengthy reasons for the delay between the factual predicates of the case and the return of the indictment.

Defendant's counsel has filed a reply (Doc. No. 57), which notes as to points two and three above, that a factual record should be developed before the Court issues a final ruling on these issues.

For the foregoing reasons, Defendant's Motion to Dismiss the Indictment will be denied, without prejudice.

An appropriate Order follows.

