

No. 07-1740

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Appellee

v.

JOSEPH DJOUMESSI,

Appellant

ON APPEAL FROM THE DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

PROOF BRIEF FOR THE UNITED STATES AS APPELLEE

GRACE CHUNG BECKER
Acting Assistant Attorney General

JESSICA DUNSAY SILVER
SARAH E. HARRINGTON
Attorneys
U.S. Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 305-7999

STATEMENT REGARDING ORAL ARGUMENT

The United States agrees with the appellant that oral argument will assist the Court in assessing the merits of this case.

TABLE OF CONTENTS

	PAGE
STATEMENT REGARDING ORAL ARGUMENT	
JURISDICTIONAL STATEMENT.....	1
STATEMENT OF ISSUES.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	3
SUMMARY OF ARGUMENT.....	15
ARGUMENT	
I THE GOVERNMENT PRESENTED AMPLE EVIDENCE THAT THE DEFENDANT COERCED HIS VICTIM TO PROVIDE LABOR THROUGH THE USE AND THREATS OF PHYSICAL INJURY AND ABUSE OF LAW OR LEGAL PROCESS.	16
II THE DEFENDANT’S FEDERAL PROSECUTION DID NOT VIOLATE THE FIFTH AMENDMENT’S PROHIBITION ON DOUBLE JEOPARDY.....	24
CONCLUSION.....	30
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF SERVICE	
APPELLEE’S DESIGNATION OF APPENDIX CONTENTS	
UNPUBLISHED DECISIONS	

TABLE OF AUTHORITIES

CASES:	PAGE
<i>Bartkus v. Illinois</i> , 359 U.S. 121 (1959).....	25-27
<i>Heath v. Alabama</i> , 474 U.S. 82 (1985).	25
<i>Mans v. United States</i> , No. 96-5065, 1996 WL 596507 (6th Cir. Oct. 16, 1996).....	27
<i>Pinkerton v. United States</i> , 328 U.S. 640 (1946).....	18
<i>Radvansky v. City of Olmsted Falls</i> , 395 F.3d 291 (6th Cir. 2005)	17
<i>United States v. Alzanki</i> , 54 F.3d 994 (1st Cir. 1995), cert. denied, 516 U.S. 111 (1996).....	22
<i>United States v. Baptista-Rodriguez</i> , 17 F.3d 1354 (11th Cir. 1999).....	27
<i>United States v. Booker</i> , 655 F.2d 562 (4th Cir. 1981).	22-23
<i>United States v. Brown</i> , 959 F.2d 63 (6th Cir. 1992).	17
<i>United States v. Carr</i> , No. 94-2415, 1996 WL 99318 (6th Cir. Mar. 6, 1996).....	29
<i>United States v. Clark</i> , No. 06-3747, 2007 WL 4102471 (6th Cir. Nov. 19, 2007).	27, 29
<i>United States v. Guzman</i> , 85 F.3d 823 (1st Cir.), cert. denied, 519 U.S. 1020 (1996).....	26
<i>United States v. Harris</i> , No. 95-1247, 1996 WL 135031 (6th Cir. Mar. 25, 1996).....	26
<i>United States v. Holmes</i> , 111 F.3d 463 (6th Cir. 1997).....	25

CASES (continued):	PAGE
<i>United States v. Kakos</i> , 483 F.3d 441 (6th Cir. 2007).....	17
<i>United States v. King</i> , 840 F.2d 1276 (6th Cir.), cert. denied, 488 U.S. 894 (1988).....	22-24
<i>United States v. Kozminski</i> , 487 U.S. 931 (1988).....	<i>passim</i>
<i>United States v. Lanza</i> , 260 U.S. 377 (1922).....	25
<i>United States v. Lawson</i> , 872 F.2d 179 (6th Cir.), cert. denied, 493 U.S. 834 (1989).....	18
<i>United States v. Liddy</i> , 542 F.2d 76 (D.C. Cir. 1976).	27
<i>United States v. Louisville Edible Oil Prods., Inc.</i> , 926 F.2d 584(6th Cir.), cert. denied, 502 U.S. 859 (1991).....	25, 29
<i>United States v. Mayle</i> , No. 93-5793, 1995 WL 478145 (4th Cir. Aug. 14, 1995).	26
<i>United States v. Pipkins</i> , 378 F.3d 1281 (11th Cir. 2004).....	22
<i>United States v. Raymer</i> , 941 F.2d 1031 (10th Cir. 1991).....	27
<i>United States v. Trammell</i> , 133 F.3d 1343 (10th Cir. 1998).	26-28
<i>United States v. Veerapol</i> , 312 F.3d 1128 (9th Cir. 2002), cert. denied, 538 U.S. 981 (2003).....	21
<i>United States v. Wang</i> , 222 F.3d 234 (6th Cir. 2000).....	17
<i>United States v. Warren</i> , 772 F.2d 827 (11th Cir. 1985), cert. denied, 475 U.S. 1022 (1986).....	22

CONSTITUTION AND STATUTES:

U.S. Const. Amend. V... 24

18 U.S.C. 2..... 2

18 U.S.C. 371..... 2, 17

28 U.S.C. 1291..... 1

8 U.S.C. 1324 17

8 U.S.C. 1324(a)(1)(A)(iii)..... 2

18 U.S.C. 1584 *passim*

18 U.S.C. 3231 1

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 07-1740

UNITED STATES OF AMERICA,

Appellee

v.

JOSEPH DJOUMESSI,

Appellant

ON APPEAL FROM THE DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

PROOF BRIEF FOR THE UNITED STATES AS APPELLEE

JURISDICTIONAL STATEMENT

The district court had jurisdiction over this case pursuant to 18 U.S.C. 3231. This Court has jurisdiction pursuant to 28 U.S.C. 1291. Judgment was entered against the defendant on June 7, 2007. The defendant filed a timely notice of appeal on June 12, 2007.

STATEMENT OF ISSUES

1. Whether the government presented sufficient evidence to demonstrate that the defendant coerced his victim to work for him through the use or threatened use of physical violence or abuse of law or the legal process.

2. Whether the federal government's prosecution of the defendant violated the Constitution's prohibition on double jeopardy because he had already been tried in state court for state crimes arising from the same conduct.

STATEMENT OF THE CASE

On February 3, 2005, a federal grand jury returned a three-count indictment charging appellant Joseph Djoumessi and his wife, Evelyn Djoumessi, with violating federal law by keeping a young woman, Pridine Fru, in their home in a condition of involuntary servitude. (R. 4, Indictment, J.A. __). The indictment charged the defendants with (1) conspiracy to commit involuntary servitude in violation of 18 U.S.C. 371; (2) involuntary servitude in violation of 18 U.S.C. 1584 and 18 U.S.C. 2; and (3) harboring an alien for commercial advantage and private financial gain in violation of 8 U.S.C. 1324(a)(1)(A)(iii) and 18 U.S.C. 2. (R. 4, J.A. __). On March 9, 2006, after a ten-day bench trial before Judge Arthur J. Tarnow, defendant Joseph Djoumessi was found guilty on all counts.¹ (R. 68, Verdict Form, J.A. __). On May 30, 2007, the district court sentenced the defendant, to 204 months in prison and ordered him to pay \$100,000 in restitution. (R. 91, Judgment, p. 6, J.A. __).

¹ Appellant Joseph and his wife, Evelyn Djoumessi, were tried together. Evelyn Djoumessi was tried before a jury, while Joseph Djoumessi chose a bench trial. Evelyn Djoumessi was found guilty of one count of involuntary servitude and was sentenced to 60 months in prison. Both defendants are responsible, jointly and severally, for the \$100,000 restitution ordered by the district court. Mrs. Djoumessi did appeal.

STATEMENT OF FACTS

Joseph and Evelyn Djoumessi immigrated to the United States from their native country of Cameroon. (See R. 99, 2/27/06 TR 86-87, J.A. __). They lived in Farmington Hills, Michigan. (R. 96, 2/22/06 TR 61, J.A. __). In 1996, the Djoumessis arranged for then 14-year-old Pridine Fru to come to the United States from Cameroon. (R. 96, 2/22/06 TR 54, J.A. __). Fru had no blood relationship to the Djoumessis and had never met them prior to arriving in the United States. (R. 96, 2/22/06 TR 61, J.A. __). Fru first learned that she would be taken to the United States when she was approximately 13 years old and had just completed 7th grade. (R. 96, 2/22/06 TR 61, J.A. __). At that time, Fru left the home in which she was living with her Aunt Rose and Uncle Philip, and went to live with Monica Neba, Evelyn Djoumessi's mother. (R. 96, 2/22/06 TR 61-63, J.A. __). Monica Neba taught Fru how to operate the types of appliances she would find in the Djoumessis' house, including a vacuum cleaner and microwave. (R. 96, 2/22/06 TR 64, J.A. __).

In preparation for her trip to the United States, Fru was introduced to a woman named Prisca, who was a friend of Evelyn Djoumessi. (R. 96, 2/22/06 TR 64-65, J.A. __). Fru went to stay with Prisca, who instructed Fru to tell Embassy officials that Evelyn Djoumessi was her mother. (R. 96, 2/22/06 TR 65, J.A. __). Fru was presented with a passport and a birth certificate, both of which were rife with false information. (R. 96, 2/22/06 TR 66-69, J.A. __). Both documents listed her name as Pridine Neba, rather than Pridine Fru, and included an incorrect birth

date. (R. 96, 2/22/06 TR 66-69, J.A. ___). The birth certificate also listed Evelyn Neba as Fru's mother. (R. 96, 2/22/06 TR 68, J.A. ___). Fru testified that she did not have a direct role in preparing her travel documents or in providing information to the personnel at the Embassy. (R. 96, 2/22/06 TR 69-70, J.A. ___). Prisca also instructed Fru to use the name Pridine Neba during her travel to the United States. (R. 96, 2/22/06 TR 71, J.A. ___).

Fru arrived in the United States in late 1996. (R. 96, 2/22/06 TR 54, J.A. ___; R. 98, 2/24/06 TR 35, J.A. ___). The Djoumessis met her at the airport and took her to their home in Farmington Hills, Michigan. (R. 96, 2/22/06 TR 57, 59-61, J.A. ___). At that time, the Djoumessis had two young daughters – Monique, who was approximately three years old, and Gabrielle, who was approximately one. (R. 96, 2/22/06 TR 60, J.A. ___). Fru came to the United States to live with the Djoumessis with the understanding that she would help look after the Djoumessis' children and, in exchange, she would live in their house and they would send her to school. (R. 96, 2/22/06 TR 61, J.A. ___). But the Djoumessis did not send her to a single day of school in the more than three years she lived in their house. (R. 96, 2/22/06 TR 87, J.A. ___; R. 98, 2/24/06 TR 76, J.A. ___). Instead, they put her to work the day after she arrived in the United States. (R. 96, 2/22/06 TR 73, J.A. ___).

Fru's day generally started at 6 a.m. and lasted until 10 or 11 p.m. (R. 96, 2/22/06 TR 77, J.A. ___). Fru worked every day of the week and did not have a single day off during her entire time with the Djoumessis, except for one week she

spent outside of their house. (R. 96, 2/22/06 TR 77, 113-114, J.A. ___; R. 98, 2/24/06 TR 76-77, J.A. ___). Fru was responsible for all of the household chores, including mopping and vacuuming the floors, watering the outside plants and grass, preparing breakfast for the family, either preparing or helping Evelyn Djoumessi prepare dinner for the family, making the beds, cleaning the bathrooms, taking out the garbage, putting away groceries, cleaning the kitchen, and washing the dishes. (R. 96, 2/22/06 TR 77-87, J.A. ___; R. 97, 2/23/06 TR 23, J.A. ___).² On Friday of every week, Fru had to do the family's laundry, including ironing everything – shirts, pants, underwear, sheets – except socks. (R. 96, 2/22/06 TR 85-86, J.A. ___). On Saturdays, Fru was required to clean the entire house, from top to bottom, including scrubbing the showers, bathtubs, and toilets, as well as emptying out all of the kitchen cabinets, cleaning them, and restocking them. (R. 97, 2/23/06 TR 25-26, J.A. ___).

Fru was also responsible for taking care of the Djoumessis' three children, including waking them up, getting them dressed, feeding them, occasionally walking Monique to the bus stop when she attended school, generally taking care of the younger children during the day, brushing their teeth, and putting them to bed. (R. 96, 2/22/06 TR 77-80, 83, 102, J.A. ___; R. 97, 2/23/06 TR 35-36, 103, J.A. ___). She was also expected to look after Evelyn's aunt, "Mommy Bibiana," who lived with the Djoumessis for a time. (R. 96, 2/22/06 TR 107, J.A. ___; R. 97,

² Although the Djoumessis owned a dishwasher, Fru was required to wash all the dishes by hand. (R. 96, 2/22/06 TR 81-82, J.A. ___).

2/23/06 TR 82, J.A. __). Bibiana had suffered a stroke and initially required assistance in order to bathe, dress, and eat. (R. 96, 2/22/06 TR 107-109, J.A. __; R. 97, 2/23/06 TR 84, 123-124, J.A. __).

In exchange for all of this labor, the Djoumessis gave Fru no money whatsoever. (R. 96, 2/22/06 TR 61, J.A. __; R. 98, 2/24/06 TR 70, J.A. __). Nor did they send her to school.³ (R. 96, 2/22/06 TR 87, J.A. __; R. 98, 2/24/06 TR 76, J.A. __). Fru's greatest desire was to go to school so that, as an adult, she could make money to help her family in Cameroon. (R. 97, 2/23/06 TR 31, 49, J.A. __). When she questioned Joseph Djoumessi about going to school, he told her that he would not send her to school until his children – who were all under the age of five – were old enough to look after themselves. (R. 96, 2/22/06 TR 87-88, J.A. __; R. 97, 2/23/06 TR 31-32, J.A. __). Fru worried that the Djoumessis would return her to Cameroon when their children were older, at which point she would be too old to resume her schooling and all her labor would be for nothing. (R. 97, 2/23/06 TR 47, 51, J.A. __).

During the three years that Fru lived with the Djoumessis, she lived in a room in the basement of their house (R. 96, 2/22/06 TR 92, J.A. __), and used the bathroom in the basement (R. 96, 2/22/06 TR 141, J.A. __). The shower in that bathroom did not work; nor did the hot water tap. (R. 96, 2/22/06 TR 141-142,

³ All Joseph Djoumessi did to help secure an education was check one G.E.D. book out of the library. (R. 96, 2/22/06 TR 125-126, J.A. __). At the time, Fru was between 14 and 17 years old and had not had any high school education.

J.A. __). In order to clean herself, she had to collect hot water from the sink, and use a bucket to bathe. (R. 96, 2/22/06 TR 141-142, J.A. __). Although there were working showers in the rest of the house, Fru was not permitted to use them because Evelyn Djoumessi told her she was dirty. (R. 96, 2/22/06 TR 141-142, J.A. __). When it rained, the basement frequently flooded and Fru had to mop out the water. (R. 96, 2/22/06 TR 142-143, J.A. __; R. 97, 2/23/06 TR 21, J.A. __). The Djoumessis placed the dresser in Fru's room up on bricks so that it would not sustain water damage. (R. 97, 2/23/06 TR 21, J.A. __; R. 101, 3/1/06 TR 79, J.A. __). In addition, the ceiling in the basement was falling down. (R. 97, 2/23/06 TR 18, J.A. __). At some point, the basement lights burned out and Joseph Djoumessi never replaced them in spite of Fru's request that he do so. (R. 97, 2/23/06 TR 18, J.A. __; R. 101, 3/1/06 TR 78, J.A. __). When Fru started her menstrual cycle, she asked Evelyn Djoumessi for some sanitary pads, but Evelyn refused to give her any, stating "what have you done for me?" (R. 97, 2/23/06 TR 29, J.A. __). Fru was forced to use her clothing in place of sanitary pads. (R. 97, 2/23/06 TR 29, 32-33, J.A. __).

The Djoumessis kept Fru largely isolated from the outside world. On a typical day, Fru did not leave the house except to take Monique to the bus stop. (R. 96, 2/22/06 TR 109, J.A. __). Other trips were generally to take the Djoumessis' children to swim lessons, skating lessons or birthday parties. (R. 96, 2/22/06 TR 109-111, J.A. __). From time to time, the Djoumessis took Fru with them to visit relatives such as Evelyn's sister Pamela, who lived with her friend

Terry. (R. 96, 2/22/06 TR 110, J.A. ____). Terry asked Fru whether she attended school and Fru told her that she did not. (R. 96, 2/22/06 TR 112-113, J.A. ____). When they returned to the Djoumessis' home after that visit, Evelyn told Fru that she could not return to Pamela's house because Fru talked too much. (R. 96, 2/22/06 TR 113, J.A. ____).

The Djoumessis also took Fru to the home of Evelyn's cousin, Patrick Che, and his girlfriend, Leslie. (R. 96, 2/22/06 TR 113-114, J.A. ____; R. 98, 2/24/06 TR 66, J.A. ____). The Djoumessis left Fru with Che and Leslie for a week while Evelyn went to California with the children. (R. 96, 2/22/06 TR 113-114, J.A. ____). Fru enjoyed herself at Che's house, where Che and Leslie permitted her to go out and took her shopping. (R. 96, 2/22/06 TR 114, J.A. ____). In fact, Fru requested that Che ask Joseph whether Fru could stay another week because Evelyn and the children would not be back until then. (R. 96, 2/22/06 TR 114, J.A. ____). Joseph refused, admonishing Fru that she did not have the right to ask to stay longer. (R. 96, 2/22/06 TR 114-116, J.A. ____). Fru never went to Che's house again. (R. 96, 2/22/06 TR 116, J.A. ____). When Evelyn saw a watch and a pair of pants that Leslie had purchased for Fru, she instructed Fru never to speak to Leslie again. (R. 96, 2/22/06 TR 116, J.A. ____).

Both Joseph and Evelyn Djoumessi subjected Fru to physical abuse while she lived with them. Fru testified about occasions on which Joseph Djoumessi beat her because she did not perform her household duties or adhere to house rules to his satisfaction. On one occasion, while Evelyn Djoumessi and her children

were out of town, Joseph Djoumessi beat Fru with a belt because she had not made him breakfast or washed sheets when he wanted her to and had forgotten to turn off outside Christmas lights. (R. 96, 2/22/06 TR 120-121, J.A. __). The beating caused her to bleed. (R. 96, 2/22/06 TR 121-122, J.A. __). On another occasion, Djoumessi beat her with a belt because, despite his orders, Fru had telephoned Patrick Che. (R. 96, 2/22/06 TR 118-119, J.A. __). Djoumessi hit her with the belt all over her body and caused Fru to bleed. (R. 96, 2/22/06 TR 119, J.A. __). She testified that it “really, really, really hurt” and that she could not breathe by the end of the beating because she had “scream[ed] to the point where [she could not] scream anymore.” (R. 96, 2/22/06 TR 119, J.A. __).

Fru also testified about a number of beatings she received from Evelyn Djoumessi. On one occasion, Fru and Evelyn were preparing a traditional Cameroonian meal that involved tying up food in leaves. (R. 96, 2/22/06 TR 88, 91-93, J.A. __). Evelyn accused Fru of tying up the food incorrectly and hit Fru with a spoon. (R. 96, 2/22/06 TR 92, J.A. __). Evelyn attempted to hit Fru on the head with the spoon, but Fru blocked the blows with her arms. (R. 96, 2/22/06 TR 92-93, J.A. __). Evelyn beat Fru another time because of a mishap with a pager she was asked to hold and because Fru had allowed one of Evelyn’s nieces to assist her with cleaning when the niece volunteered. (R. 96, 2/22/06 TR 94-101, J.A. __). On that occasion, Evelyn closed the blinds before repeatedly striking Fru with a belt. (R. 96, 2/22/06 TR 101, J.A. __). The next day, Fru had belt lines on her legs and had difficulty walking. (R. 96, 2/22/06 TR 102, J.A. __). Evelyn beat

Fru with a heeled shoe on another occasion because Fru ironed an outfit for the baby Bonomer that was not the outfit Evelyn wanted him to wear. (R. 96, 2/22/06 TR 102-103, J.A. __). Evelyn again attempted to strike Fru on her head, and struck her arm, causing her to bruise and bleed. (R. 96, 2/22/06 TR 103-104, J.A. __). During this beating, Fru began to cry. (R. 96, 2/22/06 TR 93, 104, J.A. __). In response, Evelyn said, “you haven’t seen anything yet.” (R. 96, 2/22/06 TR 93, 104, J.A. __). Evelyn also beat Fru for using the wrong rag to clean the kitchen table. (R. 97, 2/23/06 TR 44-46, J.A. __).

Joseph Djoumessi also subjected Fru to sexual abuse, raping her on two occasions and attempting to rape her on a third. (R. 98, 2/24/06 TR 110-120, J.A. __). One night in 1998, when she was 16 years old, she lay down on a mattress in the children’s room, waiting for them to fall asleep, because their parents were not at home. (R. 98, 2/24/06 TR 111-112, J.A. __). She fell asleep and was awakened by Joseph Djoumessi, who had arrived home. (R. 98, 2/24/06 TR 112, J.A. __). Joseph asked Fru to watch television in his room and she declined, saying she needed to go to sleep. (R. 98, 2/24/06 TR 112, J.A. __). He told her to come and sit by him and watch television, and she did as she was told. (R. 98, 2/24/06 TR 112-113, J.A. __). Joseph excused himself to go to the bathroom and when he returned, he sat very close to Fru on his bed and started touching her breasts. (R. 98, 2/24/06 TR 113, J.A. __). Joseph told Fru to take her clothes off, and then he began to remove her clothes. (R. 98, 2/24/06 TR 113, J.A. __). Fru testified that she did not want to take her clothes off. (R. 98, 2/24/06 TR 113-114, J.A. __).

She also testified that she felt she could not get up and leave the room. (R. 98, 2/24/06 TR 114, J.A. __). After Joseph removed Fru's clothes, he lay down on top of her and had sexual intercourse with her. (R. 98, 2/24/06 TR 114, J.A. __). When Fru told Joseph that he was hurting her, he replied, "I'll do it gently." (R. 98, 2/24/06 TR 114, J.A. __). She felt pain and testified that it felt like "something was being forced." (R. 98, 2/24/06 TR 114, J.A. __). Joseph eventually stopped and told Fru to put his penis in her mouth. (R. 98, 2/24/06 TR 114, J.A. __). She did not understand what he wanted from her and hesitated. (R. 98, 2/24/06 TR 115-116, J.A. __). When she looked up, Joseph was asleep and Fru ran out of the room. (R. 98, 2/24/06 TR 115, J.A. __).

The next morning was Sunday. (R. 98, 2/24/06 TR 115, J.A. __). Fru awoke, got the children up, and fed them breakfast. (R. 98, 2/24/06 TR 115, J.A. __). As Fru was cleaning up, Joseph came down, put in a video for the children, and told Fru to follow him downstairs to the basement. (R. 98, 2/24/06 TR 115, J.A. __). Fru insisted that she had to get the children ready for church before Evelyn came home from work, but Joseph told her to come down to the basement. (R. 98, 2/24/06 TR 115, J.A. __). Djoumessi had Fru lay down on her bed and started to undress her. (R. 98, 2/24/06 TR 116, J.A. __). She kept repeating that she had to get the children ready for church before Evelyn came home. (R. 98, 2/24/06 TR 115-116, J.A. __). He eventually told her to get up and go get the children ready without further sexually assaulting her. (R. 98, 2/24/06 TR 116, J.A. __).

Joseph Djoumessi raped Fru again several months later, around Christmas in 1998, when Evelyn and the children were out of town. (R. 98, 2/24/06 TR 116-117, J.A. __). Fru was sitting on the sofa in the living room when Joseph came in and sat next to her. (R. 98, 2/24/06 TR 117-118, J.A. __). Djoumessi and Fru were discussing Fru's cleaning schedule and her duties around the house when he told her to sit on his lap. (R. 98, 2/24/06 TR 118, J.A. __). She did as she was told and Joseph put his hands inside her shorts. (R. 98, 2/24/06 TR 118, J.A. __). He then told Fru to go downstairs and put on her nightgown. (R. 98, 2/24/06 TR 118, J.A. __). She did as she was told, and he followed her down there. (R. 98, 2/24/06 TR 118, J.A. __). Djoumessi then lay on top of Fru, pushed up her nightgown, and again had sexual intercourse with her. (R. 98, 2/24/06 TR 118, J.A. __). Fru testified that she remembers laying there crying. (R. 98, 2/24/06 TR 118, J.A. __).

Both Fru and Patrick Che testified that Fru told Che about Joseph Djoumessi's physical abuse and his initial rape and attempted rape. (R. 96, 2/22/06 TR 123, J.A. __; R. 98, 2/24/06 TR 120-121, J.A. __). Fru testified that she hoped Che would be able to prevent Djoumessi from sexually assaulting her again. (R. 98, 2/24/06 TR 120-121, J.A. __). Che testified that he confronted Djoumessi about the physical abuse, and that Djoumessi said he had lost his temper and hit her. (R. 99, 2/27/06 TR 116, J.A. __). He also confronted Djoumessi about his rape of Fru. (R. 100, 2/28/06 TR 73-76, J.A. __). Che testified that Djoumessi claimed he was drunk and that it would not happen again.

(R. 100, 2/28/06 TR 74-76, J.A. __). When Che suggested that Fru come and live with him, Djoumessi refused, saying that everyone would know what had happened if they did that. (R. 100, 2/28/06 TR 77-78, J.A. __).

Joseph Djoumessi told Fru that, because she was in the country illegally, she would go to jail if she ever called the police. (R. 96, 2/22/06 TR 125, J.A. __). When asked why she did not call 911 for help, Fru testified that she did not know what 911 was. (R. 98, 2/24/06 TR 75-76, J.A. __). For most of the time she lived with the Djoumessis, she was not in possession of her passport. Near the end of her time in the Djoumessis' house, she found her passport and birth certificate while cleaning Monique's room along with a photo of a young woman. (R. 97, 2/23/06 TR 37, J.A. __). Around that time, Fru heard Joseph Djoumessi say that they were going to use Fru's passport to bring another woman to the United States. (R. 97, 2/23/06 TR 38, J.A. __). Fru decided to take her passport and give it to a neighbor for safe-keeping. (R. 97, 2/23/06 TR 38, J.A. __; R. 98, 2/24/06 TR 141, 146, J.A. __; R. 99, 2/27/06 TR 28-29, 62, J.A. __).

Fru testified that she felt she did not have a choice about working for the Djoumessis. (R. 97, 2/23/06 TR 47, 49, J.A. __). Indeed, she testified that she felt she did not have a choice about anything that happened to her. (R. 97, 2/23/06 TR 28, J.A. __). She stated that she felt she had to do what the Djoumessis told her to do because she had nowhere else to go. (R. 97, 2/23/06 TR 28, J.A. __). Evelyn Djoumessi told Fru that she and her husband had Fru's life in their hands and could do whatever they wanted with it. (R. 97, 2/23/06 TR 35, J.A. __). Fru

testified that she was afraid of being hit by the Djoumessis, and feared that she would be hit if she did not do the work they required of her. (R. 97, 2/23/06 TR 35, 59, J.A. __).

Evelyn and Joseph Djoumessi are not the biological parents of Pridine Fru. (R. 96, 2/22/06 TR 68, 89, J.A. __; R. 104, 3/6/06 TR 19, J.A. __). Witnesses testified that it is a tradition in Cameroon for family members to raise children who are not their biological children. (R. 99, 2/27/06 TR 158-159, J.A. __; R. 104, 3/6/06 TR 37-38, J.A. __). It was under that tradition that Fru went to live with her Aunt Rose and Uncle Philip in Cameroon. (R. 96, 2/22/06 TR 135, J.A. __). That tradition dictates, however, that these children should be treated the same as the biological children in the family. (R. 104, 3/6/06 TR 39, J.A. __; see also R. 96, 2/22/06 TR 136, J.A. __; R. 97, 2/23/06 TR 67-69, J.A. __). Fru testified that the Djoumessis did not treat her as they treated their biological children, or even as part of the family. (R. 98, 2/24/06 TR 44, 53, 56, J.A. __; R. 99, 2/27/06 TR 81, J.A. __). The Djoumessis never offered Fru a way to contact her family in Cameroon. (R. 98, 2/24/06 TR 57, J.A. __).

The Farmington Hills police eventually removed Fru from the Djoumessis' house in late February 2000. The police were contacted by Susan Aschoff, who lived next door to the Djoumessis. Aschoff first got to know Fru in January 2000, after Fru met one of Aschoff's sons in the driveway. (R. 99, 2/27/06 TR 23, J.A. __). Aschoff testified that Fru stopped in at her house for five or ten minutes a couple of times a week. (R. 99, 2/27/06 TR 25, J.A. __). She stated that Fru

seemed timid, edgy, nervous, and guarded, and that Fru said she would get in trouble if the Djoumessis discovered she was visiting Aschoff. (R. 99, 2/27/06 TR 25-27, J.A. __). Aschoff testified that Fru told her she was afraid the Djoumessis would beat her if she did not do everything exactly correctly. (R. 99, 2/27/06 TR 31, J.A. __). Fru also told Aschoff about being sexually abused by Joseph Djoumessi. (R. 99, 2/27/06 TR 58, J.A. __). On February 24, 2000, Aschoff contacted the Farmington Hills Police Department and spoke to a detective about Fru's situation. (R. 99, 2/27/06 TR 36-37, J.A. __). Detective Sandra Rochford came to Aschoff's house the following day and spoke to Fru about her life with the Djoumessis. (R. 99, 2/27/06 TR 37-38, J.A. __; R. 101, 3/1/06 TR 73-77, R.A. __). She and other officers then removed Fru from the Djoumessis' household because they were concerned for her safety and well-being. (R. 101, 3/1/06 TR 77-81, J.A. __).

SUMMARY OF ARGUMENT

The district court found Joseph Djoumessi guilty of holding Pridine Fru in a condition of involuntary servitude based on ample evidence that he coerced Fru into providing her labor through the use and threatened use of violence and abuse of the law or legal process. The court heard abundant evidence that Joseph Djoumessi and his wife intentionally coerced Fru into providing her labor to them 16 hours a day, seven days a week, by beating her, by sexually assaulting her, by isolating her from the outside world, and by threatening her with imprisonment if she contacted the authorities. The court also heard testimony from the victim

herself that she felt she had no choice but to provide her labor to the Djoumessis. That evidence is more than sufficient to find Joseph Djoumessi guilty of violating 18 U.S.C. 1584.

The federal government's prosecution of Joseph Djoumessi for involuntary servitude did not run afoul of the Double Jeopardy Clause. That Clause forbids a sovereign from prosecuting a citizen for the same conduct on more than one occasion. But it has no application to successive prosecutions by separate sovereigns. Thus, the fact that the defendant was prosecuted by the State of Michigan for state crimes arising from the same conduct that formed the basis of his federal involuntary servitude charge does not establish a double jeopardy violation. Although the defendant asserts that this amounts to double jeopardy because the federal prosecution was controlled by Michigan and was a "cover" for a successive state prosecution, he has produced no evidence in support of that bare allegation and, therefore, his argument fails.

ARGUMENT

I

THE GOVERNMENT PRESENTED AMPLE EVIDENCE THAT THE DEFENDANT COERCED HIS VICTIM TO PROVIDE LABOR THROUGH THE USE AND THREATS OF PHYSICAL INJURY AND ABUSE OF LAW OR LEGAL PROCESS

Defendant Joseph Djoumessi was convicted of violating 18 U.S.C. 1584 by keeping Pridine Fru in a condition of involuntary servitude. On appeal, he challenges this conviction on the ground that there was insufficient evidence

before the district court to demonstrate that Fru's labor was compelled (Def. Br. 14-20).⁴ This Court reviews the sufficiency of the evidence to support a conviction by determining "whether after reviewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Wang*, 222 F.3d 234, 237 (6th Cir. 2000) (quoting *United States v. Brown*, 959 F.2d 63, 67 (6th Cir. 1992)).

The government presented ample evidence that Djoumessi intentionally held Fru in a condition of involuntary servitude. In *United States v. Kozminski*, 487 U.S. 931, 952 (1988), the Supreme Court held that, in order to obtain a conviction under 18 U.S.C. 1584, the government must demonstrate that a victim was "forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or legal process." In the instant case, the government presented abundant evidence that Fru was forced to work for the Djoumessis by the use and threat of physical injury and by the threat of coercion through law or legal process.

The district court heard more than sufficient evidence to support its conclusion that Fru did not provide her labor to the Djoumessis voluntarily, but

⁴ In his opening brief before this Court, Djoumessi does not directly challenge his conviction under 18 U.S.C. 371 for conspiring with his wife to hold Fru in a condition of involuntary servitude. Nor does he challenge his conviction under 8 U.S.C. 1324. He has, therefore, waived his right to do so. *United States v. Kakos*, 483 F.3d 441, 446 n.4 (6th Cir. 2007); *Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 311 (6th Cir. 2005).

was coerced into doing so through threats and violence. Fru testified that the Djoumessis subjected her to physical abuse and injury when she did not perform the work required of her in the exact manner or at the exact time the Djoumessis required it. With respect to Joseph Djoumessi specifically, Fru testified that he beat her with a belt until she bled because she did not wash sheets on the day that he wanted her to, did not make him breakfast when he wanted it, and forgot to turn off outside Christmas lights. (R. 96, 2/22/06 TR 120-122, J.A. ____). He also beat her with a belt until she bled when, against his orders, she tried to contact someone outside of the household by telephone. (R. 96, 2/22/06 TR 118-119, J.A. ____). Evelyn Djoumessi also subjected Fru to physical abuse and injury when she did not perform her duties exactly as the Djoumessis required.⁵ Evelyn beat Fru for such minor infractions as preparing food incorrectly (R. 96, 2/22/06 TR 88, 92-93, J.A. ____), allowing Evelyn's niece to assist Fru with cleaning when the niece volunteered (R. 96, 2/22/06 TR 94-101, J.A. ____), ironing the wrong outfit for the baby (R. 96, 2/22/06 TR 102-104, J.A. ____), and using the wrong rag to clean the kitchen table (R. 97, 2/23/06 TR 44-46, J.A. ____). Evelyn accompanied her beatings with threats of worse treatment – *i.e.*, “you haven’t seen anything yet” (R. 96, 2/22/06 TR 93, 104, J.A. ____) – if Fru’s performance did not improve.

⁵ Joseph Djoumessi and Evelyn Djoumessi were both convicted of conspiring to keep Fru in a condition of involuntary servitude and the substantive offense of involuntary servitude. Thus, the actions of Evelyn Djoumessi in furtherance of the conspiracy are attributable to Joseph Djoumessi. *United States v. Lawson*, 872 F.2d 179, 182 (6th Cir.) (citing *Pinkerton v. United States*, 328 U.S. 640, 646-647 (1946)), cert. denied, 493 U.S. 834 (1989).

Moreover, Joseph Djoumessi told Fru she would be sent to jail if she ever called the police because she was in the country illegally. (R. 96, 2/22/06 TR 125, J.A. ___).

Taken together, this evidence supports the district court's conclusion that Joseph Djoumessi intentionally used physical abuse, physical injury, threats of further abuse and injury, as well as threats of abuse of the legal process to coerce Pridine Fru to provide her labor. That is sufficient to satisfy *Kozminski's* requirement that a defendant intend to coerce his victim's labor in violation of Section 1584. In determining whether a defendant's coercive measures were sufficient to violate Section 1584 the Supreme Court in *Kozminski* admonished that "a victim's age or special vulnerability may be relevant in determining whether a particular type or a certain degree of physical or legal coercion is sufficient to hold that person to involuntary servitude." 487 U.S. at 948. As detailed *infra*, there was also sufficient evidence to support the district court's conclusion that Fru was, in fact, coerced into providing her labor, and did not provide it voluntarily.

Pridine Fru was only 14 years old when she was brought to a strange country to work for the Djoumessis. (R. 96, 2/22/06 TR 54, J.A. ___). Fru had no money, was in the country illegally, and did not know a single person in the United States. (See R. 96, 2/22/06 TR 61, 125, J.A. ___; R. 98, 2/24/06 TR 64, 70, J.A. ___). The Djoumessis refused to allow her to go to school and kept her largely isolated from the world outside their house. Indeed, they punished her when she

attempted to reach out to others. (R. 96, 2/22/06 TR 109-113, 116, 118-119, J.A. __). She was not aware that police might be able to help her, and did not even know how to call 911 for help. (R. 96, 2/22/06 TR 123-124, J.A. __; R. 98, 2/24/06 TR 75-76, J.A. __).

The Djoumessis' coercive behavior left Fru feeling that she did not have a choice about anything that happened to her. (R. 97, 2/23/06 TR 28, J.A. __). Their infliction of physical injury on Fru was accompanied by statements that they had Fru's life in their hands and could do anything they wanted with it. (R. 97, 2/23/06 TR 35, J.A. __). The Djoumessis' control over Fru was enhanced by Joseph Djoumessi's sexual abuse of Fru. He raped Fru on two occasions and attempted to rape her on a third. (R. 98, 2/24/06 TR 110-120, J.A. __). After the first rape and attempted rape, Fru sought assistance from one of the only people outside of the household with whom she had contact, Evelyn's cousin Patrick Che. (R. 96, 2/22/06 TR 123, J.A. __; R. 98, 2/24/06 TR 120-121, J.A. __). Her cry for help was unavailing: although Che secured assurances from Djoumessi that it would not happen again (R. 100, 2/28/06 TR 74-78, J.A. __), Djoumessi did, in fact, rape Fru a second time (R. 98, 2/24/06 TR 116-118, J.A. __). Fru was discouraged from seeking help elsewhere as well. Fru testified that Djoumessi told her that, if she ever called the police, she would be sent to jail because she was in the country illegally. (R. 96, 2/22/06 TR 125, J.A. __).

Given Fru's young age, and the special vulnerability following from her isolation and her status as an illegal alien, the evidence that the Djoumessis' use of

physical and sexual violence, in addition to their warnings that Fru would be imprisoned if she called the police, was more than sufficient to support Joseph Djoumessi's conviction under Section 1584. Fru herself testified that she felt she did not have a choice about working for the Djoumessis (R. 97, 2/23/06 TR 47, 49, J.A. __), or about anything that happened to her (R. 97, 2/23/06 TR 28, J.A. __). She further testified that she felt she had to do whatever the Djoumessis told her to do because she had nowhere else to go. (R. 97, 2/23/06 TR 28, J.A. __). Finally, Fru testified that she was afraid of being hit by the Djoumessis if she did not do the work they required of her. (R. 97, 2/23/06 TR 35, 59, J.A. __). It was rational for the district court to credit Fru's testimony and conclude that the Djoumessis intentionally compelled her to work through their use of physical violence. It was also rational for the district court to conclude that Joseph Djoumessi used the threat of coercion through the law or legal process to keep Fru in line. As the Supreme Court stated in *Kozminski*, "threatening * * * an immigrant with deportation [may] constitute the threat of legal coercion that induces involuntary servitude, even though such a threat made to an adult citizen of normal intelligence would be too implausible to produce involuntary servitude." 487 U.S. at 948; see also *United States v. Veerapol*, 312 F.3d 1128, 1132 (9th Cir. 2002), cert. denied, 538 U.S. 981 (2003).

The defendant attempts to downplay the coercive nature of the Djoumessis' abuse and threats by claiming that Fru continued to live in the Djoumessis' house "completely voluntarily" (Def. Br. 18). But the fact that Fru did not escape from

the Djoumessis' home is not evidence that she provided her labor to them voluntarily. Fru's only option had she escaped would presumably have been to live on the streets as she had no money and, for most of her time with them, was not in possession of her passport. The fact that a victim of involuntary servitude had a physical opportunity to escape and did not take it does not make her coerced labor voluntary. *United States v. Pipkins*, 378 F.3d 1281, 1297 (11th Cir. 2004)⁶; *United States v. Alzanki*, 54 F.3d 994, 1000 (1st Cir. 1995), cert. denied, 516 U.S. 1111 (1996).

Nor must the government prove that either Fru's presence in the Djoumessis' home or her provision of labor to them were coerced every second of the more than three years she lived there. *Pipkins*, 378 F.3d at 1297. There need not be a one-to-one relationship between a particular coercive measure and the work required of Fru. Here, Djoumessis established a climate of coercion continuing over several years where failure to follow their orders could result in physical violence. That is sufficient to prove a violation of 18 U.S.C. 1584. See, e.g., *Pipkins*, 378 F.3d at 1297; *Alzanki*, 54 F.3d at 1004-1005; *United States v. King*, 840 F.2d 1276, 1281 (6th Cir.), cert. denied, 488 U.S. 894 (1988); *United States v. Warren*, 772 F.2d 827, 833-834 (11th Cir. 1985), cert. denied, 475 U.S.

⁶ The Supreme Court vacated this decision for reconsideration of the defendants' challenge to their sentences in light of *United States v. Booker*, 543 U.S. 220 (2005). *Pipkins v. United States*, 544 U.S. 902 (2005). On remand, the Eleventh Circuit reinstated its earlier opinion. *United States v. Pipkins*, 412 F.3d 1251 (11th Cir. 2005).

1022 (1986); *United States v. Booker*, 655 F.2d 562, 566-567 (4th Cir. 1981). The defendant's assertion (Def. Br. 18) that Fru thought "long and hard about whether to return to her parents or remain living with the Djoumessis, [and] decided on the latter" is misleading. Although the Djoumessis apparently threatened to send Fru back to Africa in the midst of beating her (R. 97, 2/23/06 TR 46, J.A. __), there is no evidence in the record that they ever presented her with a realistic choice between staying where she was and returning to live with her parents. It is true that Fru testified that she did not want to return to Cameroon because she would not be able to re-enroll in school and, therefore, would not be able to make money to help her family. (R. 97, 2/23/06 TR 47, 51, J.A. __). That does not mean that she provided her labor to the Djoumessis voluntarily rather than as a result of the beatings and other threats she received from them.⁷

Finally, the defendant's attempt (Def. Br. 11, 15, 18-19) to portray himself and his wife as Fru's parents is nonsense. It is undisputed that the Djoumessis were not Fru's mother and father. As this Court has held, the fact that Fru's biological family may have entrusted her to the care of the Djoumessis is not a defense to a charge of involuntary servitude. *King*, 840 F.2d at 1281-1283. As this Court in *King* and the Supreme Court in *Kozminski* noted, one of the statutes

⁷ The defendant's assertion (Def. Br. 19-20) that his "only realistic" option other than keeping Fru in his house in the manner that he kept her was to send her back to Cameroon is beyond the pale. Surely the Djoumessis had the option of housing Fru and sending her to school as they promised without beating, raping, and threatening her in order to coerce her into laboring for them all day, every day.

Congress intended to recodify when it enacted 18 U.S.C. 1584 was the “Padrone statute,” which prohibited the 19th Century practice of importing Italian children to America, where they were forced to labor. *King*, 840 F.2d at 1282-1283; *Kozminski*, 487 U.S. at 947-948. As in Fru’s situation with the Djoumessis, the Padrone system depended on the willingness of the children’s parents to consent to their being forced to work while under the care of other people. Nevertheless, Congress outlawed such forced labor in the Padrone statute, and recodified that prohibition in Section 1584. *King*, 840 F.2d at 1282-1283; *Kozminski*, 487 U.S. at 947-948. Thus, the fact that Fru’s parents may have entrusted her to the care of the Djoumessis neither makes the Djoumessis her parents nor protects them from prosecution for keeping Fru in a condition of involuntary servitude. Cf. *King*, 840 F.2d at 1283 (“The Thirteenth Amendment prohibits an individual from selling himself into bondage, and it likewise prohibits a family from selling its child into bondage.”).

II

THE DEFENDANT’S FEDERAL PROSECUTION DID NOT VIOLATE THE FIFTH AMENDMENT’S PROHIBITION ON DOUBLE JEOPARDY

The defendant argues that his prosecution in federal court violates the Fifth Amendment’s prohibition on being “twice put in jeopardy,” U.S. Const. Amend. V, because he was previously tried in state court for state crimes arising from the same conduct. This Court reviews *de novo* the district court’s legal conclusion that the federal prosecution did not violate the Double Jeopardy Clause. *United*

States v. Holmes, 111 F.3d 463, 467 (6th Cir. 1997). The district court was correct in denying the defendant's motion to dismiss on double jeopardy grounds. (R. 39, Order, J.A. ___).

The Supreme Court has long held that successive prosecutions by state and federal authorities for crimes arising from the same conduct do not violate the Double Jeopardy Clause. *United States v. Lanza*, 260 U.S. 377, 382 (1922); see also *Heath v. Alabama*, 474 U.S. 82 (1985). As this Court has found, the "double jeopardy clause of the fifth amendment bars only additional prosecution by the same sovereign." *United States v. Louisville Edible Oil Prods., Inc.*, 926 F.2d 584, 587 (6th Cir.), cert. denied, 502 U.S. 859 (1991). The Supreme Court has explained that:

The dual sovereignty doctrine is founded on the common-law conception of crime as an offense against the sovereignty of the government. When a defendant in a single act violates the "peace and dignity" of two sovereigns by breaking the laws of each, he has committed two distinct "offences."

Heath, 474 U.S. at 88; see also *Lanza*, 260 U.S. at 382 (holding that "an act denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each").

The defendant acknowledges this bedrock principle in his brief (at 21), and attempts to rely on a narrow exception to the rule first mentioned by the Supreme Court in *Bartkus v. Illinois*, 359 U.S. 121 (1959). The Court in *Bartkus* considered a double jeopardy challenge from a defendant who was prosecuted by state authorities after being acquitted in federal court for charges arising from the

same conduct. The Court relied on the dual sovereignty doctrine to uphold the validity of the second prosecution. However, the Court acknowledged that successive state and federal prosecutions for the same conduct could violate the Double Jeopardy Clause if one sovereign were “merely a tool” of the other such that the prosecution by the second sovereign is “a sham and a cover for” a successive prosecution by the first. *Id.* at 123-124. In such a case, the Court reasoned, both prosecutions would be, in effect, by the same sovereign. *Id.* at 124. The evidence in *Bartkus* demonstrated that the FBI agent who had conducted the investigation on behalf of the federal government turned over all of the evidence to the state prosecutors. But the Court concluded that such coordination demonstrated only that “federal officials acted in cooperation with state authorities, as is the conventional practice between two sets of prosecutors throughout the country,” and did not constitute a “sham” or a “cover.” *Id.* at 123-124.

This Court and all the courts of appeals to address the issue have held that a subsequent federal prosecution will be considered a “sham” or “cover” only where “the state controlled the actions of the federal government such that the federal government did not act of its own volition.” *United States v. Harris*, No. 95-1247, 1996 WL 135031, at *1 (6th Cir. Mar. 25, 1996) (unpublished); see also *United States v. Trammell*, 133 F.3d 1343, 1350 (10th Cir. 1998); *United States v. Guzman*, 85 F.3d 823, 827 (1st Cir.), cert. denied, 519 U.S. 1020 (1996); *United States v. Mayle*, No. 93-5793, 1995 WL 478145, at *3 (4th Cir. Aug. 14, 1995)

(unpublished); *United States v. Baptista-Rodriguez*, 17 F.3d 1354, 1361 (11th Cir. 1994); *United States v. Liddy*, 542 F.2d 76, 79 (D.C. Cir. 1976). Courts of appeals agree that this burden is “substantial.” *Trammell*, 133 F.3d at 1350; *United States v. Raymer*, 941 F.2d 1031, 1037 (10th Cir. 1991); *Liddy*, 542 F.2d at 79. This Court has described the *Bartkus* exception as “narrow.” *Mans v. United States*, No. 96-5065, 1996 WL 596507, at *2 (6th Cir. Oct. 16, 1996) (unpublished), cert. denied, 520 U.S. (1997). Indeed, every time this Court has considered a defendant’s claim that a successive state or federal prosecution was a sham, the Court has found that the defendant failed to meet his or her burden of proof. *United States v. Clark*, No. 06-3747, 2007 WL 4102471, at *5 (6th Cir. Nov. 19, 2007) (“Since *Bartkus* was decided in 1959, this Circuit has never ruled that a prosecution violated double jeopardy protections under the ‘sham prosecution’ theory.”). The defendant in this case is no different.

The defendant offers little in the way of specific allegations – let alone evidence – in support of his claim that the federal government was so overcome by state authorities as to have no will of its own in prosecuting Joseph Djoumessi. The crux of the defendant’s argument is his assertion (Def. Br. 22-23) that: “There is no independent federal investigation, evidence, or intervening circumstance to demonstrate that the instant charges related to involuntary servitude are in any way independent of the state court prosecution.” But Mr. Djoumessi has the correct legal test exactly backwards. The burden is not, as he suggests, on the government to demonstrate that its prosecution was independent.

Rather, the burden is on the defendant to demonstrate that, in this case, the State of Michigan exercised such complete control over the federal government that it did not act of its own volition in prosecuting Djoumessi.

As an initial matter, the state and federal authorities did not prosecute Djoumessi for the same crimes. Michigan authorities prosecuted him for conspiracy to kidnap, kidnaping, first degree criminal sexual conduct, third degree sexual conduct, and third degree child abuse. (See Def. Br. 3). The United States prosecuted Djoumessi for conspiracy to commit involuntary servitude, involuntary servitude, and harboring an illegal alien for private financial gain. (R. 4, J.A. ___). The fact that both the state and the federal prosecutions were based in part on the same evidence does not help the defendant's claim. As the Tenth Circuit noted in the face of a claim that state and federal prosecutions relied upon identical witnesses and evidence: "The witnesses and exhibits that are key to the prosecution will not change merely because the prosecution moves from state to federal court." *Trammell*, 133 F.3d at 1351. In any case, the state and federal prosecutors who tried Mr. Djomessi did not present identical cases, as only half of each sovereign's witness list overlapped. This Court has held that even much greater overlap between state and federal cases is not enough to demonstrate that one sovereign's prosecution was a sham. This Court rejected such a claim from defendants who were subject to "nearly identical" state and federal trials, concluding that the defendants' arguments were based only "on their own

suspicions and conjecture.” *United States v. Carr*, No. 94-2415, 1996 WL 99318, at *2-*3 (6th Cir. Mar. 6, 1996) (unpublished). The same is true in this case.

Nor is the defendant helped by a federal immigration official’s testimony that the United States Attorney’s Office waited to authorize an arrest warrant until the conclusion of the state trial (Def. Br. 22). By relying on that testimony, the defendant implies that the federal government may not have prosecuted Mr. Djoumessi at all had he been convicted of all counts in his state trial, and thereafter sentenced to a much longer term in prison. Even if that were true, however, it has no bearing on the double jeopardy calculus. The fact that the government *might* have exercised its discretion by choosing not to devote resources to prosecuting a defendant who was already spending most of his life in prison in no way indicates that the federal government was under the control of the State of Michigan.

In short, the defendant bases his double jeopardy claim on no more than an assertion that two separate sovereigns prosecuted him for the same conduct and may have cooperated in doing so. That is not enough to meet his heavy burden. Separate prosecutions by separate sovereigns for crimes arising from the same conduct is not prohibited by the Constitution. And any amount of cooperation between state and federal prosecutors in this case was nothing more the type of “inter-sovereign dialogue” that this Court has found perfectly consistent with the Constitution. *Louisville Edible Oil Prods., Inc.*, 926 F.2d at 588; see also *Clark*,

2007 WL 4102471, at *5 (noting that federal-state “[i]nvestigatory cooperation * * * is sanctioned in *Bartkus* itself”).

CONCLUSION

This Court should affirm the defendant’s convictions.

Respectfully submitted,

GRACE CHUNG BECKER
Acting Assistant Attorney General

JESSICA DUNSAY SILVER
SARAH E. HARRINGTON
Attorneys
Department of Justice
Civil Rights Division
Ben Franklin Station
P.O. Box 14403
Washington, DC 20044-4403
(202) 305-7999

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type volume limitation imposed by Fed. R. App. P. 32(a)(7)(B). The brief was prepared using WordPerfect 12.0 and contains 8,173 words of proportionally spaced text. The type face is Times New Roman, 14-point font.

Date: December 20, 2007

SARAH E. HARRINGTON
Attorney

CERTIFICATE OF SERVICE

I certify that one copy of the foregoing PROOF BRIEF FOR THE UNITED STATES AS APPELLEE was served by Federal Express, postage prepaid, on December 20, 2007, on the following counsel of record:

Andrew Wise, Esq.
Federal Defender Office
Legal Aid and Defender Association, Inc.
613 Abbott, 5th Floor
Detroit, MI 48226
(313) 967-4850

SARAH E. HARRINGTON
Attorney

APPELLEE'S DESIGNATION OF APPENDIX CONTENTS

Pursuant to Sixth Circuit Rules 10(d) and 11(b), appellee United States of America designates the following items to be contained in the Joint Appendix:

Description	Date	Record No.
Indictment	2/7/2005	4
Order	7/11/2005	39
Verdict Form	3/9/2006	68
Judgment	5/30/2007	91
Trial Transcript Vol. 1, pages 54, 57, 59-71, 73, 77-89, 91-104, 107-116, 118-126, 135-136, 141-143, 147	2/22/2006	96
Trial Transcript Vol. 2, pages 18, 21, 23, 25-26, 28-29, 31-33, 35-38, 44-47, 49, 51, 59, 67-69, 82, 84, 123-124	2/23/2006	97
Trial Transcript Vol. 3, pages 35, 44, 53, 56, 57, 64, 66, 70, 75-77, 110-121, 141, 146	2/24/2006	98
Trial Transcript Vol. 4, pages 23, 25-27, 28-29, 31, 36-38, 58, 62, 81, 86-87, 116, 158-159	2/27/2006	99
Trial Transcript Vol. 5, pages 73-79	2/28/2006	100
Trial Transcript Vol. 6, pages 73-81	3/1/2006	101
Trial Transcript Vol. 9, pages 19, 37-39	3/6/2006	104

UNPUBLISHED DECISIONS

Pursuant to Sixth Circuit Rule 28(g) and Federal Rule of Appellate Procedure 32.1(b), appellee United States of America attaches the following unpublished decisions for the Court's review:

1. *United States v. Clark*, No. 06-3747, 2007 WL 4102471 (6th Cir. Nov. 19, 2007)
2. *Mans v. United States*, No. 96-5065, 1996 WL 596507 (6th Cir. Oct. 16, 1996)
3. *United States v. Harris*, No. 95-1247, 1996 WL 135031 (6th Cir. Mar. 25, 1996)
4. *United States v. Carr*, No. 94-2415, 1996 WL 99318 (6th Cir. Mar. 6, 1996)
5. *United States v. Mayle*, No. 93-5793, 1995 WL 478145 (4th Cir. Aug. 14, 1995)