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**UNITED STATES DISTRICT COURT**

**District of Kansas**

(Topeka Docket)

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**CASE NO. 5:22-cr-40086-TC-RES**

**CECIL A. BROOKS (1),  
LEMARK ROBERSON (2),  
RICHARD ROBINSON (3),  
a.k.a. "Bone," and  
ROGER GOLUBSKI (4),**

**Defendants.**

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**GOVERNMENT’S MOTION FOR AN ORDER PERMITTING ADMISSION OF  
EVIDENCE PURSUANT TO FEDERAL RULES OF EVIDENCE 413 and 404(b)**

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Defendants Brooks, Roberson, and Robinson, with protection from and participation by then-Detective Golubski, held young women and girls at an apartment complex owned by Brooks, and forced the young women, through beatings and threats of force, to provide sexual services. The victims included two minors, Person 1 and Person 2. All four defendants contributed to a reign of physical terror at the apartment complex.

In the years leading up to, during, and after the charged conduct, which occurred more than two decades ago, other victims at the apartment complex observed key background and context as to the defendants’ conspiracy; defendants Brooks and Golubski

sexually assaulted other victims; and all four defendants engaged in other acts that demonstrated their common plan and scheme of controlling, terrorizing, and sexually abusing minors and young women. This trial will turn entirely on victim credibility, and the other-victim evidence is both crucial and admissible to assist the jury in “accurately deciding [a] case[] that would otherwise become [an] unresolvable swearing match[]” between the defendants and the two then-teenagers they conspired to sexually abuse. *United States v. Enjady*, 134 F.3d 1427, 1431 (10th Cir. 1998), *opinion clarified*, No. 96-2285, 1998 WL 133994 (10th Cir. Mar. 25, 1998).

Accordingly, the United States of America, by and through undersigned counsel, respectfully moves this Court to issue an order that (a) the proffered preliminary background evidence to the charged conspiracy set out below and reflected in the indictment, ECF 1 at 2-8, is admissible intrinsic evidence; (b) the proffered evidence of defendant Brooks’s sexual assaults of Other Victims C, D, E, and F, and of defendant Golubski’s sexual assaults of Other Victims A, B, D, and G, is admissible under Federal Rule of Evidence 413; and (c) the five proffered categories of other-act evidence—attempted sexual assault and sexual assault by a third party; grooming in the apartment complex office; instigation of punishment; punishment; and refusal to allow victims to seek urgent medical care—are admissible under Federal Rule of Evidence 404(b). The United States seeks leave to file a supplemental motion should there be additional admissible evidence uncovered as the investigation proceeds.

**A. PROCEDURAL BACKGROUND**

On November 10, 2022, a federal grand jury returned a three-count indictment under seal charging all four defendants with violating 18 U.S.C. § 241 by conspiring to hold young women, including Person 1 and Person 2, in a condition of involuntary sexual servitude (Count One); charging defendants Brooks, Roberson, and Robinson with violating 18 U.S.C. § 1584 by holding Person 1 in a condition of involuntary servitude and forcing her to provide sexual services to defendant Roberson (Count Two); and charging defendants Brooks, Roberson, and Golubski with violating 18 U.S.C. § 1584 by holding Person 2 in a condition of involuntary servitude and forcing her to provide sexual services to adult men, including Brooks, Roberson, and Golubski (Count Three). All three counts charge that the defendants' conduct included kidnapping and its attempt, and aggravated sexual abuse and its attempt. Additionally, Counts Two and Three charge that the defendants' conduct involved the sexual and physical abuse, and kidnapping, of a child then under the age of 18 years. This matter has not yet been set for trial.

**B. SUMMARY OF CRIMES CHARGED IN THE INDICTMENT**

**I. Section 241 Conspiracy (Count One – all four defendants)**

Between 1996 and 1998, defendant Brooks operated and controlled Delevan, an apartment complex in Kansas City, Kansas, where he and defendants Roberson and Robinson conducted criminal activity, including sex trafficking. The defendants selected young girls who were runaways, who were recently released from Beloit Juvenile Correctional Facility, and/or who came from broken homes, and moved these girls into Delevan to use them in criminal activities, including sex trafficking. Brooks, Roberson,

and Robinson used physical beatings, sexual assaults, and threats of force to compel young women at Delevan—including Persons 1 and 2, described further below—to provide sexual services. Golubski, then a detective with the Kansas City, Kansas Police Department, provided Brooks, Roberson, and Robinson protection from law enforcement investigation and intervention into the criminal offenses, including sex trafficking, occurring at Delevan, and sexually assaulted girls who were being held there.

Brooks kept one of the apartment units at Delevan as his “office,” where he stored guns, drugs, and cash used in his criminal activities, and where he held regular meetings to further the criminal activities, including meetings with Golubski. Brooks kept locks on both the inside and the outside of the door to the office unit, which meant that girls could be locked in the office unit from the outside. The office unit had a second floor with a bedroom and a bathroom. On multiple occasions, Brooks, Roberson, and Robinson held young girls—including Person 1, described further below—in this office unit. The girls held there ranged in age from 13 years old to 17 years old. Those girls, whom defendants sometimes considered to “belong” to one of the defendants at a time, would be forced to provide sexual services to that defendant primarily, and sometimes to others.

Brooks, Roberson, and Robinson also held young girls in multiple units at Delevan that were separate from the office unit. One of those units was referred to as the “relaxed” area, where young girls used alcohol and drugs with the defendants, and another was the “working house,” where girls were compelled to perform sexual services for adult men who visited Delevan. Brooks, Roberson, and Robinson provided drugs to the girls in the working house, who were addicts, and they beat and threatened to beat girls who did not

agree to provide sexual services in exchange for shelter, drugs, or clothes. Brooks, Roberson, and another member of the conspiracy who is now deceased, each sometimes collected money at the door from the adult men who came to the working house to have sex with the girls. Roberson and the now-deceased member of the conspiracy, H.R., would sometimes pass the money to Robinson, who would give it to Brooks. Brooks, Roberson, and Robinson provided the adult men with whichever girl they chose and allowed the men to take the girl into a bedroom for sexual services.

On multiple occasions, Golubski visited the “working house,” and Brooks, Roberson, and Robinson allowed him to choose girls—including Person 2, described further below—to provide him sexual services. Golubski would also meet with Brooks in Brooks’s office, where Brooks would make sure they would meet alone by having any others present leave when Golubski arrived at the office. On other occasions, Golubski parked outside Delevan, where he would be handed a bundle of money through his car window by Brooks or those working for him.

## **II. Involuntary Servitude of Person 1 (Count Two – Defendants Brooks, Roberson, and Robinson; The Office Unit)**

Person 1 met Roberson when she was a teenager who had recently been released from Beloit Juvenile Correctional Facility and whose mother had committed suicide. Roberson moved her into the upstairs area of the office unit, where he, Brooks, and Robinson held her for approximately one year, from September 1996 to October 1997, often locking her inside. In a voluntary, audio-recorded statement to the FBI in 2022,

Roberson offered the first name of Person 1 and said that Person 1 lived with him in the office-bedroom at Delevan, that he had sex with her, and that she had been his girlfriend.

Person 1 recalled that there was an office unit door that locked from both the inside and the outside, and when she heard it lock Person 1 knew that she would not be able to get out. There were also bars on the window. Roberson forced Person 1 to provide sexual services to him. On multiple occasions, Roberson vaginally raped her; forced her to perform oral sex; beat her with a closed fist; and threatened to kill her.

During a period when Roberson was in jail, Brooks, at Roberson's request, instructed Person 1 that she was not to leave Delevan, to talk to any other men, or to smile at any other men. Although Person 1 complied, Brooks told Roberson upon his return that Person 1 had smiled at another man. As a result, Roberson struck Person 1 in the face with a closed fist. Roberson then calmly moved an iron and ironing board out of the way, waited for the iron to cool off, and struck Person 1 with the iron and beat her. Roberson dragged her down a staircase by her hair and repeatedly struck her, as Brooks observed and laughed.

Roberson terrified Person 1 by telling her that other women at Delevan were punished by being beaten and that one woman was strung upside-down by her feet in a closet as punishment. On one occasion, Person 1 could hear another woman screaming; Person 1's understanding from the screams and from what Roberson told her after was that the woman was being beaten by Brooks and his crew. *Cf. United States v. Harris*, 701 F.2d 1095, 1100 (4th Cir. 1983) (finding evidence that defendant beat other people was relevant in 18 U.S.C. § 1584 case because it contributed to a "reign of physical terror" used to coerce the victim). Person 1 confided in Roberson, who sometimes brought her food,

that she desperately wanted to escape. Nevertheless, Robinson refused to allow her to leave Delevan, even though he knew that she was in a dire situation, and he had the ability to help her leave.

When teenaged Person 1 experienced severe abdominal pain and vaginal bleeding, Roberson and others still refused to allow her to leave Delevan to go to a hospital. Person 1 escaped from Delevan in October 1997 and got to a hospital, where she was diagnosed as suffering from an 8-week ectopic pregnancy and iron deficiency anemia and underwent emergency surgery. Person 1 recalled that Roberson had impregnated her.

### **III. Involuntary Servitude of Person 2 (Count Three – Defendants Brooks, Roberson, and Golubski; The Working House)**

Brooks selected Person 2 to live at Delevan in approximately January 1997, when Person 2 was 16 years old. Person 2 had also been released from Beloit Juvenile Correctional Facility and had nowhere to live.

Initially, Person 2 lived in the “relaxed” part of Delevan, but after a short time, Brooks moved her into the “working house,” where Brooks, Roberson, and Robinson forced her to provide sexual services to men—in order to avoid being beaten and kicked—for several months. During this time, Roberson repeatedly vaginally raped Person 2. When Person 2 fought back, Roberson struck her, shoved her, and pulled her hair. Roberson terrified Person 2 by telling her that the defendants had murdered a woman by burning her alive and watching her dance around like a chicken with no head. Person 2 watched Brooks beat a man and burn his face with an iron; Person 2 felt like Brooks did it in front of her and the other girls in order to send a message.

During her time there, Person 2 observed Golubski come to the working house regularly and choose primarily young Black girls—ranging in age from about 13 to 17 years old—to provide sexual services to him. Sometimes the girls had visible bruises and injuries before being chosen for sex. On one occasion, Golubski chose Person 2. There were not many people at the working house that day and Person 2 felt like Golubski was “settling” for her because she was white and Golubski preferred Black girls. When Golubski chose Person 2, he acknowledged that she did not look happy to be at Delevan.

Golubski pushed Person 2 into one of the rooms used for sex. He was wearing his firearm and badge, and Person 2 was afraid because of his firearm. Golubski initially struggled to get an erection. After he did, he forced his penis into Person 2’s vagina. The sex turned rough and painful; Golubski pulled Person 2’s hair and choked her. Person 2 repeatedly cried out in pain, and Golubski repeatedly said, “you like it like that, bitch.” Person 2 cried and vomited after Golubski left, and she was sore for days after. Person 2 felt like Golubski raped her when he did not need to (because she would have submitted to sex to avoid being beaten by Brooks, Roberson, and the now-deceased member of the conspiracy, H.R.).

Brooks told Person 2 that he had law enforcement on his payroll. On one occasion, Brooks took Person 2 into the basement, forced her to perform oral sex on him, and vaginally raped her without a condom as Person 2 cried and begged him to stop. Brooks then grabbed Person 2 by the throat, slammed her into a wall, and threatened to kill her. Soon after this incident, Person 2 ran away from Delevan. Shortly after she escaped, she disclosed to her sister that she had been raped and beaten at Delevan (but not by whom).

**C. LEGAL ELEMENTS**

**I. Elements of Conspiracy Against Rights, 18 U.S.C. § 241 (Count One)**

Count One charges all four defendants with violating 18 U.S.C. § 241 by conspiring to interfere with the victims' Thirteenth Amendment right to be free from involuntary servitude. Section 241 provides, in pertinent part: "If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any . . . District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States," they shall be punished. 18 U.S.C. § 241.

To prove that each defendant violated Section 241, the government must prove beyond a reasonable doubt (1) that the defendant conspired with one or more persons to injure, oppress, threaten, or intimidate young women, including Persons 1 and 2, for the purpose of interfering with a specific right secured by the Constitution or laws of the United States—here, their Thirteenth Amendment right to be free from involuntary servitude; (2) that the defendant intended to interfere with said right; and, in this case, (3) that the defendant's conduct included kidnapping or its attempt, or aggravated sexual abuse or its attempt. *See, e.g., United States v. Kozminski*, 487 U.S. 931, 934 (1988) ("Title 18 U.S.C. § 241 prohibits conspiracy to interfere with an individual's Thirteenth Amendment right to be free from 'involuntary servitude.'"); *United States v. Whitney*, 229 F.3d 1296, 1301 (10th Cir. 2000) (setting out elements of 18 U.S.C. § 241 violation); Pattern Crim. Jury Instr. 10th Cir. 2.16 (2023).

In the Tenth Circuit, to prove part of the first element—that a conspiracy existed—the government must prove (1) that the defendant agreed with at least one other person to

violate the law, as charged in the indictment; (2) that the defendant knew the essential objective of the conspiracy; (3) that the defendant knowingly and voluntarily participated in the conspiracy; and (4) that there was interdependence among the members of the conspiracy; that is, the members, in some way or manner, intended to act together for their shared mutual benefit within the scope of the conspiracy charged. *See United States v. Alcorta*, 853 F.3d 1123, 1136 (10th Cir. 2017) (setting out elements of conspiracy); Pattern Crim. Jury Instr. 10th Cir. 2.16 (2023). “[A]n agreement may be inferred from a variety of circumstances, such as[] sharing a common motive, presence in a situation where one could assume participants would not allow bystanders, repeated acts, mutual knowledge with joint action, and the giving out of misinformation to cover up [the illegal activity].” *Whitney*, 229 F.3d at 1301 (internal quotation marks omitted).

## **II. Elements of Involuntary Servitude, 18 U.S.C. § 1584 (Counts Two-Three)**

As noted above, Counts Two and Three charge three defendants each with violating 18 U.S.C. § 1584 by holding Person 1 and Person 2, respectively, in a condition of involuntary servitude and forcing them to provide sexual services. Section 1854 was enacted to enforce the Thirteenth Amendment, which provides, in relevant part: “Neither slavery nor involuntary servitude . . . shall exist within the United States, or any place subject to their jurisdiction.” U. S. Const. amend. XIII. Section 1584 provides: “Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term,” shall be punished. 18 U.S.C. § 1584(a).

To prove that the defendants violated Section 1584, the government must prove beyond a reasonable doubt as to each defendant (1) that the defendant held the victim in a condition of “involuntary servitude”; (2) that the victim was so held for a “term,” that is, a period of time; (3) that the defendant acted knowingly and willfully; and, in this case, (4) that the defendants’ conduct also involved the sexual and physical abuse, or kidnapping, of a child then under the age of 18 years. *See United States v. Kaufman*, 546 F.3d 1242, 1259-62 (10th Cir. 2008). “The term ‘involuntary servitude’ means a condition of compulsory service in which the victim is compelled to perform labor or services against the victim’s will for the benefit of a defendant [(a)] due to the use or threat of physical restraint or physical injury, or [(b)] by the use or threat of coercion through law or the legal process.” *Id.* at 1260 (quoting district court jury instructions, which the Tenth Circuit upheld); *see also Kozminski*, 487 U.S. at 934.

**D. SUMMARY OF OTHER-VICTIM EVIDENCE SOUGHT TO BE INTRODUCED UNDER RULES 404(b) AND 413**

The United States provides the following summaries of other-victim evidence it intends to introduce at trial under Federal Rules of Evidence 413 and 404(b). The United States has provided FBI 302 (summary) reports of the victims’ accounts to defense counsel, and the below is not an exhaustive account. The United States has attached to this motion a table summarizing the chronology and accounts of the other victims described below in order to aid the Court in its determination of admissibility. *See* Attachment B.

## **I. Other Victim A<sup>1</sup>**

### **a. Rule 413 evidence as to Defendant Golubski**

Between 1989-1991, when Other Victim A (“OV.A”)<sup>2</sup>, who is Black, was 21 or 22 years old, she got into an argument with her boyfriend and walked to a nearby park. Golubski drove up, identified himself as a police officer, told her that she was not allowed to be in the park at that hour, and offered to drop her off at home. Instead, Golubski drove her to a small field and told her that she needed to perform oral sex on him.

When OV.A said no, Golubski grabbed OV.A by the throat and squeezed, pushing her until she fell into the back seat of his vehicle. He continued to hold her throat with one hand and attempt to pull at her skirt with the other. Golubski kept his hand around her throat as he removed his penis from his pants. He pulled down her skirt and underwear, inserted his penis into her vagina, and raped her. OV.A cried loudly and screamed, “why are you doing this?” Golubski responded, “Because I can.” Throughout the assault, Golubski had on his person his badge and firearm.

## **II. Other Victim B<sup>3</sup>**

### **a. Intrinsic evidence<sup>4</sup>**

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<sup>1</sup> Hereinafter, the government will use these “Other Victim” designations in lieu of initials for the Rules 413 and 404(b) victims. A sealed attachment identifies these victims by name. *See* Sealed Attachment A.

<sup>2</sup> Other Victim A is the same person as Other Victim 3 in the corresponding other-victim litigation in *United States v. Golubski*, No. 5:22-cr-40055-TC-RES.

<sup>3</sup> Other Victim B is the same person as Other Victim 5 in the corresponding other-victim litigation in *United States v. Golubski*, No. 5:22-cr-40055-TC-RES.

<sup>4</sup> For reasons described further below, *see* Section E.I. at pp. 24-26, the government submits that certain evidence described in this section is admissible as intrinsic evidence and therefore not subject to Rule 404(b)

In the mid-1990s, Other Victim B spent time at Delevan, where she observed then-Detective Golubski visit Brooks's office on multiple occasions.

**b. Rule 404(b) evidence as to Defendant Brooks**

OV.B first met defendant Brooks in approximately 1988, when she was 14 or 15 years old. Brooks would "groom" her by giving her money and "chasing" her. OV.B went to a party around this time; although she had no memory of drinking alcohol, she woke up naked in Brooks's bed the next morning. Around this time, Brooks slapped OV.B for dating a boy her own age and told her that she was cheating on him.

**c. Rule 413 evidence as to Defendant Golubski**

In 1990, Golubski offered to get lunch with OV.B, who is Black, after he had met her while investigating the murder of her younger brother. At lunch, Golubski placed his hand on OV.B's thigh and pressured her for sex, offering to pay her money. Golubski asked OV.B if she'd "ever been with a white guy" and said that he wanted her to give him a "creampie" and to "cum on his face." After OV.B said no, those close to her began getting into trouble with police. A couple years later, Golubski asked OV.B to visit his office at the police station. In his office, the defendant lifted up OV.B's dress, held her thighs, and aggressively attempted to perform oral sex. OV.B felt like she was trapped and pushed the defendant's head away until he eventually allowed her to leave.

**III. Other Victim C**

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analysis. Alternatively, the government submits that such evidence is admissible under Federal Rule of Evidence 404(b).

Other Victim C moved to Delevan in approximately 1993 or 1994, when she was eight years old, and lived there until approximately 1996. OV.C lived with her mother, and then with her grandmother, at Delevan. OV.C is related to one of the defendants in a manner noted in the sealed attachment that identifies the victims. *See Attachment A.*

**a. Intrinsic evidence**

During the time that she lived at Delevan, OV.C observed Golubski there regularly. OV.C knew that Golubski was a police officer because of his badge, his clothing, and the fact that he was a white man in that part of town. At the time, OV.C was confused that Golubski could arrive at Delevan, where she knew drugs and crimes happened, and no one would run or seem bothered by his presence.

When OV.C would play outside, she would see Golubski drive up and park in the alley next to Delevan, where his car would not be visible from the road. Sometimes, Golubski would stay in his vehicle, Brooks would hand an envelope to one of his “runners,” and the runner would hand the envelope to Golubski. Other times, Golubski would go inside. Golubski went into Brooks’s office so regularly that OV.C assumed he had a key, and oftentimes when he arrived, Brooks would make everyone leave so that Brooks could meet with him alone.

OV.C knew that there were girls at Delevan who had sex with men there and who were addicted to drugs. During the time that OV.C lived at Delevan, a then-middle-aged (now deceased) woman, who was an addict, lived there as well. OV.C heard Brooks regularly tell the woman he would give her a “piece,” meaning crack cocaine, to go “take

care” of one of the girls. Brooks would say, “Don’t come back ‘til she’s bleeding, or you’ll be bleeding.”

Above the office at Delevan (consistent with the area where Person 1 says she was held), there were rooms and a bathroom, but Brooks would not allow people to go up there. OV.C remembered that she tried to go up the stairs a few times, but Brooks would stop her and tell her she could not go upstairs. Sometimes OV.C saw women come down the stairs, but she did not know who stayed up there.

**b. Rule 413 evidence as to Defendant Brooks**

Brooks sexually assaulted OV.C approximately six times, beginning in approximately 1995. The first time was in the office at a club that Brooks owned. Brooks told OV.C to sit on his lap, and she did. Brooks exposed his penis, told OV.C to “touch it so it will get bigger,” and placed her hand on his penis. Brooks then touched OV.C over her clothing on her chest and vaginal area. When OV.C saw fluid coming out of Brooks’s penis and asked him what it was, Brooks told her to kiss it. OV.C leaned forward but was disgusted by the smell; she asked Brooks why it smelled so bad, and he told OV.C to leave.

After that incident, Brooks sexually assaulted OV.C approximately four more times in the office at Delevan. Brooks would tell OV.C to come sit on his lap, expose his penis, place OV.C’s hand on his penis, and touch her chest. After the first incident or two, when OV.C would hear the double lock activate on the office door, she knew that she was about to be assaulted and that there was no way for her to escape. OV.C began bringing her brother with her whenever there was a chance that she would see Brooks, hoping that Brooks would be less likely to assault her if she weren’t alone.

**c. Rule 404(b) evidence as to Defendant Brooks**

The last time that Brooks tried to sexually assault OV.C was when she was about 14 years old. Brooks was driving her somewhere on Quindaro Road in Kansas City, Kansas at 9 or 10 p.m., and he asked her for sex. When OV.C said no, Brooks became angry and demanded she get out of his car if she was not giving to give him “any pussy.” OV.C was scared that Brooks was going to hurt her. She got out of his car, though she was afraid to be left alone in the dark in that part of town; Brooks then instructed her to get back in the car.

**d. Rule 404(b) evidence as to Defendants Golubski and Brooks**

Golubski would sometimes hand out baseball cards and lollipops to the children at Delevan. Golubski would tell OV.C, who is Black, that she was “going to be one of [his] girls,” and it made OV.C feel confused, uncomfortable, and afraid.

One day, Golubski instructed OV.C to follow him into the office. OV.C looked to Brooks, who nodded to OV.C, signaling that it was okay, and OV.C hesitantly entered the office. Once inside, Golubski offered OV.C something; in her initial interview, OV.C reported that it was \$20; in her follow-up interview, OV.C thought it could have been a baseball card. OV.C’s understanding of what Golubski said at the time was that he was asking her to touch him in exchange for what he was offering her. H.R., the now-deceased member of the conspiracy, walked into the office, and when he saw Golubski with OV.C, he immediately yelled at Golubski to get away from her because she was [redacted].<sup>5</sup> See

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<sup>5</sup> The FBI summary of OV.C’s initial interview, documented in an FBI 302 report, stated that *Brooks* “told Golubski to leave [OV.C] alone because she was [redacted].” It is possible that the 302 report mistakenly

Attachment A. OV.C could not believe that H.R. was yelling at a police officer. Golubski looked to Brooks, who said nothing but nodded as if he were going to address H.R. later, and Golubski left without a word. H.R. yelled at OV.C to “stay the fuck away” from Golubski and Brooks, took OV.C back to her mother, and told her mother to keep her away from the office. OV.C’s mother beat her afterwards, seemingly in response to H.R.’s anger at the situation.

#### **IV. Other Victim D**

Other Victim D knew Brooks since she was a child because of a close family connection. OV.D also spent time at Beloit Juvenile Correctional Facility. She served time for killing a man when she was a teenager; OV.D explained that she was pregnant with Brooks’s child at the time, that she committed the murder with Brooks’s gun, that Brooks “was trying to raise me like his protégé,” and that at the time she was a “hurt child” who was sick of grown men taking advantage of young girls and wanted to rid the streets of “perverts.”

In approximately 1994 or 1995, when OV.D was about 15 or 16 years old, she returned home to find her house boarded up. She was confused as to why it was boarded up; Brooks told her that, as a result, she had to come live with him at Delevan. OV.D

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attributed this statement to Brooks rather than to the now-deceased member of the conspiracy. Even if it accurately reflected OV.C’s statement, however, this inconsistency does not render OV.C’s testimony inadmissible. *See, e.g., United States v. Mann*, 193 F.3d 1172, 1174 (10th Cir. 1999) (affirming finding that other-victim testimony was sufficient to allow jury to reasonably find by a preponderance of the evidence that prior uncharged sexual act occurred “even though [other victim’s] initial statements about defendant’s prior acts were inconsistent”).

explained that her general thoughts while at Delevan were as follows: “I thought that Golubski ran the streets and I thought that Cecil [Brooks] was God.”

**a. Rule 413 evidence as to Defendant Brooks**

Brooks repeatedly raped and beat OV.D at Delevan. In the days after he raped OV.D for the first time, Brooks told her that he just “couldn’t control himself” and that he “didn’t mean to fall in love” with her. (In a voluntary, audio-recorded statement to the FBI in 2022, Robinson recalled OV.D by her first name. According to Robinson, OV.D was underage and was one of the younger girls who lived in the office-bedroom at Delevan. At that time, Robinson observed bruises on OV.D’s body, and on one occasion her lip was swollen.) Years later, Brooks told OV.D that he was sorry for what he did to her but that “it wasn’t really under my control”; OV.D felt that his apology “really didn’t fix anything.”

**b. Rule 413 evidence as to Defendant Golubski**

In the early 2000s, when OV.D was 19 or 20 years old, Golubski approached her in an alley where drugs were sold. OV.D had encountered Golubski before at Delevan, and Golubski knew OV.D, who is Black, by name. OV.D had a gun on her; Golubski took it. OV.D thought that Golubski was going to arrest her, but instead he drove her to a secluded area. OV.D was afraid that Golubski was going to kill her. OV.D recalled that, instead, he forced her to engage in sexual conduct. Golubski had his own firearm on him, and OV.D thought that Golubski was going to kill her. Golubski “ran the city,” and he threatened to kill OV.D and her brother.

OV.D recalled that Golubski forced her to engage in sexual conduct on three or four additional occasions, until around 2003. In particular, Golubski would grope OV.D and

attempt to force her to perform oral sex. On one occasion, Golubski struck her in the face so hard that he split open OV.D's lip.

**V. Other Victim E**

When she was approximately 13 or 14 years old, Other Victim E was a runaway who had served time at Beloit Juvenile Correctional Facility. OV.E was walking along Quindaro Road when Brooks stopped his car and offered her drugs or money. She went with Brooks to Delevan, where she stayed from approximately 1996-1997.

**a. Intrinsic evidence**

OV.E's time at Delevan partially overlapped with that of Person 1. Generally, Brooks did not like when Delevan girls left the apartment complex. Brooks did not want OV.E to leave Delevan, but sometimes she left and came back because of her drug addiction. OV.E recalled that, in contrast, Person 1 lived in the bedroom above the office and was never allowed to leave the apartment/office building.

OV.E saw Golubski, whom she knew was a police officer, weekly at Delevan. Golubski stuck out there in part because he was white. When Golubski would go into Brooks's office—where OV.E would often count money from drug sales at the direction of Brooks—OV.E was told to leave.

OV.E had seen Brooks beat another woman. OV.E vividly recalled the locks on the door of Brook's office. The door locked from both the inside and the outside. OV.E knew that once the lock clicked, she would not be able to get out.

**b. Rule 413 evidence as to Defendant Brooks**

OV.E, who was 13 or 14 years old and addicted to drugs, submitted to sex with Brooks and with other men at Delevan because she felt that she had to in order to receive shelter, food, and drugs, and to avoid being beaten.

## **VI. Other Victim F**

Other Victim F became addicted to crack cocaine when she was 13 years old, and she met Brooks at a “dope house” when she was 15 years old. Brooks told her that he would “take care” of her. OV.F came to know him as both a “protector” and as “Satan,” and he instilled in her feelings of both love and terror. In the mid-to-late 1990s, when she was in her early-to-mid-twenties, OV.F stayed at Delevan because she had nowhere else to go, and Brooks put the “fear of God” in her.

### **a. Intrinsic evidence**

There were many young girls at Delevan when Other Victim F lived there. At Delevan, Brooks gave OV.F crack cocaine, to which she was addicted. *Cf. Kozminski*, 487 U.S. at 952 (“[T]he vulnerabilities of the victim are relevant in determining whether the physical or legal coercion or threats thereof could plausibly have compelled the victim to serve.”). When OV.F was in the upstairs office, she often heard what sounded like young girls being beaten: she heard the screams of girls and thumping noises.

On several occasions, OV.F saw a “hefty” white male police officer with a firearm on his hip (consistent with Golubski’s appearance) go inside Brooks’s office alone.

At Delevan, which Brooks owned, OV.F understood from what she heard and observed that Brooks was in charge and “called the shots”; that Robinson was a direct

subordinate of Brooks who would do whatever Brooks directed him to do; and that Roberson was someone whom Brooks kept around to do his bidding.

**b. Rule 413 evidence as to Defendant Brooks**

Other Victim F provided a voluntary statement to the FBI in 2001, which was documented by a written summary report. OV.F reported that Brooks sexually assaulted her numerous times, sometimes sodomizing her and forcing her to perform oral sex, and that he gave her drugs.

In more recent interviews, documented by FBI 302 reports, OV.F elaborated that at Delevan, she was known as “Cecil’s [Brooks’s] girl,” and that Brooks told her she was not allowed to go anywhere else outside of the Delevan office, a particular unit, or across the street. Brooks forced her to give him oral sex, and he sodomized her. OV.F felt that she had to let him do whatever he wanted because she knew “there were consequences to saying no.” OV.F sometimes cried when Brooks forced her to perform oral sex on him, but Brooks would respond by firmly holding her head so that she was physically unable to stop. Likewise, OV.F would sometimes cry in pain when Brooks sodomized her. OV.F was afraid that Brooks and/or the people who worked for him would hurt her or cause her to disappear.

**c. Rule 404(b) evidence as to Defendant Brooks**

Brooks sometimes locked OV.F in the office as a form of “punishment.” While she was locked in the office, Brooks would bring her food and water but not allow her out. Sometimes she would remain locked in the room for a day or two before escaping by shimmying under security bars that were over the window. Usually, after OV.F escaped,

Brooks would locate her and bring her back to Delevan or OV.F would return on her own and apologize. When the latter would happen, OV.F would try to time her return so that Brooks had time to cool off; if she tried to return too soon, Brooks would hurt her or have someone else hurt her. When OV.F “got in trouble” with Brooks, she was again afraid of getting hurt or disappearing at the hands of the people who worked for Brooks.

On one occasion, Brooks “pimped her out” to a man named Bob. Bob performed oral sex on OV.F, and OV.F felt that she had no choice but to submit.

**d. Rule 404(b) evidence as to Defendants Roberson and Brooks**

In her 2001 statement to the FBI, OV.F also reported that Brooks accused her of stealing drugs, and even though she denied it, he tied her up and held a plastic bag over her head, restricting her breathing.

OV.F elaborated on this incident in 2021, as documented in an FBI 302 report. Roberson—who had lost either money or drugs—blamed the loss on OV.F. As a result, Brooks instructed OV.F and Roberson to meet him in his office. OV.F denied taking anything, and Brooks told her that Roberson said that she did. Brooks then wrapped his arm around her, placed a plastic bag over her nose and mouth, and held the bag in place. Roberson was there as OV.F struggled but was unable to fight off Brooks. OV.F believed she was going to die because she could not breathe and could not break free. Eventually, Brooks released the bag, and OV.F was able to breathe again.

**e. Rule 404(b) evidence as to Defendant Roberson**

Following OV.F’s time at Delevan, Brooks sent OV.F to live with Roberson in an apartment in Olathe, Kansas, for a time. (In his voluntary, audio-recorded statement to the

FBI in 2022, Roberson recalled that at one point he lived at an apartment in Olathe with a woman whose name had [the first letter of OV.F's name] in it, whom Brooks “was messing with” at Delevan when she was younger, and who said that Brooks would hit her.) Roberson repeatedly attempted to have sex with OV.F against her will. In particular, Roberson pushed her against a wall; struck her in the side of the head with a closed fist; and grabbed her by the neck. OV.F fought back and kned Roberson in the groin to get him off her.

**f. Rule 404(b) evidence as to Defendants Brooks and Robinson**

OV.F was at Delevan when she went into labor. OV.F told Brooks, Robinson, and H.R. that she was in labor and begged to be taken to the hospital, but they refused to take her.

**VII. Other Victim G<sup>6</sup>**

**a. Rule 413 evidence as to Defendant Golubski**

When Other Victim G, who is Black, was 13 or 14 years old in approximately 1998, she met Golubski, who introduced himself as a police officer and claimed that he was reaching out because OV.G was a potential witness to a crime. Golubski instructed OV.G to meet him in a parking lot, which she did. Golubski showed her his badge and had a firearm in his hip holster.

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<sup>6</sup> Other Victim G is the same person as the victim in Counts One-Three of the indictment in *United States v. Golubski*, No. 5:22-cr-40055-TC-RES.

Golubski asked her, “Do you have Caucasian in you? Do you want some?” He offered OV.G money for oral sex; she said no. He offered her a pill, which OV.G also declined. Golubski threatened the life of OV.G’s grandmother, put his hand on OV.G’s thigh, used his fingers to penetrate her, masturbated himself, and grabbed her hair so hard that she felt her neck pop. OV.G was afraid that Golubski would use his firearm to shoot her. Golubski continued his assault despite OV.G crying, and he warned her against doing “that crybaby shit.”

Golubski raped OV.G on several occasions after that. Several times, Golubski had difficulty getting an erection. During the sexual assaults, Golubski used physical violence, including choking OV.G, and he called her “bitch.”

## **E. LEGAL ANALYSIS**

### **I. Intrinsic Evidence**

The federal rules of evidence governing “other acts” are not applicable where evidence is intrinsic to the charged crime. *United States v. Murry*, 31 F.4th 1274, 1290 (10th Cir. 2022). “Intrinsic evidence is directly connected to the factual circumstances of the crime and provides contextual or background information to the jury.” *Id.* (internal quotation marks omitted). Intrinsic evidence may take many forms, such as evidence that “was inextricably intertwined with the charged conduct[;] occurred within the same time frame as the activity in the conspiracy being charged[;] was a necessary preliminary to the charged conspiracy[;] provided direct proof of the defendant’s involvement with the charged crimes[;] was entirely germane background information[;] directly connected to the factual circumstances of the crime[;] or was necessary to provide the jury with

background and context of the nature of the defendant’s relationship to his accomplice.” *United States v. Cushing*, 10 F.4th 1055, 1075-76 (10th Cir. 2021) (alterations omitted); *see also United States v. Majeed et al.*, No. 21-20060-JAR, ECF 317 (D. Kan. Mar. 6, 2024) (intrinsic evidence in forced labor case includes evidence of a climate of fear).

As discussed above, the proffered other-victim accounts include necessary preliminary background to the charged conspiracy, including information about (a) the layout of Delevan, its off-limits areas, and the double-lock on the office door that so viscerally affected Person 1, OV.C, OV.E, and OV.F; (b) the presence at Delevan of young women and girls who were addicted to drugs and engaged in sex with men, and the other victims’ observations as to these women and girls being beaten, *cf. Harris*, 701 F.2d at 1100 (affirming defendant’s conviction under 18 U.S.C. § 1584 based on the “reign of physical terror” created by the defendant and despite the lack of “evidence that [the defendant] personally ever assaulted [the victim] or threatened [the victim] with harm”); (c) the observed power dynamic between the four defendants; and (d) Golubski’s regular presence at Delevan, the fact that no one would run or seemed bothered by his arrival despite the criminal activity occurring there, the handover of envelopes to Golubski, and Golubski’s regularly entering Brooks’s office, the home base of Brooks’s criminal operations, and having private meetings inside, *see Whitney*, 229 F.3d at 1301 (reasoning that an “agreement may be inferred from a variety of circumstances, such as . . . presence in a situation where one could assume participants would not allow bystanders”).

This evidence—which is set forth in the indictment, ECF 1 at 2-8—is admissible intrinsic evidence because it is directly connected to the factual circumstances of the

charged crimes and is a necessary preliminary to the charged conspiracy.<sup>7</sup> The high probative value of this intrinsic evidence is not substantially outweighed by a danger of unfair prejudice under Federal Rule of Evidence 403, and the evidence should be admitted as intrinsic to the charged conspiracy and crimes.

## II. Rule 413 Evidence

Pursuant to Federal Rule of Evidence 413, the government seeks to admit evidence against defendant Brooks of his sexual assaults of Other Victims C, D, E, and F, and evidence against defendant Golubski of his sexual assaults of Other Victims A, B, D, and G. When a defendant is charged with a crime involving sexual assault, Rule 413 allows evidence of the defendant's other sexual assaults to be admitted and to "be considered on any matter to which it is relevant," including propensity. Fed. R. Evid. 413(a); *see also United States v. Enjady*, 134 F.3d 1427, 1431 (10th Cir. 1998). Such evidence "is frequently critical in assessing the relative plausibility of [victims'] claims and accurately deciding cases that would otherwise become unresolvable swearing matches" because "sexual assault cases . . . often turn on difficult credibility determinations." *Id.* (internal quotation marks omitted).

Evidence of other sexual assaults is admissible under Rule 413 where the defendant is accused of a crime involving sexual assault; the evidence offered also involves sexual assault; the evidence is relevant; a jury could reasonably find by a preponderance of the

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<sup>7</sup> Alternatively, the government submits that this evidence is admissible under Federal Rule of Evidence 404(b) to show a common scheme as well as preparation and plan as to the defendants' conspiracy to force young women to submit to sexual services at Delevan, and the defendants' opportunity to do so without fear of law enforcement intervention.

evidence that the other sexual assault occurred; and the evidence's probative value is not substantially outweighed by one of the dangers identified in Federal Rule of Evidence 403. *See Enjady*, 134 F.3d at 1431-33. All of the requirements are satisfied here.

First, defendants Brooks and Golubski are each "accused of a crime involving sexual assault." *United States v. Benally*, 500 F.3d 1085, 1090 (10th Cir. 2007). The Tenth Circuit has rejected a categorical approach to determining whether the charged case is one "in which a defendant is accused of a sexual assault," Fed. R. Evid. 413, and it directs courts to focus on the conduct underlying the charges rather than the elements of the charged offenses. *See, e.g., United States v. Batton*, 602 F.3d 1191, 1197 (10th Cir. 2010) (rejecting defendant's argument that Rule 413 did not apply in a case involving a charge of transportation for illegal sexual activity, which does not require proof of sexual assault as an element); *United States v. Vafeades*, No. 2:14-cr-00153, 2015 WL 9273936 at \*7-9 (D. Utah Dec. 18, 2015) (rejecting the categorical approach and finding the facts underlying the charges of kidnapping, transportation for illegal sexual activity, and transportation and possession of child pornography, satisfied Rule 413's requirement for defendant to be "accused of a sexual assault"); *see also United States v. Foley*, 740 F.3d 1079, 1086-88 (7th Cir. 2014) (rejecting defendant's argument that a court must take a categorical approach to determine if a charged offense involves a sexual assault under Rule 413 and focusing on "the conduct itself").

Rule 413 defines "sexual assault" as, in relevant part, "contact, without consent, between any part of the defendant's body . . . and another person's genitals or anus," and "contact, without consent, between the defendant's genitals or anus and any part of another

person's body." Fed. R. Evid. 413(d)(2)-(3). The Rule 413 definition of "sexual assault" also includes "any conduct prohibited by 18 U.S.C. chapter 109A." Fed. R. Evid. 413(d)(1). Chapter 109A criminalizes, in relevant part, "knowingly engag[ing] in sexual contact with another person without that other person's permission." 18 U.S.C. § 2244(b). "Sexual contact" is the "intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person." 18 U.S.C. § 2246(3). Rule 413 provides that "sexual assault" includes not only the above-described conduct but also "an attempt *or conspiracy* to engage in [such] conduct." Fed. R. Evid. 413(d)(5) (emphasis added).

The indictment charges that both Brooks and Golubski participated in a conspiracy to violate young women's right to be free from involuntary servitude, an offense that included aggravated sexual abuse and its attempt (Count One); that Brooks and two other defendants held Person 1 to a term of involuntary servitude, that Person 1 was forced to provide sexual services to Roberson, and that the defendants' conduct involved aggravated sexual abuse and its attempt (Count Two); and that Brooks, Golubski, and another defendant held Person 2 to a term of involuntary servitude, that Person 2 was forced to provide sexual services to Brooks and Golubski (and another defendant) in particular, and that the defendants' conduct also involved aggravated sexual abuse and its attempt (Count 3). "Aggravated sexual abuse" requires "knowingly caus[ing] another person to engage in a *sexual act* (1) by using force against that other person; or (2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury,

or kidnapping.” 18 U.S.C. § 2241(a) (emphasis added). A “sexual act” satisfies the definition of “sexual assault” in Rule 413. *See* 18 U.S.C. § 2246(2) (A “sexual act” is “contact between the penis [of one person] and the vulva or . . . the anus [of another],” “contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus,” or “penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.”).

In this case, the conduct underlying the charges against both Brooks and Golubski is “sexual assault” as defined by Rule 413. Put simply, Brooks and Golubski conspired to force young women to engage in sexual acts, and both raped Person 2.

Second, the evidence offered also involves sexual assault under Rule 413. As to Defendant Brooks, OV.C alleges that he forcibly placed her hand on his exposed penis and that he groped her chest and vaginal area over her clothing; OV.D alleges that he raped her; OV.E alleges that she submitted to sex with him because she felt she had to in order to receive shelter, food, and drugs, and to avoid being beaten; and OV.F alleges that he forced her to perform oral sex and that he sodomized her against her will. As to defendant Golubski, OV.A alleges that he raped her; OV.B alleges that he grabbed and held her thighs and attempted to perform oral sex on her; OV.D alleges that he attempted to force her to perform oral sex; and OV.G alleges that he raped her.

Third, the evidence is relevant. Evidence is relevant if it has “any tendency to make a fact [of consequence] more or less probable than it would be without the evidence.” Fed. R. Evid. 401. Congress has determined that evidence of a defendant’s past sexual assaults

is “highly relevant” to a jury’s determination of whether a defendant committed a charged sexual assault. *Enjady*, 134 F.3d at 1431. The proffered Rule 413 evidence is relevant because it is probative of Brooks’s and Golubski’s propensity to sexually assault young women and girls who were vulnerable to their control. *See United States v. Rogers*, No. CR-21-232, 2022 WL 1150673, at \*3 (E.D. Okla. Apr. 18, 2022) (noting that Rule 413 evidence was relevant because it was probative of “the disputed fact of [d]efendant’s sexual interest in minor females and his propensity to commit acts of sexual contact with minors”).

Fourth, a jury could reasonably find by a preponderance of the evidence that the other sexual assaults occurred. *See Enjady*, 134 F.3d at 1433. The victims will testify under oath about the concrete details of their own sexual assaults, proffered above and in Attachment B. A victim’s testimony about her own sexual assault is sufficient for a jury to conclude by a preponderance of the evidence that the assault occurred. *See United States v. Begay*, 497 F. Supp. 3d 1025, 1062 (D.N.M. 2020) (affirming finding that other-victim testimony was sufficient to allow jury to reasonably find by a preponderance of the evidence that prior uncharged sexual acts occurred and rejecting defendant’s argument that proffered evidence was insufficiently corroborated).

Finally, the evidence’s high probative value is not substantially outweighed by one of the dangers identified in Federal Rule of Evidence 403. In conducting this balancing, the Tenth Circuit instructs courts to consider, as to probative value, “1) how clearly the prior act has been proved; 2) how probative the evidence is of the material fact it is admitted to prove; 3) how seriously disputed the material fact is; and 4) whether the government can avail itself of any less prejudicial evidence.” *Enjady*, 134 F.3d at 1433 (internal quotation

marks omitted). As to prejudicial danger, the Tenth Circuit directs courts to consider “1) how likely is it such evidence will contribute to an improperly-based jury verdict; 2) the extent to which such evidence will distract the jury from the central issues of the trial; and 3) how time consuming it will be to prove the prior conduct.” *Id.*

The Rule 413 evidence has incredibly high probative value in corroborating Person 1 and Person 2’s accounts. First, the evidence is clearly proven. All of the other-victim accounts are memorialized in FBI 302 reports. More than two decades ago, OV.F disclosed that Brooks sexually assaulted her numerous times, including sodomizing her and forcing her to perform oral sex, as documented in a 2001 FBI summary report. OV.F’s account as to these key facts has remained consistent. Her statement is also consistent with Roberson’s statement to the FBI in 2022, in which he recalled a woman whose name had [the first letter of OV.F’s name] in it, whom Brooks “was messing with” at Delevan when she was younger, and who said that Brooks would hit her. *Cf. Begay*, 497 F. Supp. 3d at 1062 (reasoning that reliability of proffered Rule 413 evidence is increased where the proffered accounts provide detail about the prior acts and where a defendant “himself corroborated [the other victim’s] statements when he spoke with law enforcement”). The accounts of the other Rule 413 victims are also consistent with the accounts of OV.F, in particular; with each other; and with the charged victims’ accounts: Brooks and Golubski hand-selected minors and young women who were vulnerable to their control—as a result of the young victims’ broken homes, lack of anywhere to live, state of being on their own, drug addictions, and/or time at juvenile facilities—and brutally exploited that vulnerability, employing violence and death threats to sexually assault them.

Second, the Rule 413 evidence is highly probative of Brooks's and Golubski's charged conspiracy and sexual assaults. The Tenth Circuit has set out five subfactors that inform the analysis of this second *Enjady* factor: "(1) the similarity of the [other] acts and the charged acts, (2) the time lapse between the other acts and the charged acts, (3) the frequency of [other] acts, (4) the occurrence of intervening events, and (5) the need for evidence beyond the defendant's and alleged victim's testimony." *Benally*, 500 F.3d at 1090-91.

All subfactors weigh heavily in favor of admission in this case. The Rule 413 evidence as to Other Victims A-G is remarkably similar to the charged sexual assaults: every victim was a minor or a young woman; every victim came from an unstable background that left them vulnerable or was in a state of being on their own; Person 1, Person 2, OV.D, and OV.E all spent time at the same juvenile corrections facility; Person 1, Person 2, and Other Victims B-F were all essentially recruited to be at Delevan as a result of their vulnerability; Person 1, OV.C, OV.E, and OV.F vividly recalled the double-lock on the office door and the feeling of dread when they knew they could not get out; Person 1 and OV.F also recalled a similar feeling as to the bars over the office unit window; Golubski invoked his law enforcement authority as a precursor to sexually assaulting Person 2, OV.A, OV.B, OV.D, and OV.G, despite each of them crying and/or attempting to stop him; and every charged and Rule 413 victim recalled being in terror because of the defendants' brute physical violence and/or threats to their lives or their family's lives.

There is no improper time lapse between the Rule 413 accounts and the charged conduct. The conduct occurred between the late 1980s and 2001 with no time gaps; indeed,

the assaults of OV.C, OV.D, and OV.E all occurred within approximately a year of the charged conduct, and OV.E's time at Delevan overlapped with that of Person 1. Additionally, Brooks's and Golubski's other sexual assaults occurred with such frequency that they demonstrate a clear pattern, rather than outlier or one-off behavior, *cf. United States v. Wacker*, 72 F.3d 1453, 1459 (10th Cir. 1995) (discussing "longstanding pattern" showed by other-acts evidence); there are no intervening events that would cast doubt on Brooks's or Golubski's continued propensity to commit sexual assault; and there is no need for evidence beyond testimony. The subfactors demonstrate that the Rule 413 evidence is highly probative.

Third, whether Brooks and Golubski sexually assaulted, and conspired to sexually assault, young women, including Person 1 and Person 2, is the ultimate issue in this case. Evidence of their other sexual assaults shows that each has the propensity to sexually assault minors and young women in vulnerable positions, which is relevant to the ultimate issue: whether they sexually assaulted or conspired to sexually assault Person 1 and Person 2. *See Batton*, 602 F.3d at 1198 ("[Defendant] claimed at trial that he did none of the acts of which [the victim] accused him, making the [Rule 413 sexual assault] a crucial piece of evidence to help the jury determine the validity of [the victim's] accusations."). This weighs in favor of admission of the Rule 413 evidence. *United States v. Sturm*, 673 F.3d 1274, 1286 (10th Cir. 2012) ("The more seriously disputed the material fact, the more heavily this factor weighs in favor of admissibility.").

Finally, as in *United States v. Golubski*, No. 5:22-cr-40055-TC-RES, the usual difficulties inherent in sexual assault cases are magnified in this case, where the defendants,

including a law enforcement officer, conspired to commit and committed the charged sexual assaults more than 20 years ago. The government has no less prejudicial evidence of which it can avail itself regarding the charged sexual assaults: no eyewitnesses to the sexual assaults themselves, no DNA, no forensic evidence, no photographic or video evidence, no text messages or phone records, and no GPS or cell phone tracking evidence. Without the accounts of the other victims, this case would boil down to a “swearing match” between the defendants and two then-teenagers they conspired to sexually abuse, precisely the situation that Congress sought to avoid in enacting Rule 413. 140 Cong. Rec. S129901 (Sept. 20, 1994) (Statement of Sen. Dole). All four probative-value *Enjady* factors weigh heavily in favor of admission.

As to prejudicial danger, the three probative-danger *Enjady* factors show that the high probative value of the Rule 413 evidence is not substantially outweighed by any Rule 403 danger. The Tenth Circuit directs courts to consider “1) how likely is it such evidence will contribute to an improperly-based jury verdict; 2) the extent to which such evidence will distract the jury from the central issues of the trial; and 3) how time consuming it will be to prove the prior conduct.” *Enjady*, 134 F.3d at 1433.

It is not likely that the Rule 413 evidence will contribute to an improperly based jury verdict. Brooks’s and Golubski’s other sexual assaults are relevant to each defendant’s propensity to commit sexual assault, and the Tenth Circuit has emphasized that propensity is a proper basis for the jury to consider Rule 413 evidence. *See Benally*, 500 F.3d at 1093 (“[Defendant] is incorrect in his assertion that the only reason to introduce this evidence was to bias the jury. Evidence of other similar crimes involving sexual assault . . . was

determined by Congress to be probative of a defendant's propensity to commit such crimes. The purpose for introducing evidence of [the defendant's] prior sexual assaults was to provide the jury with just such probative propensity evidence.") (internal citations omitted); *see also United States v. Henthorn*, 864 F.3d 1241, 1256 (10th Cir. 2017) ("Evidence is *unfairly* prejudicial if it makes a conviction more likely because it provokes an emotional response in the jury or otherwise tends to affect adversely the jury's attitude toward the defendant *wholly apart from its judgment as to his guilt or innocence* of the crime charged.") (emphasis added).

Any minimal risk of an improper jury verdict may be cured with appropriate limiting instructions. *See United States v. McHorse*, 179 F.3d 889, 897 (10th Cir. 1999) (affirming admission of other-sexual-assault evidence, discussing permissible jury instructions, and emphasizing that "[a] central assumption of our jurisprudence is that juries follow the instructions they receive"). In particular, limiting instructions can make clear that Rule 413 evidence of Brooks's other sexual assaults is admitted against only Brooks, and that Rule 413 evidence of Golubski's other sexual assaults is admitted against only Golubski. *See United States v. Shaw*, 562 F. App'x 593, 596-600 (10th Cir. 2014) (affirming admission of other-assault evidence in case where three defendants were convicted of aggravated sexual abuse of a fellow federal inmate and discussing permissible jury instructions regarding four other-assault incidents that were evidence against some but not all defendants).

Next, the Rule 413 evidence will not distract the jury from the central issues of the trial. No expert testimony or extraneous evidence is necessary for the jury to make sense

of the other acts, unlike in *United States v. Guardia*, where expert testimony was necessary for a jury to evaluate the medical appropriateness of the defendant-doctor's other gynecological examinations. 135 F.3d 1326, 1328-29 (10th Cir. 1998). Because the other sexual assaults bear striking factual similarities to the charged sexual assaults, the Rule 413 evidence serves to focus—rather than distract—the jury.

Last, the Rule 413 evidence will not be unreasonably time consuming because the government will present it through “a narrowly tailored line of questioning” of the victims themselves that “reflects the similarities between the charged assaults and the other assaults.” *United States v. Thompson*, No. 22-cr-118-JFH, 2022 WL 3563704 at \*7 (N.D. Okla. 2022); *see also United States v. Roberts*, 185 F.3d 1125, 1141-42 (10th Cir. 1999) (affirming admission of testimony of six other-sexual-assault victims despite the extension in trial time). If there should come a time at trial when the Court determines that the evidence is becoming or might become needlessly cumulative, then the Court can limit that evidence appropriately; however, limiting the proffered evidence before trial would be premature. *See Huddleston v. United States*, 485 U.S. 681, 690 (1988) (“The trial court has traditionally exercised the broadest sort of discretion in controlling the order of proof at trial, and we see nothing in the Rules of Evidence that would change this practice.”).

The Rule 413 evidence has extremely high probative value in illustrating Brooks's and Golubski's pattern of behavior, demonstrating their propensity to commit sexual assault, and corroborating Person 1 and Person 2's testimony. Its high probative value is not substantially outweighed by any Rule 403 danger that would offset “the presumption . . . in favor of admission.” *Enjady*, 134 F.3d at 1431.

### III. Rule 404(b) Evidence

Rule 404(b) is “an inclusive rule, admitting all evidence of other crimes or acts except those which tend to prove *only* criminal disposition.” *United States v. Tan*, 254 F.3d 1204, 1208 (10th Cir. 2001) (internal quotation marks omitted). Other-act evidence is admissible when it is relevant, proposed for a proper purpose under Rule 404(b)(2), and not subject to exclusion under Rule 403. *United States v. Mares*, 441 F.3d 1152, 1156-57 (10th Cir. 2006). Proper purposes include, but are not limited to, “proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” Fed. R. Evid. 404(b)(2); *see Tan*, 254 F.3d at 1208 (noting that this list is not exhaustive). This standard to satisfy Rule 404(b) is permissive: “[i]f the other act evidence is relevant and tends to prove a material fact other than the defendant’s criminal disposition, it is offered for a proper purpose under Rule 404(b) and may be excluded only under Rule 403.” *Tan*, 254 F.3d at 1208; *see also United States v. Cuch*, 842 F.2d 1173, 1176 (10th Cir. 1988) (“It is well settled that the rule is one of inclusion which admits evidence of other crimes relevant to an issue in a trial, unless the evidence is introduced for an impermissible purpose or undue prejudice is shown.”). The proffered Rule 404(b) evidence, described above and in Attachment B, satisfies the above requirements.<sup>8</sup>

#### a. Attempted sexual assault and sexual assault by a third party

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<sup>8</sup> The government submits that, if the Court were to hold that the proffered evidence as to the sexual assaults of Other Victims A-G is not admissible under Rule 413, in the alternative, it is admissible under Rule 404(b) for similar reasons as set forth below.

Roberson’s attempted sexual assault of OV.F—which included his pushing her, striking her in the head with a closed fist, and grabbing her by the neck—is relevant to show his preparation and plan in attempting to exploit the vulnerabilities of and physically overpower a young woman with ties to Delevan and to rebut a defense of consent as to Persons 1 and 2 (as noted above, Roberson has already claimed that Person 1 had been his girlfriend). *See United States v. Stewart*, 540 F. Supp. 3d 1058, 1059 (E.D. Okla. 2021) (finding that allegations of attempted sexual assault were relevant to a charge of sexual assault and attempted sexual assault).

Likewise, Brooks’s making OV.F submit to another man performing oral sex on her is relevant to show his pattern and plan to force vulnerable young women to submit to sex with the defendants and with other adult men.

**b. Grooming in the apartment complex office**

Golubski told OV.C, a Black girl, that she was “going to be one of [his] girls”; Brooks allowed and encouraged her to go into the Delevan office—where Brooks himself sexually assaulted her on several occasions, discussed above—with Golubski; OV.C’s impression was that Golubski was offering her \$20 or a baseball card in exchange for her touching him; and when the now-deceased member of the conspiracy walked in and yelled for Golubski to get away from her, Golubski and Brooks said nothing and silently exchanged a look. This evidence is relevant to show the “interdependence” between Brooks and Golubski and the way in which they, as members of the charged conspiracy, acted “together for their shared mutual benefit within the scope of the conspiracy charged.” *Alcorta*, 853 F.3d at 1136. The evidence also shows Golubski’s pattern of targeting young Black girls

for sex; as Person 2 will testify, Golubski regularly chose 13 to 17-year-old girls for sex at Delevan and seemed unhappy that on the charged occasion he had to settle for sexually assaulting Person 2, a white girl.

**c. Instigation of punishment**

Evidence that Roberson claimed that OV.F lost money or drugs and then watched Brooks physically assault her for it by suffocating her with a plastic bag—similar to how Brooks claimed that Person 1 smiled at another man and then watched Roberson physically assault her for it—is relevant to show the interdependence between Brooks and Roberson and their acting “together for their shared mutual benefit,” perverse as it was, “within the scope of the conspiracy charged.” *Alcorta*, 853 F.3d at 1136. Evidence that Brooks used a plastic bag to suffocate OV.F in front of Roberson during this incident is relevant to show the same and to show their pattern and plan of instilling terror in their victims, as discussed further below.

**d. Punishment**

Brooks slapped 14- or 15-year-old OV.B for “cheating” on him by dating a boy her own age, he kicked 14-year-old OV.C out of his vehicle at night in a dangerous area because she denied him “pussy,” and he punished OV.F for displeasing him by locking her in the office, sometimes for multiple days. This evidence is relevant to show the defendant’s preparation and plan in grooming teenage girls by physically punishing them and/or placing them in fear that harm would result if they asserted themselves against his control. *Cf. Kaufman*, 546 F.3d at 1265 (discussing relevance of fear in 18 U.S.C. § 1584 case).

**e. Refusal to allow victims to seek urgent medical care**

Evidence that Brooks and Robinson refused to take OV.F to the hospital when she was in labor, just as Roberson and others refused to take Person 1 to the hospital when she was bleeding from an ectopic pregnancy, is relevant to show the pattern and plan of the conspiracy to keep young women at Delevan regardless of their health or needs. *Cf. United States v. Alzanki*, 54 F.3d 994, 1002 (1st Cir. 1995) (finding that deprivation of medical care, threats of violence, and violence contributed to “climate of fear”); *see also Kozminski*, 487 U.S. at 956-57 (Brennan, J., concurring) (discussing range of coercive tactics that contributed to climate of fear in various involuntary servitude cases, including “disorienting the victims with frequent verbal abuse . . . denying medical care and subjecting the victims to substandard food, clothing, and living conditions,” “isolation from friends, family, transportation or other sources of food, shelter, clothing, or jobs; denying pay or creating debt that is greater than the worker’s income; [and] controlling every detail of their lives”).

The extremely high probative value of the above-described Rule 404(b) evidence is not substantially outweighed by any danger of unfair prejudice. As with the Rule 413 evidence, any minimal risk of unfair prejudice may be cured with an appropriate limiting instruction that makes clear the proper purpose for which the evidence is admitted and to which defendant the evidence applies. *See Shaw*, 562 F. App’x at 596. For similar reasons as above, the Rule 404(b) evidence does not present a danger of *unfair* prejudice. The evidence is offered for a proper purpose; the conduct is remarkably factually similar to the charged conduct; the egregiousness of the conduct does not exceed that of the charged

conduct such that exclusion is warranted, *cf. United States v. Piette*, 45 F.4th 1142, 1153-54 (10th Cir. 2022) (affirming admission of evidence of defendant’s prior molestation of his two daughters—not the charged victims—in a child molestation case and concluding that, despite the “depravity of the molestation evidence,” any resulting prejudice was not “particularly unfair” and did not “substantially outweigh the evidence’s probative value”); and the testimony of the other victims will be “narrowly tailored to reflect the similarities” between the charged and other conduct, *Thompson*, 2022 WL 3563704 at \*7.

#### **F. CONCLUSION**

For the above reasons, the government respectfully moves this Court to issue an order that (a) the proffered preliminary background to the charged conspiracy offered by Other Victims B, C, E, and F, set out above and reflected in the indictment, ECF 1 at 2-8, is admissible intrinsic evidence; (b) the proffered evidence of defendant Brooks’s sexual assaults of Other Victims C, D, E, and F, and of defendant Golubski’s sexual assaults of Other Victims A, B, D, and G, is admissible under Federal Rule of Evidence 413; and (c) the five proffered categories of other-act evidence offered by Other Victims B, C, and F, is admissible under Federal Rule of Evidence 404(b).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 29, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all parties.

/s/ Tara Allison

Tara Allison  
Trial Attorney