

new trial. Had the information presented in York's motion for new trial come to light during trial, there is a reasonable probability that York would not have been convicted of the sex counts. Furthermore, since the RICO counts involved the alleged transportation of minors to engage sex, York would not have been convicted of the RICO counts. Thus, York's convictions must be overturned.

VI After York's conviction at trial, the district court improperly relied upon the United States Sentencing Guidelines to determine York's punishment. The use of the Guidelines served to increase York's punishment based on facts that were never submitted to a jury for proof beyond a reasonable doubt. York was denied his Sixth Amendment right to a jury trial when the district court took these steps and increased his punishment based on facts beyond what was reflected in the jury verdict.

VII The use the most recent version of the Sentencing Guidelines at York's sentencing violates Ex Post Facto. York's punishment was increased based on the use of the most recent version of the Guidelines instead of the version in effect at the time York committed the charged offenses. Therefore, he must receive a new sentencing so that the court may employ the appropriate version of the Guidelines.