Appendix A

Appendix A

Sample and Model Documents

Motions and Petitions

Document	Source and internet address
Template Motion to Vacate or Expunge under the TSRA (D. Ct., under seal)	Appendix A-01 NSLC (July 2026)
Template Notice of Motion and Motion to Vacate Conviction under the TSRA, with Memorandum of Points and Authorities	Appendix A-02
Sample Motion to Vacate and Memorandum of Points and Authorities (D.C.)	Appendix A-03 DC Vacatur Toolkit, attach. B — https://freedomnetworkusa.org/app/uploads/2020/02/DC-Vacatur-Toolkit-Revised-February-2021.pdf
Sample Memorandum of Law (Md.)	Appendix A-04 DC Vacatur Toolkit, attach. C — https://freedomnetworkusa.org/app/uploads/2020/02/DC-Vacatur-Toolkit-Revised-February-2021.pdf
Sample Orders, including Order to Expunge Criminal Records (D.C. Super. Ct., under seal)	Appendix A-05 DC Vacatur Toolkit, attach. E — https://freedomnetworkusa.org/app/uploads/2020/02/DC-Vacatur-Toolkit-Revised-February-2021.pdf
Sample vacatur petition under Cal. Penal Code § 236.14	Appendix A-06 CAST — https://castla.box.com/v/March2022SamplePetition
Petition to vacate a conviction, pro se and attorney versions (Ga., O.C.G.A. § 17-10-21)	Appendix A-07A, 7B Ga. Off. of the Att'y Gen. — https://law.georgia.gov/key-issues/human-trafficking/restriction-and-vacatur-forms
Petition to restrict a conviction record (Ga., O.C.G.A. § 35-3-37)	Appendix A-08 Ga. Off. of the Att'y Gen. — https://law.georgia.gov/key-issues/human-trafficking/restriction-and-vacatur-forms

Survivor Declarations and Affidavits

Document	Source and internet address
Sample Client Affidavit (Md.)	Appendix A-09 DC Vacatur Toolkit, attach. D — https://freedomnetworkusa.org/app/uploads/2020/02/DC-Vacatur-Toolkit-Revised-February-2021.pdf
Sample Defendant's Affidavit in Support of Motion to Vacate Judgment (N.Y.)	Appendix A-10 Jailhouse Lawyer's Manual ch. 20, app. B-2 — https://jlm.law.columbia.edu/files/2017/05/32.-Ch.-20.pdf
Sample Defendant's Affidavit in Support of Motion to Set Aside Sentence (N.Y.)	Appendix A-11 Jailhouse Lawyer's Manual ch. 20, app. B-4 — https://jlm.law.columbia.edu/files/2017/05/32.-Ch.-20.pdf
Sample affidavits maintained by the Survivor Reentry Project	Appendix A-12A, 12B Freedom Network USA — https://freedomnetworkusa.org/app/uploads/2020/02/FNUSA-SRP-US-Adult-Affidavit-Template.pdf https://freedomnetworkusa.org/app/uploads/2020/02/FNUSA-SRP-Foreign-National-Adult-Affidavit-Template.pdf
Expert Declaration of Stephanie Richard on Human Trafficking and Forced Criminality (redacted)	Appendix A-13 Stephanie Richard, Sunita Jain Anti-Trafficking Initiative, Loyola Law School (Aug. 2026)

Jury Instructions

Document	Source and internet address
PROPOSED JURY INSTRUCTION: Human Trafficking Duress Defense 18 U.S.C § 28	Appendix A-14
Wis. JI-Criminal 791 — affirmative defence for a trafficking victim, Wis. Stat. § 939.46(1m)	Appendix A-15 https://wilawlibrary.gov/jury/files/criminal/0791.pdf
CALCRIM No. 3414, Coercion (Cal. Penal Code §§ 236.23, 236.24)	https://www.justia.com/criminal/docs/calcrim/3400/3414/
Ninth Cir. Model Crim. Jury Instr. 5.7, Duress, Coercion, or Compulsion	Appendix A-16 https://www3.ce9.uscourts.gov/jury-instructions/node/871
N.C.P.I. — Crim. 310.10, Compulsion, Duress, or Coercion	Appendix A-17 https://www.sog.unc.edu/sites/default/files/pji-master/r/r310.10%20Compulsion,%20Duress,%20or%20Coercion.%20%5B6-2019%5D.pdf

Appendix A-01

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF [INSERT]

UNITED STATES OF AMERICA, **Plaintiff,** **v.** **[Movant Name],** **Defendant,**	**CRIMINAL CASE NO. [XXCRXX]** **UNDER SEAL**

MOTION TO [VACATE / EXPUNGE]

NOW COMES, [*Counsel*] on behalf of [*Survivor Movant*], and requests that this Court [*vacate the conviction and/or expunge*] all relevant public criminal records pursuant to the Trafficking Survivors Relief Act (the "TSRA"). The TSRA provides that victims of human trafficking whose arrests or convictions were a direct result of being trafficked may move the court of jurisdiction to vacate their convictions, expunge their arrest records, or reduce the term of their imprisonment.[1] 18 U.S.C. § 3771A. The TSRA seeks to exonerate survivors who were criminalized as a result of being trafficked. While almost every state has a similar law for addressing state criminal records for trafficking victims, it was not until January 2026 that the same relief could be sought for federal criminal records.

[1] Motions to reduce a term of imprisonment under 18 U.S.C. Section 3771A(e) require separate elements. Practitioners should consult the statute if relying on this template to seek that relief.

[*If the Government has indicated consent to this Motion, state so here*].

To grant the requested relief in this Motion, the Court must find, by a preponderance of evidence, that [*Movant*] was [*convicted/arrested*] of an eligible offense and that their participation in that offense was a direct result of being a victim of trafficking. [*Movant*] meets the requirements under the TSRA and states the following as grounds for relief:

I. PROCEDURAL HISTORY

[Insert numbered paragraphs describing relevant federal criminal charges, convictions and dismissals or acquittals]

[Cite to exhibits such as indictment, judgment, and arrest record]

II. UNDER THE TSRA, [*MOVANT'S*] [*CONVICTION / ARREST*] SHOULD BE [*VACATED / EXPUNGED*].

A. [*Movant*] was a Victim of Trafficking.

Relief under the TSRA requires that the movant be a "victim of trafficking." The definition of "victim of trafficking" is taken from the Trafficking Victims Protection Act of 2000 ("TVPA"), 22 U.S.C. § 7102 (11), (12) and (17) which defines a victim of trafficking as someone who was "induced by force, fraud, and coercion" to perform a commercial sex act or "subject[ed] to involuntary servitude."

[*Insert numbered paragraphs with statements establishing victim status by a preponderance of the evidence and citing to relevant exhibits such as letters or affidavits from service providers, clinicians, and/or law enforcement.]*

B. [*Movant*] was [*convicted of/arrested for*] a "Level []" Federal Offense Pursuant to 18 U.S.C. Section § 3771A.

[*Choose if convicted of Level A Offense*]: Under the TSRA, "a person convicted of any Level A offense (or any attorney representing such a person) may move the court that imposed the sentence for the Level A offense to vacate the judgment if the Level A offense was committed as a direct result of the person having been a victim of trafficking." The Movant was convicted of [*insert Level A offense*], which meets the TSRA's definition of a level A offense. [*Insert case law establishing non-violent status of the offense*].

[*Choose if Level B Offense*]: Under the TSRA, "a person arrested for any level B offense [ ] may move the district court of the Unites States for the district and division embracing the place where the person was arrested to expunge all records of the arrest if – (i) the conducted or alleged conduct of the movant that resulted in the arrest was directly related to the movant having been a victim of trafficking; and (ii) [*movant was acquitted, the Government did not pursue or moved to dismissed, or charges were reduced to level A and then acquitted/dismissed/vacated*]." The Movant was arrested for [*insert Level B offense*], and the crime did not implicate a

child victim. [*Cite to exhibited indictment or other record showing that no minor was a victim of charged conduct*]. The arrest record is therefore eligible for expungement as a Level B offense under the TSRA.

C. [*Movant's*] Participation in the Crime was a Direct Result of having been a Victim of Trafficking

[*Insert numbered paragraphs with statements establishing direct nexus between victim status and commission of the crime, citing to relevant exhibits such as letters or affidavits from service providers, clinicians, and/or law enforcement.]*

D. [*Vacatur / Expungement*] is Required.

[*Choose if convicted of Level A Offense*]: Under the TSRA "[i]f the court grants a motion to vacate a conviction of a level A offense [] the court shall immediately – (A) vacate the conviction for cause; (B) set aside the verdict and enter a judgment of acquittal; and enter an expungement order that directs that there be expunged from all official records all references to [the arrest, criminal proceeds and results]." 18 U.S.C. § 3771A(c)(1).

[*Choose if Level B Offense*]: Under the TSRA, "[i]f the court grants a motion to expunge all records of an arrest for an offense under subsection (b), the court shall immediately enter an expungement order that directs that there be expunged from all official records all references to – (A) the arrest of the movant for the offense; (B) the

institution of any criminal proceedings against the movant relating to the offense; and (C) the results of the proceedings, if any." 18 U.S.C. § 3771A(d)(1).

WHEREFORE, Counsel, on behalf of [*Movant*], for the reasons set forth above, respectfully requests this Court [*vacate/expunge*] the [*conviction/arrests*] for cause, [*set aside the verdict and enter a judgment of acquittal*] and take any additional action in the interest of justice. Counsel further respectfully requests that the Court enter an order directing [*relevant government agencies*] to expunge all references to official records related to the criminal proceedings and the results thereof. The Court shall also order the Clerk's Office to seal the entire court docket.

If the Government files a timely opposition, the Court shall hold a hearing within 45 days of this motion. If the Government does not timely oppose, we respectfully request prompt issuance of an order.

Date: [ ]

Respectfully submitted:

Counsel for Defendant

Appendix A-02

[INSERT COUNSEL INFORMATION]

Counsel for Petitioner FIRST, LAST

IN THE UNITED STATES DISTRICT COURT

[INSERT DISTRICT]

[INSERT DIVISION]

FIRST LAST, Petitioner, v. UNITED STATES OF AMERICA, Respondent.	**Case No.: _____** PETITIONER [FIRST LAST]'S Notice of Motion and Motion TO VACATE CONVICTION under the Trafficking Survivors' Relief Act **FILE UNDER SEAL** **Court:** COURT **Hearing Date:** December 30, 1899 **Hearing Time:** TIME

TO: [INSERT OPPOSING COUNSEL INFORMATION]

PLEASE TAKE NOTICE that at [TIME] on [DATE] or as soon thereafter as counsel may be heard, Petitioner FIRST LAST, by and through counsel, will move this Court under 18 U.S.C. § 3771A for an order vacating his/her conviction. Petitioner's motion is based upon the accompanying memorandum of points and authorities, declaration, and exhibits; relevant statutory provisions and case law; the files and records in this case; and such argument as the Court may allow at any hearing on the motion.

TABLE OF CONTENTS

TABLE OF CONTENTS ..... **i**

TABLE OF AUTHORITIES ..... **ii**

INTRODUCTION **1**

FACTUAL AND PROCEDURAL BACKGROUND **1**

A. Long-standing problem of labor trafficking and forced criminality 1

B. Congress enacts the Trafficking Survivors' Relief Act in 2025 3

C. Common features present in human trafficking cases 4

D. Petitioner is a victim of trafficking 5

E. Procedural history 6

ARGUMENT **6**

I. Legal Standard for Relief under 18 U.S.C. § 3771A 6

II. Petitioner was convicted of a qualifying offense 7

III. Petitioner's offense was committed as a direct result of his/her having been a victim of human trafficking 8

A. **[TRAFFICKING PROCESS]:** Petitioner was obtained / recruited / transported for labor or services 8

B. **[TRAFFICKING MEANS]:** Petitioner was recruited / transported through the use of force / fraud / coercion 9

C. **[TRAFFICKING ENDS]:** For the purposes of subjecting Petitioner to debt bondage AND/OR involuntary servitude 10

D. Petitioner's offense was a direct result of his/her trafficking 12

CONCLUSION **14**

APPENDIX: ADDITIONAL MATERIAL FOR REPLY **14**

A. The TSRA Requires Only that the Offense be the "Direct Result" of Prior Trafficking. 14

B. Vacatur is Mandatory if the Requirements are Met 19

TABLE OF AUTHORITIES

Federal Cases

United States v. Dann,
652 F.3d 1160 (9th Cir. 2011) 18

Federal Statutes

18 U.S.C. § 16..... 13, 14
18 U.S.C. § 28 1
18 U.S.C. § 1589 18
18 U.S.C. § 3143 12
18 U.S.C. § 3145 12
18 U.S.C. § 3553 11
18 U.S.C. § 3771A ..... *passim*
21 U.S.C. § 841 14
22 U.S.C. § 7102..... *passim*

INTRODUCTION

Petitioner FIRST LAST respectfully moves the Court to vacate his/her conviction under the Trafficking Survivors Relief Act, codified at 18 U.S.C. § 3771A. That newly-effective statute provides retroactive relief for survivors of human trafficking who were convicted of nonviolent federal criminal offenses, including [offense]. *See* 18 U.S.C. § 3771A(b)(1); *see also* 18 U.S.C. § 28(d). Here, Petitioner, like many survivors of human trafficking, was not initially recognized as a victim, but rather prosecuted as an offender. Recognizing this problem, the federal government has now joined the overwhelming majority of states in expressly permitting survivors of human trafficking to vacate their convictions for crimes committed as a result of their trafficking.

Under § 3771A, a person convicted of a qualifying offense "may move the court that imposed the sentence . . . to vacate the judgment of conviction if the . . . offense was committed as a direct result of the person having been a victim of trafficking." 18 U.S.C. § 3771A. As discussed in detail below, Petitioner meets both requirements for relief under this statute. The Court should therefore grant the motion and vacate his/her conviction.[1]

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is the victim of human trafficking, which led directly to his/her offense of conviction. In fact, there has been a long-standing problem of such labor trafficking and forced criminality among immigrants to this country resulting in recent legislative action to provide relief to nonviolent victims like Petitioner. Viewed within this context, the experience of Petitioner is especially credible and compelling.

A. Long-standing problem of labor trafficking and forced criminality

The federal government has long recognized, and recently reiterated its awareness of, the serious problems of labor trafficking and forced criminality of migrants who cross the southern border into the United States. As the U.S. Department of State's 2025 Trafficking in Persons Report recognizes, the two "primary forms of trafficking in persons" are "sex trafficking and forced labor." Declaration of ATTORNEY (filed concurrently with this memorandum) [hereinafter "ATTORNEY

[1] Section 3771A expressly provides that all litigation under that section be conducted under seal. *See* 18 U.S.C. § 3771A(h)(1). Accordingly, this memorandum and supporting declaration with attachments are all filed under seal.

Decl.”] ¶ 2 & Ex. A, U.S. Department of State 2025 Trafficking in Persons Report [hereinafter “Ex. A”] at 2. Forced labor “encompasses the range of activities involved when a person uses force, fraud, or coercion to exploit the labor or services of another person.” *Id*. at 3. Traffickers use a variety of methods to compel victims to engage in forced labor, including “threats of force, debt manipulation, withholding of pay, confiscation of identity documents,” among others. *Id*. Forced labor can “occur in any sector or setting, whether legal or illicit, including but not limited to agricultural fields, factories, restaurants, hotels, massage parlors,” and even “drug trafficking operations.” *Id*. at 4.

Forced criminality is “a form of trafficking in persons that occurs when a trafficker uses force, fraud, or coercion to compel another person to engage in criminal conduct for the benefit of the trafficker.” Ex. A at 18. Traffickers use this method to “shield themselves from criminal liability, making it more likely the victim will face liability than the trafficker.” *Id*. Due to this practice, “[t]he first time trafficking survivors come into contact with law enforcement officers is often as an offender, not as a victim.” ATTORNEY Decl. ¶ 3 & Ex. B, Polaris Project, Criminal Record Relief for Trafficking Survivors (2023) [hereinafter “Ex. B.”] at 9. “Often law enforcement and criminal justice personnel who encounter victims of forced criminality are experts in other areas and may struggle to identify that seemingly apparent criminals are actually victims hidden within a complex criminal scheme.” Ex. A at 19. Unfortunately, this means that “victims of forced criminality are often inappropriately penalized solely for crimes committed as a direct result of being trafficked, and law enforcement loses the ability to collect evidence to build a case against [the traffickers].” *Id*.

Traffickers often target persons seeking to cross the southern border of the U.S. *See* ATTORNEY Decl. ¶ 4 & Ex. C, U.S. Department of State 2025 Trafficking in Persons Report: Mexico [hereinafter “Ex. C”] at 11. As relevant here, the movement of migrants from “Northern Triangle countries (El Salvador, Guatemala, and Honduras) to Mexico’s northeastern border is now controlled” by transnational criminal organizations, or TCO’s. ATTORNEY Decl. ¶ 5 & Ex. D, Correa-Cabrera, “Trafficking in Persons Along Mexico’s Eastern Migration Routes: The Role of Transnational Criminal Organizations,” (Mar. 2017) [hereinafter “Ex. D”] at 2. This makes migrants especially vulnerable to human trafficking. *Id*. at 2. Those who use “smugglers” to cross the southern border “are at particularly high risk of exploitation as many assume debts to pay smugglers” and are

subsequently exploited to pay those debts. Ex. C at 11; *see also* Ex. D at 2 ("drug trafficking, migrant smuggling, and trafficking in persons are becoming inextricably linked"). "[M]igrants [who] cannot pay the transportation cost" essentially "become the TCOs' indentured servants," working to pay back their debt through "sex trafficking, labor trafficking, drug smuggling, and other associated criminal activity." ATTORNEY Decl. ¶ 6 & Ex. E, Domestic Preparedness, The Nexus Between Drug and Human Trafficking (2024) [hereinafter "Ex. E"] at 3.

For migrants, saying no is not an option: "[r]efusal to comply with TCO demands for trade-based repayment often means violence to migrants or their family members who remained in the country." Ex. E at 3; *see also* Ex. C at 11 (migrants "are often fearful to report abuses due to retaliation"); ATTORNEY Decl. ¶ 7 & Ex. F, Expert Declaration of EXPERT [hereinafter "Ex. F"] ¶ 13 ("Trafficking survivors are frequently compelled to engage in unlawful conduct as part of the coercive control exercised by their traffickers. In many trafficking situations, the criminalized conduct directly benefits the traffickers financially and serves as a mechanism of control."). Survivors are often "reluctant to seek assistance from law enforcement due to fear of retaliation, threats of harm to themselves or their families, distrust of authorities, and concerns that they will be treated as offenders rather than victims." *Id*.

B. Congress enacts the Trafficking Survivors' Relief Act in 2025

Recognizing that forced criminality is a severe problem, since 2010 the overwhelming majority of the states—forty-seven total—have enacted laws that allow survivors of human trafficking to obtain relief from criminal convictions. *See* Ex. B at 6. The new federal vacatur and expungement provisions of Trafficking Survivors' Relief Act (TSRA), codified at 18 U.S.C. § 3771A, were enacted to bring the federal criminal system in line with these state statutes. *See* 171 Cong. Rec. H4921, 2025 (sponsor of the legislation recognizing that the "vast majority of States" afford some form of relief to victims for nonviolent offenses committed while under the control of their traffickers).

As sponsors of the TSRA recognized, "[t]raffickers exploit the vulnerable," and "a vast number of women and children . . . are exploited after crossing our southern border." 171 Cong. Rec. H4921, 2025; *see also* H.R. Rep. No. 119-347 at 7 (2025) ("[W]omen and children who make the dangerous journey to cross the southern border into the United States have a high likelihood of being smuggled

and trafficked.”). “Traffickers often force their victims to commit other crimes, including prostitution, money laundering, fraud, drug trafficking, robbery, and theft,” which “leads trafficking victims to be arrested and prosecuted without consideration of their status as victims themselves.” 171 Cong. Rec. H4921, 2025.

Congress recognized that the impact this criminalization has on victims of human trafficking is profound: “They are often then made to serve prison sentences and left with criminal records that can stop them from finding employment, suitable housing, or qualifying to receive the treatment that they need to recover from trauma and rebuild their lives.” 171 Cong. Rec. H4921, 2025. The TSRA was enacted to serve this “vulnerable” population, recognizing the reality that “criminal convictions, and even nonviolent ones, can hold someone back from applying for a job or getting housing. These victims deserve to be able to heal and move on with their lives.” *Id*.

C. Common features present in human trafficking cases

To assist the Court in evaluating the evidence in this case, Petitioner has introduced an expert report from Professor Stephanie Richard, a longtime human trafficking services provider who is currently the Director of the Sunita Jain Anti-Trafficking Initiative (SJI) at Loyola Law School. *See* Ex. E, Declaration of Stephanie Richard (hereinafter “Richard Decl.”) at ¶ 2. Professor Richard has worked on hundreds of trafficking cases and consulted on thousands more. *Id*. at ¶ 4. She personally worked on reauthorizations of the federal Trafficking Victims Protection Act of 2000 (TVPA), as well as drafting the California provisions establishing criminal vacatur relief for trafficking victims compelled to engage in criminal conduct as a result of their victimization. *Id*. at ¶ 5. She has also provided training for judges, law enforcement, and prosecutors on how to identify trafficking victims. *Id*. at ¶¶ 9, 14.

As Professor Richard’s declaration explains, the reality of human trafficking is often very different from what outsiders imagine. “Many people envision trafficking victims as being locked in rooms, chained, constantly monitored, or subjected to severe physical violence,” but in reality, trafficking is often maintained through “‘invisible chains’ of force, fraud, coercion, manipulation, fear, trauma, debt, emotional dependency, or threats of harm.” *Id*. at ¶¶ 28-29. Some surprising features of human trafficking include the following:

- Trafficking victims "***may appear to outsiders to have freedom and autonomy*** even when they are experiencing severe exploitation." Richard Decl. ¶¶ 29-30. Far from being chained in a room, trafficking survivors may "have access to cars, cell phones, bank accounts, or social media." *Id*. at ¶ 30.
- Trafficking victims are often ***arrested multiple times***: one study found that 40% of trafficking survivors were arrested nine or more times. *Id*. at ¶ 32. "This extensive arrest history of identified trafficking victims reflects the reality that traffickers place victims in high-risk environments, compel them to engage in criminal conduct repeatedly, and create conditions where victims cannot avoid law-enforcement contact." *Id*.
- For a variety of reasons, trafficking victims "***often do not disclose*** their exploitation ***at the time of arrest*** or during initial law-enforcement contact." *Id*. at ¶ 32. "The absence of disclosure at the moment of arrest is a hallmark of trafficking, not a contradiction of it." *Id*. at ¶ 33.
- Moreover, law enforcement officers who have not received specialized training are "unlikely to recognize victims." *Id*. at ¶ 32. "Trafficking victims rarely self-identify, and ***officers must be trained*** to recognize subtle indicators of exploitation." *Id*.
- ***Corroboration is rare***. "In criminal trafficking prosecutions it is well-documented that the victim's testimony is often the only evidence available to prove coercion, force, fraud, or exploitation." *Id*. at ¶ 37. The U.S. Department of Justice has recognized that "trafficking victims are often the only ones who can explain the coercive dynamics of the crime." *Id*. at ¶ 38.
- Finally, "fragmented, delayed, or ***evolving narratives are expected***" and "specialized interviewing techniques and/or specialized interviewers are required to overcome these barriers in human trafficking cases." *Id*. at ¶ 34.

It is necessary to understand the unique features of human trafficking cases in order to properly evaluate the evidence submitted in support of this vacatur petition.

D. Petitioner is a victim of trafficking

[Insert specifics here regarding the trafficking and the offense conduct. Be sure to clearly lay

out the causal relationship between the trafficking and the offense. If there are multiple arrests, offenses, or instances of conduct, explain how each one relates to the trafficking. If client did not report to the police or was not identified by police as a victim, consider adding an explanation about that from the outset].

E. Procedural history

[Insert discussion of client's prosecution, conviction, and sentence].

This motion for post-conviction relief under 18 U.S.C. § 3771A follows.

ARGUMENT

Petitioner meets the requirements for post-conviction relief under 18 U.S.C. § 3771A based upon the record in this case, as well as the additional materials submitted in support of this motion, including a declaration from Petitioner and the expert declaration of EXPERT. The Court should therefore grant the motion and vacate Petitioner's conviction.

I. Legal Standard for Relief under 18 U.S.C. § 3771A

To vacate a conviction under 18 U.S.C. § 3771A, the petitioner must meet two requirements. First, the petitioner must show she was convicted of a qualifying "level A" offense. 18 U.S.C. § 3771A(b)(1)(A). The statute defines a "level A" offense as "a Federal offense that is not a violent crime." *Id*. at § 3771A(a)(5). A violent crime is "an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 16(a); 18 U.S.C. § 3771A(a)(8) (cross-referencing 18 U.S.C. § 16(a)).

Second, the petitioner must show the offense "was committed as a direct result of the person having been a victim of trafficking." 18 U.S.C. § 3771A(b)(1)(A). The term "victim of trafficking" is defined in 22 U.S.C. § 7102 to mean "a person subjected to" a variety of acts or practices, including: "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery." *Id*. at § 3771A(a)(7); 22 U.S.C. § 7102(17), 7102(11)(B).

The petitioner bears the burden of establishing his/her entitlement to relief by a preponderance of the evidence. 18 U.S.C. § 3771A(b)(4)(A)-(B). In determining whether the petitioner is a victim of trafficking, the court "may consider any supporting evidence the court determines is of sufficient

credibility and probative value." 18 U.S.C. § 3771A(b)(5)(A)(ii). However, one type of supporting evidence—"an affidavit or sworn testimony of an anti-human trafficking service provider or clinician"—is particularly specified as a type of evidence that the Court **must** consider. *See* 18 U.S.C. § 3771A(b)(5)(A)(i). Such evidence is particularly probative and **on its own** can be sufficient to grant a motion to vacate. *See* 18 U.S.C. § 3771A(b)(5)(B) ("The affidavit or sworn testimony described in subparagraph (A)(i) shall be sufficient evidence to vacate a conviction or expunge an arrest under this section if the court determines that (i) the affidavit or sworn testimony is credible; and (ii) no other evidence is readily available."). Accordingly, this type of supporting evidence should be given great weight in the Court's analysis.

The government may file an opposition to this motion within 30 days. 18 U.S.C. § 3771A(b)(3)(A)(i). If it does so, the Court is required to hold a hearing within 15 days. *Id*. If the government does not file a motion in opposition, the Court may hold a hearing within 45 days of the motion being filed. *Id*. at § 3771A(b)(3)(B).

If the Court grants the motion to vacate the conviction, it shall also enter an expungement order

> direct[ing] that there be expunged from all official records all references to —
>
> (i) the arrest of the movant for the level A offense;
>
> (ii) the institution of criminal proceedings against the movant relating to the level A offense; and
>
> (iii) the results of the proceedings.

Id. at § 3771A(c).

II. Petitioner was convicted of a qualifying offense.

Petitioner meets all the statutory requirements for vacatur under the TSRA. To start, his/her [guilty plea to / conviction for] [offense] qualifies for relief because that offense does not constitute a "violent crime." 18 U.S.C. § 3771A(a)(8) (adopting definition in 18 U.S.C. § 16(a)). An offense is a crime of violence if it "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 16(a). Under this definition, Petitioner did not commit a crime of violence. *See* _____. Thus, the offense she seeks to vacate is a qualifying level A offense. 18 U.S.C. § 3771A(a)(8).

III. Petitioner's offense was committed as a direct result of his/her having been a victim of human trafficking.

Additionally, Petitioner's offense "was committed as a direct result of [his/her] having been a victim of trafficking" as is defined in 22 U.S.C. § 7102. 18 U.S.C. §§ 3771A(a)(7), (b)(1)(A). A "victim of trafficking" is "a person subjected to" a variety of acts or practices, including: "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery." 22 U.S.C. §§ 7102(17), 7102(11)(B).

To further show he/she meets the requirements under the TSRA, Petitioner has produced an affidavit from an "anti-human trafficking service provider EXPERT. [Insert background information on expert qualifications.]. Through their work as POSITION at ORGANIZATION, EXPERT qualifies as an "anti-human trafficking service provider." 18 U.S.C. § 3771A(b)(5)(A)(i).

[Expert's] affidavit credibly explains that Petitioner was not only subjected to debt bondage but also threatened and coerced by his/her traffickers. Based on [describe materials reviewed], [expert] concluded that Petitioner is a victim of labor trafficking and that his/her offense was a direct result of this victimization. Under the TSRA, this evidence can be sufficient **on its own** to meet Petitioner's burden to show relief by a preponderance of the evidence. *See* 18 U.S.C. § 3771A(b)(5)(B). However, Petitioner has also submitted his/her own sworn affidavit, which provides a detailed and credible account of the circumstances surrounding his/her trafficking. Together, these two pieces of evidence are more than sufficient to show, by a preponderance of the evidence, that Petitioner's offense was the direct result of his/her being a victim of trafficking.

A. **[TRAFFICKING PROCESS]:** Petitioner was obtained / recruited / transported for labor or services.

First, Petitioner was "recruit[ed], harbor[ed], transport[ed], provi[ded], or obtain[ed] . . . for labor or services." *See* 18 U.S.C. § 3771A(a)(7); 22 U.S.C. § 7102(17), 7102(11)(B).

Recruit. The human trafficking statute does not specifically define the term "recruitment." 22 U.S.C. § 7102(11)(B). However, the plain meaning of the term refers to the act of "secur[ing] the services of" someone. *Recruit*, Merriam-Webster Online Dictionary, available at https://www.merriam-webster.com/dictionary/recruit. [Insert facts relevant to your client here].

Harbor. The human trafficking statute does not specifically define the term "harbor." 22 U.S.C. § 7102(11)(B). However, the plain meaning of the term refers to the act of providing "shelter or refuge" to another. *Harbor*, Merriam-Webster Online Dictionary, available at https://www.merriam-webster.com/dictionary/harboring. In the T-Visa context, the USCIS Policy Manual explains that "harboring within the trafficking context refers to the series of actions a trafficker takes to exert and maintain control over a victim by substantially limiting or restricting a victim's movement or agency." *See* 3 USCIS Policy Manual § B.2.B.2. [Insert facts relevant to your client here].

Transport. The human trafficking statute does not specifically define the term "transport." 22 U.S.C. § 7102(11)(B). However, the ordinary meaning of this term is "to transfer or convey from one place to another." *Transport*, Merriam-Webster Online Dictionary, available at https://www.merriam-webster.com/dictionary/transport. [Insert facts relevant to your client here].

Provide. The human trafficking statute does not specifically define the term "provide." 22 U.S.C. § 7102(11)(B). However, the ordinary meaning of this term is "to supply or make available." *Provide*, Merriam-Webster Online Dictionary, available at https://www.merriam-webster.com/dictionary/provide. [Insert facts relevant to your client here].

Obtain. The human trafficking statute does not specifically define the term "obtain." 22 U.S.C. § 7102(11)(B). However, the ordinary meaning of this term is to "attain usually by planned action or effort." *Obtain*, Merriam-Webster Online Dictionary, available at https://www.merriam-webster.com/dictionary/obtain. [Insert facts relevant to your client here].

B. **[TRAFFICKING MEANS]:** Petitioner was recruited / transported through the use of force / fraud / coercion.

Additionally, Petitioner was **[recruited / transported/obtained]** to provide labor or services through the use of **[force / fraud / coercion].** *See* 18 U.S.C. § 3771A(a)(7); 22 U.S.C. § 7102(17), 7102(11)(B).

Force. The human trafficking statute does not specifically define the term "force." 22 U.S.C. § 7102(11)(B). However, Black's Law Dictionary defines "Force" as "[a] violent physical action; physical compulsion or constraint of someone or something." *Force*, Black's Law Dictionary (12th

ed. 2024); *see also id*. (defining "actual force" as "[f]orce consisting in a physical act, esp. a violent act directed against a crime victim.").

Fraud. While the human trafficking statute does not specifically define the term "fraud," under federal law, fraud generally requires a material misrepresentation or omission. *See, e.g.*, Ninth Circuit Model Crim. J.I. 15.35. A misrepresentation is material "if it has a natural tendency to influence" the listener. *Id*. A deceitful statement of half-truth also qualifies if it "states the truth only so far as it goes, while omitting critical qualifying information." *Id*.

Applying those principles here, it is clear that [insert facts here explaining why fraud (a material misrepresentation) was used to obtain client]. Here, the misrepresentation was clearly material: a listener would naturally be influenced by the promise of a legitimate job. Ninth Circuit Model Crim. J.I. 15.35. If Petitioner had been aware of the kind of "job" that awaited her, she never would have signed up to perform such work.

Coercion. The statute defines "coercion" as "any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person." 22 U.S.C. § 7102(3)(B). Although the term "serious harm" is not defined in § 7102(3), it is also used in 18 U.S.C. § 1589, a provision of the Victims of Trafficking and Violence Protection Act of 2000 that criminalizes forced labor. *See United States v. Dann*, 652 F.3d 1160, 1169 (9th Cir. 2011) (discussing the history of the provision). There, the term "serious harm" is specifically defined to include "any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm." 18 U.S.C. § 1589(c)(2). [Insert facts relevant to your client here].

C. **[TRAFFICKING ENDS]:** For the purposes of subjecting Petitioner to debt bondage AND/OR involuntary servitude.

Finally, Petitioner was **[recruited / transported / obtained]** for labor and services, through the use of **[force / fraud / coercion]**, for the purpose of subjecting him/her to **[peonage / slavery / involuntary servitude / debt bondage].** *Id*. at § 3771A(a)(7); 22 U.S.C. § 7102(17), 7102(11)(B).

Debt Bondage. The statute defines debt bondage to mean "the status or condition of a debtor arising from a pledge by the debtor of his or her personal services . . . as a security for debt, if" one of two further conditions is met. 22 U.S.C. § 7102(11)(B). First, if "the value of those services as reasonably assessed is not applied toward the liquidation of the debt," that constitutes debt bondage. *Id*. Second, debt bondage may also occur if "the length and nature of those services [pledged] are not respectively limited and defined." *Id.*

The second definition of debt bondage perfectly encapsulates what happened to PETITIONER. She pledged her personal services as security for a debt she would owe to the smugglers. However, the length of services she would have to provide was not "limited"—she was simply expected to work indefinitely until her debt was paid off. In addition, the nature of the services she would have to provide was never "defined." Without a definition of what services she was expected to provide, she ended up forced to perform illegal labor to pay off her debt. That constitutes debt bondage under 22 U.S.C. § 7102(11)(B).

Involuntary servitude. For similar reasons, Petitioner was subjected to involuntary servitude. The statutory definition of the term "involuntary servitude" echoes the definition of coercion: it is "a condition of servitude induced by means of . . . any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint." 22 U.S.C. § 7102(8). In other words, involuntary servitude occurs when coercion is used to cause someone to enter into or continue in a condition of servitude. [Insert facts relevant to your client here].

Peonage. The human trafficking statute does not specifically define the term "peonage." 22 U.S.C. § 7102(11)(B). However, in the T-Visa context, the USCIS Policy Manual explains that peonage occurs when "the perpetrator compels the victim into involuntary servitude in order to satisfy a real or artificially-created debt." 3 USCIS Policy Manual § B.2.B.4. That compulsion is characteristic of peonage: "A clear distinction exists between peonage and the voluntary performance of labor or rendering of services in payment of a debt. In the latter case the debtor, though contracting to pay his indebtedness by labor or service, . . . can elect at any time to break [the contract], and no law or force compels performance or a continuance of the service." *Clyatt v. United States*, 197 U.S. 207, 215–16

(1905). By contrast, peonage is "a status or condition of compulsory service, based upon . . . indebtedness." *Id*. at 215. [Insert facts relevant to your client here].

Slavery. The human trafficking statute does not specifically define the term "slavery." 22 U.S.C. § 7102(11)(B). However, in the T-Visa context, the USCIS Policy Manual defines slavery as "the state of being held under the complete and total ownership or control of another person or entity and being deprived of liberty, autonomy, and independence for the purpose of subjecting the victim to forced labor or services." 3 USCIS Policy Manual § B.2.B.4. [Insert facts relevant to your client here].

D. Petitioner's offense was a direct result of his/her trafficking.

Finally, the offense was committed as a "direct result" of Petitioner "having been a victim of trafficking." 18 U.S.C. § 3771A(b)(1)(A).

The TSRA sets forth a specific causation standard: that the offense be the "direct result" of the movant having been a victim of trafficking. The statute does not define the meaning of the phrase "direct result." However, in ordinary language, a "direct" result is one "characterized by close logical, causal, or consequential relationship" to the originating event. *See* Merriam-Webster Online, "Direct," available at https://www.merriam-webster.com/dictionary/direct.

Many of the state statutes that the TSRA is based on include a "direct result" standard. State case law interpreting that term therefore provides useful guidance.

In *State v. Kizer*, the Wisconsin Supreme Court provided a particularly helpful discussion of the "direct result" causation standard. *State v. Kizer*, 2022 WI 58, ¶ 15, 403 Wis. 2d 142, 154. The Wisconsin Supreme Court held that "an offense is 'committed as a direct result of the violation' of the human-trafficking statutes if there is a logical, causal connection between the offense and the trafficking such that the offense is not the result, in significant part, of other events, circumstances, or considerations apart from the trafficking violation." *Id*. ¶ 15. That definition echoes the Merriam-Webster definition of the term "direct," making it consistent with the plain language of the TSRA's text. *See* Merriam-Webster Online, "Direct," *supra* (defining a "direct" result as one "characterized by close ***logical, causal,*** or consequential relationship" to the originating event) (emphasis added).

In explaining its holding, the *Kizer* Court elucidated a few key principles.

First, "a consequence can be the direct result of more than one prior action." *Id*. ¶ 14. For

instance, "an accident in which a distracted driver crashes into a car that ran a red light" is the direct result of both (1) driver A's inattention and (2) driver B's running the red light. *Id*. In the same vein, an offense can be the "direct result" of prior human trafficking even if the human trafficking is not the *only* factor inducing the victim to carry out the offense. Thus, *Kizer* rejected the argument that the "direct result" requirement is not met "whenever an 'intervening cause or agency' is involved." *Kizer*, 2022 WI 58, ¶ 17 (cleaned up). "[A]n offense may be a direct result of a trafficking offense even if there are other causes at play, so long as the offense is not the result, in significant part, of other events, circumstances, or considerations apart from the trafficking violation." *Id*.

Next, *Kizer* rejected the idea that the "direct result" standard means proximate causation is required. *Kizer*, 2022 WI 58, ¶ 15. And with good reason: it makes little sense to import the proximate cause standard used to limit tort liability into the distinct factual and legal context of human-trafficking vacatur.

Requiring proximate causation (in addition to requiring causation in fact) is an approach that has been adopted in the tort context on the theory that "considerations of policy [should] limit an actor's responsibility for the consequences of his conduct" when those consequences are not foreseeable. *City & Cnty. of San Francisco v. Purdue Pharma L.P.*, 620 F. Supp. 3d 936, 1006 (N.D. Cal. 2022) (internal quotation marks and citation omitted). But applying that standard in the context of the TSRA makes little sense: since the TSRA does not impose any actual liability on the trafficker for the results of his or her conduct, there is no need to delve into what the trafficker could or could not have foreseen. Moreover, as *Kizer* explained, the factual reality of human trafficking makes proximate causation particularly inappropriate. "Unlike many crimes, which occur at discrete points in time, human trafficking can trap victims in a cycle of seemingly inescapable abuse that can continue for months or even years." *See Kizer*, 2022 WI 58, ¶ 15. The upshot is that "even an offense that is unforeseeable . . . can be a direct result of the trafficking offense, so long as there is still the necessary logical connection between the offense and the trafficking." *Kizer*, 2022 WI 58, ¶ 15.

Here, Petitioner's declaration clearly shows that she never wanted to be involved in drug trafficking and only began selling drugs because she was coerced to do so to pay off her debt. [Insert additional facts here]. As Expert explains, [use expert declaration to bolster causation]. Thus,

Petitioner's offense was the direct result of his/her subjection to [fraud, coercion, involuntary servitude, and/or debt bondage].

As the discussion above illustrates, the evidence submitted by Petitioner is sufficient to establish, by a preponderance of the evidence, that his/her offense was the direct result of his/her status as a victim of trafficking. He/she is therefore entitled to vacatur of his/her conviction under the TSRA.

CONCLUSION

For the reasons stated above, Petitioner qualifies for vacatur and expungement of his/her conviction under 18 U.S.C. § 3771A. The Court should grant his/her motion for relief.

Dated: [INSERT DATE]

Respectfully submitted,

[INSERT COUNSEL SIGNATURE]

APPENDIX: ADDITIONAL MATERIAL FOR REPLY

A. The TSRA Requires Only that the Offense be the "Direct Result" of Prior Trafficking.

In its opposition brief, the government repeatedly misconstrues the applicable causation standard. The TSRA's statutory requirement that an offense be the "direct result" of the movant having been a victim of trafficking imposes an *actual* causation requirement. *See* 18 U.S.C. § 3771A(b)(1)(A) (authorizing vacatur if the offense "was committed as a direct result of the person having been a victim of trafficking"). But it does not require the movant to establish *proximate* causation, much less that the victimization was the sole cause of the offense. And the government's further argument that the TSRA requires that the offense conduct occur while the movant is *actively being victimized* is at odds with the plain language of the statute, which expressly refers to the movant's prior status as "*having been* a victim of trafficking." *Id.* (emphasis added).

i The TSRA requires actual, not sole or proximate, causation.

The TSRA sets forth a specific causation standard: that the offense be the "direct result" of the movant having been a victim of trafficking. The statute does not define the meaning of the phrase "direct result." However, in ordinary language, a "direct" result is one "characterized by close logical, causal, or consequential relationship" to the originating event. *See* Merriam-Webster Online, "Direct," available at https://www.merriam-webster.com/dictionary/direct. As the government acknowledges, many of the analogous state statutes that the TSRA is based on include such a "direct result" standard. State caselaw interpreting that term therefore provides useful guidance. Along these lines, the Wisconsin Supreme Court in *State v. Kizer* has provided a particularly helpful discussion of the "direct result" causation standard. *See* 976 N.W.2d 356, 362 (Wis. 2022). However, the government misreads the *Kizer* opinion in several important ways.

Kizer held that "an offense is 'committed as a direct result of the violation' of the human-trafficking statutes if there is a logical, causal connection between the offense and the trafficking such that the offense is not the result, in significant part, of other events, circumstances, or considerations apart from the trafficking violation." 976 N.W.2d at 362. That definition echoes the definition of the term "direct" cited above, making it consistent with the plain language of the TSRA's text.

In explaining its holding, the *Kizer* Court elucidated a few key principles. First, contrary to the government's argument, the "direct result" requirement is not a "sole causation" requirement *Id.* ("[A] consequence can be the direct result of more than one prior action."). For instance, "an accident in which a distracted driver crashes into a car that ran a red light" is the direct result of both (1) driver A's inattention and (2) driver B's running the red light. *Kizer,* 976 N.W.2d at 362. In the same vein, an offense can be the "direct result" of prior human trafficking even if the human trafficking is not the *only* factor inducing the victim to commit the offense. That is precisely why *Kizer* rejected the argument, also raised here by the government, that the "direct result" requirement is not met "whenever an intervening cause or agency is involved." 976 N.W.2d at 363 (cleaned up). On the contrary, "an offense may be a direct result of a trafficking offense even if there are other causes at play, so long as the offense is not the result, in significant part, of other events, circumstances, or

considerations apart from the trafficking violation." *Id*.

That conclusion in *Kizer* should be followed in interpreting § 3771A here, for the reasons set forth in that case, and for two additional reasons. First, the actual text of § 3771A(b)(1)(A)—requiring that the "offense was committed as a direct result of the person having been a victim of trafficking"—does not provide, as the government urges, that the trafficking be the "sole cause" of the offense. Other federal statutes that require the strict sole causation urged by the government explicitly list that as a requirement. *See, e.g., Martin v. Cal. Dep't of Veterans Affairs*, 560 F.3d 1042, 1049 (9th Cir. 2009) (the Rehabilitation Act requires proof that the plaintiff suffered an adverse action " 'solely by reason of' [his] disability."). The absence of similar language in the TSRA, then, indicates that Congress did not intend to impose such a requirement.[2]

Next, *Kizer* explicitly rejected the idea—also urged by the government here—that the "direct result" standard means that "proximate causation" is required. 976 N.W.2d at 362. That rejection was well founded because it makes little sense to import the proximate cause standard used to limit tort liability into the distinct factual and legal context of human-trafficking vacatur of a criminal conviction. For example, requiring proximate causation (in addition to requiring causation in fact) in the tort context reflects "considerations of policy that limit an actor's responsibility for the consequences of his conduct." *City & Cnty. of San Francisco v. Purdue Pharma L.P.*, 620 F. Supp. 3d 936, 1006 (N.D. Cal. 2022) (internal quotation marks and citation omitted). Specifically, proximate causation was adopted to limit tort defendants' liability for the results of their actions when those results were not foreseeable. *Id.*

But applying that standard in the context of the TSRA is a poor fit. Because the TSRA does not impose any actual liability on the trafficker for the results of his or her conduct, there is no need to delve into what the trafficker could or could not have foreseen. Moreover, as *Kizer* explained, the complexity and perniciousness of human trafficking makes a proximate causation requirement

[2] The government's reference to *Nat'l Union Fire Ins. Co. of Pittsburgh v. Cargill, Inc*., 61 F.4th 615 (8th Cir. 2023), is unpersuasive. That case involved a dispute over an insurance contract that provided indemnification for losses "resulting directly" from an employee's theft. *Id*. at 621. But the goal in contract interpretation is "to honor the intent of the parties." *Id*. at 620. The distinct legal landscape and factual context make this case inapposite, particularly when compared to state court decisions analyzing identical language ("direct result") in a nearly identical context (state post-conviction relief for human trafficking victims).

particularly inappropriate: "Unlike many crimes, which occur at discrete points in time, human trafficking can trap victims in a cycle of seemingly inescapable abuse that can continue for months or even years." *See Kizer*, 976 N.W.2d at 362. The upshot is that "even an offense that is unforeseeable . . . can be a direct result of the trafficking offense, so long as there is still the necessary logical connection between the offense and the trafficking." *Id.*

The California Court of Appeal adopted a similar reading of the term "direct result" in *In re D.C.*, 60 Cal. App. 5th 915 (2021). There, the defendant, D.C., was convicted of carrying a concealed dirk or dagger, in violation of California Penal Code § 21310. *Id*. at 918. D.C. raised a human trafficking defense, claiming that he had been trafficked by an older man for over three years, and he was carrying the knife because he feared his trafficker might injure or kill him. *Id*. The Court of Appeal held that the offense was the direct result of the D.C.'s being trafficked, even though he did not act at the behest of his trafficker, and the trafficker was not aware that D.C. was carrying the knife. *Id*. at 919. What mattered was that "the coercion suffered by [D.C.] . . . result[ed] directly from his status as a victim." *Id*. at 920.

The California Court of Appeal's decision in *People v. S.H.*, 116 Cal. App.5th 1064, 1085 (2025), review den. (Mar. 25, 2026), cited by the government here, is not to the contrary. That case involved a distinct California statute allowing victims of intimate partner violence or sexual violence to vacate their convictions for criminal offenses that are the "direct result" of such violence. Cal. Penal Code § 236.15(a). The defendant, S.H., sought to vacate his conviction for possession of child pornography, claiming this offense was a "direct result" of his history being a victim of sexual violence, both as a child and as an adult. *S.H.*, 116 Cal. App. 5th at 1070-72. The Court of Appeal disagreed, finding that "other contributing factors also were in the mix, and they were significant and unusual, not merely attendant to the sexual violence." *Id*. at 1085. Specifically, the extreme non-sexual abuse defendant had suffered during his childhood, his "poorly controlled pain after surgeries," and "traumatic events at work" were significant, distinct contributing causes to his possession of child pornography. *Id*. at 1085-86. The court also found that "the causal connection between the sexual violence defendant suffered and his possession of child pornography is attenuated by the passage of time," as four years had elapsed in between the last instance of sexual violence and

the date on which the defendant possessed child pornography. *Id*. at 1086.

Even though it addresses vacatur in a different context, the government here predictably seizes on the result in the *S.H*. decision, but badly overreads it in an attempt to overcome the clear factual distinctions from the instant case. Critically, the *S.H.* case did not hold that the intimate parter violence or sexual violence must be the sole cause of the offense, nor did it impose a bright-line requirement that the offense must have occurred during or shortly after the trafficking. Rather, the court merely held that the defendant had failed to meet his factual burden of proof on causation. *See* 116 Cal. App. 5th at 1085-86. The reason for this failure was that it was an "unusual" case where there was a substantial passage of time between the trafficking and the offense, and the defendant's offense conduct was driven by a panoply of other "significant" and "distinct" factors. *Id.* But, as discussed in more detail below, those facts are substantially different from what is presented in this case, where the offense of conviction was clearly not substantially attenuated from the trafficking.

ii The TSRA does not require ongoing victimization at the time the offense was committed.

The government next urges this Court to adopt a "temporal" requirement that the offense was committed "at the time" the movant was being trafficked. The government does not ground its argument in the text of § 3771A—nor can it. On the contrary, the statutory language is clear that vacatur requires only that the movant show the offense was the "direct result" of "having been a victim of trafficking" at some point in the past.

As noted above, the TSRA expressly provides for vacatur of an offense "committed as a direct result of the person *having been* a victim of trafficking." 18 U.S.C. § 3771A(b)(1)(A) (emphasis added). The verb tense here reflects that the offense need not have simultaneously been committed while the trafficking was currently underway. Rather, it is sufficient that the person was a victim of trafficking at some point, and the offense was a "direct result" of their previously "having been" such a victim. To provide a counterexample, California's vacatur statute on this issue requires proof that "the crime was a direct result of *being* a victim of human trafficking." Cal. Penal Code §§ 236.14(a), (g)(2) (emphasis added). The use of the present tense in that California statute might require the

temporal requirement the government urges here.[3] But the TSRA clearly uses different language.

The government claims that its reading of the statute to require temporal simultaneity between trafficking and commission of the offense is supported by a different provision of the TSRA, 18 U.S.C. § 28, which allows a defendant to establish a "duress" defense at trial by showing that she "was a victim of trafficking at the time at which [she] committed the offense." 18 U.S.C. § 28(b). However, that provision does not unambiguously state that the defendant must *presently* be trafficked when she committed the offense, just that she "*was* a victim" at some point prior to that time. 18 U.S.C. § 28(b) (emphasis added). The latter interpretation of § 28(b) is clearly more consistent with the language in § 3771A discussed above of an offense "committed as a direct result of *having been* a victim of trafficking." 18 U.S.C. § 3771A(b)(1)(A) (emphasis added).[4]

Indeed, Congress's choice of words in § 3771A is particularly telling because numerous state vacatur statutes expressly impose the strict temporal requirement the government urges. As noted above, California clearly requires that persons seeking vacatur for "any nonviolent offense committed while they *while they were a victim* of human trafficking" prove their offense was a "direct result direct result of *being* a victim of human trafficking." Cal. Penal Code §§ 236.14(a), (g)(2) (emphasis added). The TSRA's omission of similar "while" and "being" language is telling and requires that this Court reject the government's crabbed reading of § 3771A.

B. Vacatur is Mandatory if the Requirements are Met.

The government also errs in suggesting that the TSRA allows the Court to deny vacatur even if it finds the movant meets its statutory requirements. The only reason the government provides in support of its theory is the statute's use of the word "may." But that single word cannot bear the weight the government places on it.

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[3] Other state statutes also use the present tense. *See, e.g.*, Ga. Code Ann. § 17-10-21(a)(1) (2021) ("A defendant convicted of an offense and sentenced as a direct result of the defendant being the victim of an offense of trafficking under Code Section 16-5-46 may petition the court imposing the sentence to vacate such conviction.").

[4] In any event, even if the government interpretation of the trial defense provision § 28(b) were accepted, the obvious problem with its argument is that, if Congress had meant to add this temporal requirement to motions seeking vacatur of a conviction under § 3771A, it would have done so. *See Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 457-58 (2022) (under the "meaningful-variation canon," "where a document has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea.") (cleaned up) (quoting A. Scalia & B. Garner, Reading Law 170 (2012).

As the Supreme Court has explained, "the mere use of 'may' is not necessarily conclusive of congressional intent to provide for a permissive or discretionary authority." *Cortez Byrd Chips, Inc. v. Bill Harbert Const. Co.*, 529 U.S. 193, 198 (2000). "[O]bvious inferences from the structure and purpose of the statute" can suggest that discretion has not been granted, even though the word "may" has been used. *United States v. Rodgers*, 461 U.S. 677, 706 (1983) (footnote and citations omitted). Here, the structure of the TSRA, as well as the wording of other portions of the act, demonstrates the error in the government's reading.

The TSRA allows qualifying movants to receive various forms of relief, including vacatur of a conviction and the expungement of an arrest. See 18 U.S.C. § 3771A(b)(1)(A)-(C). As relevant here, subsection (b)(1) of the Act describes the types of motions that can be made; subsection (b)(2) describes the contents of the motion; subsection (b)(3) specifies when a hearing on the motion is required; subsection (b)(4) specifies the "factors" relevant to granting the motion; and subsection (b)(5) describes the weight to be given to certain kinds of evidence in resolving the motion.

The government claims that, because subsections (b)(4)(A)-(C) provide that the court "may" grant a motion after considering the factors enumerated in each of those subsections, the court retains discretion to consider any and all additional factors it thinks are relevant in ruling on the motion, even if the movant meets all the specified requirements for relief. But that is nonsense. The statute sets out factors specifically tailored to the relief being sought: the factors required to vacate a conviction of a level A offense are different from the factors required to expunge an arrest for a level A offense. *Compare* § 3771A(b)(4)(A)(ii) (vacatur requires proof that offense was the "direct result" of trafficking) with § 3771A(b)(4)(B)(ii) (arrest expungement requires only that arrest bear a "direct relat[ion]" to the trafficking). And the factors that are relevant to determining whether to expunge an arrest for a level B offense differ from both of those factors. *See* § 3771A(b)(4)(C) (requiring, *inter alia*, that the movant was acquitted or the charges dismissed). The overall structure of the statute thus indicates that the court is limited to consider the list of enumerated factors that Congress has decided are relevant in determining whether each specific type of relief is warranted. As a result, if the movant meets the factors under a particular subsection, relief is warranted.

Moreover, the factors the government specifically urges this court to consider in this case are

actually included in a different subsection, applicable to the reduction of a term of imprisonment under § 3771A(e), but glaringly omitted from § 3771A(b)(4)(A), which addresses vacatur of the conviction. Specifically, subsection § 3771A(e) provides that a court can, on the motion by a "covered prisoner" or *on its own motion*, reduce the term of imprisonment for an offense committed as the direct result of the covered prisoner having been a victim of trafficking. *See* 18 U.S.C. § 3771A(e)(1)(A)(ii); *see also* § 3771A(1)(2) (defining "covered prisoner"). That section specifically instructs that, in determining whether to grant this particular relief to this different class/category of movants, the court must consider "(i) the factors set forth in section 3553(a); (ii) the nature and seriousness of the danger to any person, if applicable; and (iii) the community, or any crime victims." *Id*. at § 3771A(e)(1)(C). Those are precisely the factors the government urges the court to consider in determining whether vacatur of the conviction is warranted under § 3771A(b)(1)(A). But the vacatur provision in § 3771A(b)(1)(A) does not in any way reference or incorporate the additional factors relevant to the sentence reduction determination outlined in subsection (e).

The conclusion is obvious: Congress meant for those factors to be considered only in making determinations under subsection (e), and not under subsection (b)(1)(A). After all, if Congress had intended for those factors to be considered in both proceedings, it could have easily said so. The idea that those factors can be considered, simply because the statute uses the term "may," is the epitome of hiding an elephant in a mousehole.

Finally, comparison with other state vacatur statutes, which expressly grant courts discretion to determine whether vacatur is warranted, reinforces that the TSRA requires vacatur when the statutory elements are met. For instance, California's vacatur statute requires that the Court find that vacatur is in the "best interest of justice" before granting the motion. Cal. Penal Code § 236.14(g)(3). The fact that the TSRA omits this requirement is yet another reason to reject the government's interpretation of the statute. Thus, the best reading of the TSRA is that vacatur is required once a movant establishes the factors set out in § 3771A(b)(4)(A).

Appendix A-03

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA	:	**TO BE FILED UNDER SEAL**
	:	
	:	Case Nos. [redacted]
v.	:	
	:	
[redacted]	:	
a/k/a [redacted]	:	
	:	
	:	

MOTION TO VACATE CONVICTIONS AND EXPUNGE CRIMINAL RECORDS IDENTIFYING [redacted] IN MULTIPLE CASES

Pursuant to the Trafficking Survivors Relief Amendment Act of 2018, amending D.C. Code §§ 22-1831, 22-1844-47, [redacted] a/k/a [redacted] respectfully moves this Court through counsel to vacate the judgments of conviction and expunge all records identifying her as having been arrested, prosecuted, or convicted of the offenses in the above-captioned cases. In support of this motion, counsel states the following on information and belief:

1. When [redacted] was [redacted] years old, she met a man in his late twenties named [redacted]. *See* Affidavit of Movant ("Movant Aff"), Ex. A at ¶ 4. [redacted] approached her the summer after she finished [redacted]. *Id.* [redacted] promised [redacted] a romantic future, and pressured her to uproot her life and move in with him, which she did. *Id.* at ¶¶ 4-5. [redacted] came from a broken home rife with sexual and physical abuse and was therefore susceptible to [redacted] overtures. *Id.* at ¶¶ 2-3.
2. On [redacted] very first night with [redacted] he explained that he did not have enough money to sustain their new life together. *Id.* at ¶ 6. He then pressured her to engage in

sexual relations in exchange for payment. *Id*. She "cried afterward and felt dirty." *Id.* [redacted] kept all of the money [redacted] received in her first encounter.

3. After that first night, [redacted] resorted to threats, intimidation, and force in order to keep her working for him. *Id.* at ¶¶ 8-9. [redacted] continued to keep all of the funds from [redacted] sexual exchanges. *Id. at* ¶¶ 7, 10. If [redacted] was unable to obtain what [redacted] deemed sufficient funds, he intimidated her verbally and physically. *Id. at* ¶¶ 8. [redacted] would choke her, hit her in the face, and pin her against the wall. *Id*. Once, [redacted] split [redacted] head open with a glass bottle. *Id*.
4. [redacted] coached her on how to proposition men, set her rates, and present herself to potential clients. *Id. at* ¶¶ 7. He also taught her how to walk in high heels, and told her to wear more makeup to appear older. *Id.* [redacted] had her rehearse a false name and social security number to give police so they would not learn she was underage. *Id*.
5. As [redacted] became disillusioned and tried to flee, [redacted] began threatening her family. *Id*. at ¶ 9. He told [redacted] that if she left him, he would force her mother and sister into prostitution. *Id*. [redacted] controlled [redacted] until one of her clients, [redacted] noticed what was happening and helped her escape from [redacted] *Id*. at ¶ 10.
6. While [redacted] was under the control of [redacted] she was arrested in the District of Columbia [redacted] times on [redacted] charges. She seeks vacatur and expungement of these charges and convictions pursuant to Trafficking Survivors Relief Amendment Act, codified at D.C. Code § 22-1844 *et seq*.
7. [redacted] was arrested on or about [redacted] for [redacted]" in violation of D.C. Code [redacted]. *See* Metropolitan Police Department Arrest Record, Ex. B; *See* FBI Identification Record, Ex. I. [redacted] provided her alias [redacted]

[redacted]" at the time of her arrest. *See* Movant Aff. ¶ 7. The Superior Court of the District of Columbia found [redacted] guilty on [redacted]. *See* [redacted] Case Jacket, Exhibit C. [redacted] was a minor at the time of this arrest and charge, however she was charged as an adult after providing a false name and birthdate as directed by her trafficker. *See* Birth Certificate, Ex. H; Movant Aff. ¶ 7. This arrest and charge is not exempted as an ineligible offense under D.C. Code § 22-1831(5)(B) and thus is eligible for vacatur pursuant to the Trafficking Survivors Relief Amendment Act. All criminal proceedings relating to this matter are completed. D.C. Code § 22-1844 (e)(1); *See* [redacted] Case Jacket, Exhibit C. This offense was a direct result of [redacted] status as a victim of trafficking, because she was a minor coerced into [redacted] by her trafficker. D.C. Code § 22–1831(12)(A)(iii); *See* Movant Aff. ¶¶ 4, 7.

8. [redacted] was arrested on or about [redacted] and again charged under the alias [redacted] with [redacted] in violation of D.C. Code [redacted]. *See* Metropolitan Police Department Arrest Record, Ex. B; *See* FBI Identification Record, Ex. I. Here too, [redacted] provided her alias and fake birthdate as instructed by her trafficker. *See* Movant Aff. ¶ 7. [redacted] was convicted and sentenced on June [redacted]. *See* [redacted] Case Jacket, Exhibit D. This arrest and conviction is eligible for vacatur. D.C. Code § 22-1831(5A). All criminal proceedings relating to this matter were completed decades ago. D.C. Code § 22-1844(E)(1); *See* [redacted] Case Jacket, Exhibit D. [redacted] incurred this conviction as a minor forced into the sex trafficking trade, and thus the conviction is as a direct result of her status as a victim of trafficking. D.C. Code §§ 22-1831(12)(A)(iii), 1844(a); Movant Aff. ¶¶ 4, 7.

9. [redacted] was arrested on or about [redacted] and charged with [redacted] in violation of [redacted]. *See* Metropolitan Police Department Arrest Record, Ex. B; *See* FBI Identification Record, Ex. I. [redacted] was charged under her alias [redacted] was a minor at the time of this arrest and charge. *See* Birth Certificate, Ex. H; *See* Movant Aff. ¶¶ 4, 7. This case was entered Nolle Prosequi and dismissed. *See* [redacted] Case Jacket, Exhibit E; *See* FBI Identification Record, Ex. I. This arrest and charge is eligible for expungement under D.C. Code § 22-1844(b) because there was no conviction. [redacted] was charged when she was a trafficked minor, and the charges were a direct result of her status as a victim of trafficking. D.C. Code §§ 22-1831(5)(A), (12)(A)(iii). All criminal proceedings relating to this matter have completed. D.C. Code § 22-1844(E); *See* FBI Identification Record, Ex. I.

10. [redacted] was arrested on or about [redacted] and charged under her alias [redacted] with [redacted] in violation of [redacted]. *See* Metropolitan Police Department Arrest Record, Ex. B; *See* FBI Identification Record, Ex. I. She pled guilty to this charge in case on [redacted]. [redacted] Case Jacket, Exhibit F. [redacted] was a minor at the time of this arrest and charge. *See* Birth Certificate, Ex. H. As a misdemeanor, this conviction is eligible for vacatur. D.C. Code § 22-1831(5)(A). All criminal proceedings and sentences relating to this matter have completed. D.C. Code § 22-1844 (E); *See* 1983 CMD 005545 Case Jacket, Exhibit F. As [redacted] was a minor coerced into this conduct by her trafficker, this offense was a direct result of [redacted] status as a trafficking victim. D.C. Code §§ 22-1831(5)(A), (12)(A)(iii); *See* Movant Aff. ¶¶ 4, 7.

11. On or about [redacted] was arrested and charged with [redacted] in violation of D.C. Code [redacted] under her alias, [redacted] *See* Metropolitan Police Department Arrest Record, Ex. B. *See* FBI Identification Record, Ex. I. The resulting case was entered Nolle Prosequi and subsequently dismissed. *See* [redacted] Case Jacket, Exhibit G; *See* FBI Identification Record, Ex. I. [redacted] was a minor at the time of this arrest and charge. *See* Birth Certificate, Ex. H. This charge is eligible for expungement under § 22-1844(b) because there was no conviction, and [redacted] incurred it as a direct result of her status as a minor coerced into sex trafficking. D.C. Code § 22-1831(12)(A)(iii); *See* Movant Aff. ¶¶ 4, 7. All criminal proceedings relating to this matter have completed. D.C. Code § 22-1844(E)(1); *See* FBI Identification Record, Ex. I.

12. For the [redacted] years since her escape, [redacted] has worked consistently to change her life. She has held steady employment for that entire duration, most recently as an [redacted] at a school [redacted]. *Id*. at ¶¶ 12, 13. [redacted] is committed to working in helping professions, where she can serve as an advocate for vulnerable populations. *Id*. at ¶ 12. Additionally, [redacted] is a pillar in her community, engaging in volunteer work through her church and various non-profit organizations. *Id*. at ¶ 14.

13. While [redacted] has maintained steady employment, she recently resigned from her position, and background checks render her unable to seek certain employment opportunities. *Id.* at ¶ 17. Though [redacted] is far removed from the offenses that occurred [redacted] years ago, these offenses continue to directly impact her life. *Id*. They affect her ability to feel secure in her current employment, content in her personal life,

and to truly move on from this trauma. Society has labeled her a criminal and she seeks to remove this label. *Id*. at ¶ 17-18.

WHEREFORE, for the reasons set forth in the accompanying Memorandum, Movant respectfully requests that this Court issue an order vacating and expunging all records of the above-captioned cases. D.C. Code § 22-1844.

Dated: June 5th, 2019

Respectfully submitted,

/s/ Maya Lentz

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CERTIFICATE OF SERVICE

I hereby certify that on June 5th, 2019, I electronically filed the foregoing Motion and accompanying Memorandum of Points and Authorities and Proposed Order by using the ECF system of the Criminal Division of the Superior Court of the District of Columbia. I certify that I sent a courtesy copy of said documents to USADC.ECFspecialproceedings@usdoj.gov. I also certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system:

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA	:	**TO BE FILED UNDER SEAL**
	:	
	:	Case Nos. [redacted]
v.	:	
	:	
[redacted]	:	
a/k/a [redacted]	:	
	:	
	:	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO VACATE CONVICTIONS AND EXPUNGE ALL AVAILABLE RECORDS IN MULTIPLE CASES

Pursuant to the Trafficking Survivors Relief Amendment Act of 2018 amending D.C. Code §§ 22-1831, 22-1844-47, [redacted] respectfully moves this Court to vacate the judgments of conviction and expunge all records identifying her as arrested, prosecuted, or convicted of the offenses as set forth in the accompanying "Motion to Vacate Convictions and Expunge All Records Identifying [redacted] in Multiple Cases."

The Trafficking Survivors Relief Amendment Act ("hereinafter "the Act" or "TSRA") provides two forms of relief for trafficking victims: vacatur for convictions, and expungement for arrests and prosecutions that did not result in convictions. D.C. Code § 22-1844. Vacatur is a robust remedy that requires the court to overturn a conviction and dismiss underlying charges, thereby restoring victims to their pre-existing legal status. D.C. Council, Report on Bill 22-0329 at 2 (September 20, 2018); D.C. Code § 22-1846(i) ("The effect of relief pursuant to this section shall be to restore the movant, in the contemplation of the law, to the status he or she occupied before being arrested, prosecuted, or convicted.")

The court may grant a motion for vacatur and expungement of records filed under D.C. Code § 22-1844(a) if the movant establishes, by clear and convincing evidence, that: (1) she was

convicted of an eligible offense; (2) she is a victim of trafficking; and (3) the conduct resulting in the charges, arrests, or convictions was the direct result of having been a victim of trafficking. D.C. Code § 22-1845(d). A motion will only be granted if all criminal proceedings and sentences connected to the cases that are the subject of the motion have completed. D.C. Code § 22-1844(e). The Court may grant this motion based solely on an affidavit of sworn testimony of the movant. D.C. Code § 22-1845(g). A review of [redacted] record in light of these factors and eligibility criteria will demonstrate by clear and convincing evidence that [redacted] has only eligible convictions on her record, all proceedings and sentences from the cases ended decades ago, and all were as a result of her having been trafficked into prostitution as a minor, making those convictions eligible for vacatur under §1844(a). *See* Metropolitan Police Department Arrest Record, Ex. B; *See* FBI Identification Record, Ex. I.

The Act also provides for expungement of arrests and prosecutions that did not result in convictions. D.C. Code § 22-1844(b). In a motion filed under §1844(b), the movant must show, by clear and convincing evidence, that: (1) she was arrested but not prosecuted, or the prosecution was terminated without conviction; (2) she is a victim of trafficking; and (3) her conduct resulting in the arrest or prosecution was a direct result of having been a victim of trafficking. D.C. Code § 22-1845(e). No offenses are ineligible for expungement under §1844(b). An examination of the facts here will demonstrate first, that there are non-prosecuted charges on [redacted] record; second, that all proceedings and sentences from the cases ended decades ago; and finally, that all charges were because she was trafficked as a minor into prostitution, rendering those charges eligible for expungement under §1844(b).

I. [redacted] CONVICTIONS ARE ELIGIBLE OFFENSES UNDER THE TRAFFICKING SURVIVORS RELIEF AMENDMENT ACT

For a trafficking-related conviction to qualify for vacatur under the Act, the conviction must be an "eligible" offense. D.C. Code §§ 22-1831(5A)-(5B), 22-1845(d)(1). No such eligibility requirement exists for arrests and charges that did not lead to a conviction. § 1844(b). The convictions on [redacted] record are all eligible offenses, defined as any criminal offenses under the D.C. Code that are not specifically exempted within the statute. D.C. Code § 22-1831(5)(B). The only convictions on [redacted] record are for [redacted] and [redacted] neither of which are exempted offenses. *See* Metropolitan Police Department Arrest Record, Ex. B; FBI Identification Record, Ex. I. Indeed, the Act specifically intends [redacted] and related offenses such as lewdness and solicitation to be eligible for the remedies of the TSRA. *See* D.C. Council, Report on Bill 22-0329 at 6 (September 20, 2018). Therefore, the convictions on [redacted] record are eligible for relief under § 22-1844 (a).

II. [redacted] IS ELIGIBLE FOR VACATUR AND EXPUNGEMENT OF HER ENTIRE CRIMINAL RECORD BECAUSE SHE IS A "VICTIM OF TRAFFICKING" AS DEFINED BY THE TRAFFICKING SURVIVORS RELIEF AMENDMENT ACT

To qualify for both vacatur and expungement under the Act, a movant must be a victim of trafficking. D.C. Code §§ 22-1844(a), (b). [redacted] qualifies because she satisfies two distinct definitions of "trafficking victim" within the statute.

A. [redacted] Satisfies the Definition of "Trafficking Victim" Because She Was Coerced by Another to Engage in a Commercial Sex Act

The Act defines a victim of trafficking as a person against whom the offenses of "trafficking in labor or commercial sex acts under § 22-1833" were committed. D.C. Code § 22-1831(12)(A)(ii). According to D.C. Code § 22-1833, "[i]t is unlawful for an individual or a

business to recruit, entice, harbor, transport, provide, obtain, or maintain by any means a person, knowing, or in reckless disregard of the fact that [c]oercion will be used or is being used to cause the person to provide labor or services or to engage in a commercial sex act." In relevant part, D.C. Code § 22-1831 defines coercion as any one of, or a combination of:

> (A) force, threats of force, physical restraint, or threats of physical restraint; (B) [s]erious harm or threats of serious harm;[1] (C) [t]he abuse or threatened abuse of law or legal process; (D) [f]raud or deception; (E) [a]ny scheme, plan, or pattern intended to cause a person to believe that if that person did not perform labor or services, that person or another person would suffer serious harm or physical restraint.

[redacted] meets the statutory definition of sex trafficking victim under D.C. Code § 22-1833 because her trafficker, [redacted] coerced her to engage in commercial sex acts. *See* Affidavit of Movant ("Movant Aff"), Ex. A. The trafficker inflicted physical violence against [redacted] to force her to commit acts of prostitution. *Id.* at ¶ 8. He choked and beat her when she tried to refuse to "turn tricks." *Id*. Moreover, her trafficker used psychological manipulation and threats of serious harm to [redacted] and her loved ones to prevent her from escaping. *Id.* at ¶¶ 8-9. She lived in terror for her family's welfare because [redacted] threatened to abduct [redacted] and [redacted] and force them into prostitution if she were uncooperative. *Id.* As a result of [redacted] inflicting violent force, the resulting serious harm, and threats of serious harm to coerce [redacted] to continue prostituting herself, [redacted] meets this definition of trafficking victim.

[1] "'Serious harm' means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue to perform labor, services, or commercial sex acts to avoid incurring that harm." D.C. Code § 22-1831(7).

B. [redacted] Meets the Definition of "Trafficking Victim" Because She Was Under 18 When She Was Trafficked into Prostitution

The TSRA also defines a victim of trafficking as an individual trafficked under the age of eighteen. D.C. Code § 22-1831(12)(iii) (incorporating D.C. Code § 22-1834). Pursuant to D.C. Code § 22-1834(a), it is unlawful for an individual to knowingly "transport, provide, obtain, or maintain by any means a person who will be caused as a result to engage in a commercial sex act knowing or in reckless disregard of the fact that the person has not attained the age of 18 years." Here, the trafficker was aware of [redacted] youth. Movant Aff. ¶¶ 4,7. [redacted] met her the summer after [redacted], and coerced her into committing the offenses on her record at ages 14 and 15. *Id.* at ¶¶ 4-10; Birth Certificate, Ex. H. He expended a great deal of time, energy and money trying to make her appear older using makeup, high heels, and more adult-like clothing. *Id.* at ¶7. [redacted] also gave [redacted] a fake identification card, a fake name, "a false SSN, and a birthdate over the age of 18 to use in case I was arrested." *Id.* at ¶7. [redacted] qualifies as a trafficking victim under this provision because [redacted] knowingly coerced her into engaging in commercial sex acts when she was under the age of 18.

C. [redacted] Satisfies the Definition of "Trafficking Victim" within the Federal Statute Because She was Induced into Commercial Sex Acts When She Was under the Age of 18

Finally, [redacted] is a victim of trafficking within D.C. Code § 22-1831(12)(B) because she also meets the federal definition of trafficking victim under the Trafficking Victim's Protection Act of 2000 (hereinafter "TVPA"), which the TSRA incorporates. In relevant part, D.C. Code § 22-1831(12)(B) states that a person who has been subject to an act or practice described in § 103(9) or (10) of the TVPA is also considered a victim of trafficking under D.C.

Law.[2] The TVPA defines "sex trafficking" as the "recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act." 22 U.S.C.A. § 7102 (2019). The TVPA defines "severe forms of trafficking in persons" as "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age." *Id.* Notably, the TVPA does not include a "knowledge" element for the trafficker. As a result, under the TVPA, people trafficked under the age of 18 are considered victims of trafficking whether or not their trafficker had knowledge of their age.

[redacted] qualifies as a victim pursuant to the TVPA definition of "sex trafficking" because the trafficker recruited an unwitting [redacted] and transported her across jurisdictional lines—from [redacted] to [redacted].— with the intent of forcing her to commit acts of prostitution. 22 U.S.C.A. § 7102 (2019); D.C. Code § 22-1831(12)(B); Movant Aff. ¶¶ 4-10. [redacted] also satisfies the definition of a victim of "severe forms of trafficking" under the TVPA because her trafficker forcibly induced her to engage in commercial sex acts when she was still a child of 14 and 15 years of age. 22 U.S.C.A. § 7102 (2019); D.C. Code § 22-1831(12)(B); Movant Aff. ¶¶ 4-10; Birth Certificate, Ex. H. This demonstrates that [redacted] is a victim of trafficking under the federal TVPA law definition incorporated by the D.C. Code.

[2] On January 9, 2019, the TVPA definitions section was modified, and what was section 103(9) is now section 103(11), and what was section 103(10) is now section 103(12). Pub. L. 114-22, Title I, §108(b); Pub. L. 115-427, §2. As a result, the TSRA now mistakenly incorporates irrelevant provisions of the TVPA. It is clear, however, that the TSRA intended to incorporate the federal definition of trafficking even though the referenced sections of the TVPA are no longer correct.

III. [redacted] ARRESTS AND CONVICTIONS ARE A DIRECT RESULT OF HAVING BEEN A VICTIM OF TRAFFICKING

[redacted] is entitled to relief under the Act because her conduct deemed criminal resulted directly from the control of a violent sex trafficker. Pursuant to both §1844 (a) and §1844(b), the final prong the movant must demonstrate is that the conduct that resulted in the arrest(s), charge(s), or conviction(s) was a direct result of having been a victim of trafficking. While the Act does not explicitly define "direct result," the legislative history signals that the D.C. Council "intends for the Court's inquiry to consider the totality of circumstances, including: the severity of the offense, the form and duration of the coercion exerted on the movant, and the nexus between the coercion exerted on the movant and the commission of the act for which the movant seeks relief." D.C. Council, Report on Bill 22-0329 at 24 (September 20, 2018).

Here, a totality of circumstances analysis establishes that [redacted] offenses are the direct result of being trafficked. First, her record is comprised solely of misdemeanor charges and convictions related to prostitution that occurred when she was 14 and 15 years old. *See* Metropolitan Police Department Arrest Record, Ex. B; *See* FBI Identification Record, Ex. I. Her trafficker used physical, verbal, and psychological abuse over an extended period to force her into commercial sex. *See* Movant Aff. ¶¶ 4-10. From the beginning of their relationship, the trafficker manipulated a young, traumatized girl from a broken home with promises of love and material assistance. *Id.* at ¶¶ 2-5. Immediately after the trafficker lured [redacted] away from her family in [redacted] to [redacted] he forced her into prostitution. *Id.* at ¶ 6. He coached her on how to look older to obtain clients and took steps to shield her from criminal prosecution. *Id*. at ¶ 7. He exerted financial control over [redacted] and kept all money she earned from prostitution. *Id*. Observed holistically, it is evident that [redacted] was forced

and manipulated into the sex trade as a child, and her offenses are the direct result of having been the victim of sex trafficking.

IV. ALL CRIMINAL PROCEEDINGS AGAINST [redacted] HAVE CONCLUDED, AND SHE HAS COMPLETED ALL SENTENCES RELATED TO THE OFFENSES THAT ARE THE SUBJECT OF THIS MOTION.

In order to be eligible for relief under both §1844 (a) and §1844(b), all criminal proceedings against the person related to the offenses that are the subject of the motion must be complete. D.C. Code § 22-1844 (e)(1). The statute also requires that, "[t]he person completes any sentence of incarceration, commitment, probation, parole, or supervised release related to the offenses that are the subject of the motion." *Id.* at (2). All of proceedings related to [redacted] convictions have completed. *See* FBI Identification Record, Ex. I. Moreover, [redacted] is no longer under any sentence of incarceration, commitment, probation, parole, or supervised release for these offenses. *See* § D.C. Code 21-1844 (e)(1), (2); *See* Metropolitan Police Department Arrest Record, Ex. B; *See* FBI Identification Record, Ex. I.

V. [redacted] IS EXACTLY THE TYPE OF PERSON THE D.C. COUNCIL INTENDED TO ASSIST WITH THE ROBUST REMEDY OF THE TRAFFICKING SURVIVORS RELIEF AMENDMENT ACT

Given the Act's legislative history and statutory language, it is clear that [redacted] is the ideal candidate to benefit under the TSRA. The D.C. Council passed the Act to grant victims of trafficking the most comprehensive restoration available. The Act recognizes that sex trafficking victims are hindered from reentering society by criminal records that are the result of duress and coercion. D.C. Code §§ 22-1834, 1844-1847. In passing the TSRA, the D.C. Council emphasized that the Act's purpose is not merely to seal records from the public; rather, "the intent is to recognize that convictions arising from conduct that was the direct result of being a

victim of human trafficking are essentially wrongful convictions." D.C. Council, Report on Bill 22-0329 at 21 (September 20, 2018).

Although [redacted] has taken extraordinary steps to rebuild her shattered life, her criminal history has proven to be an extreme impediment. She has worked consistently over more than three decades since her escape, most recently as an [redacted] at a school [redacted]. Movant Aff. ¶¶ 12-13. She wants to expand her professional prospects, and "has big dreams" for her career and life; her prior convictions, however, have rendered her unable to branch out of her current role because many positions working with children, the elderly, and the government require extensive background checks. *Id*. at ¶ 17.

[redacted] has also worked hard to be a caring and active community member, volunteering through her church and various non-profit organizations. *Id*. at ¶ 14. [redacted] has volunteered with [redacted]; United Way; American Heart Association; [redacted]; [redacted]; [redacted]; and [redacted]. *Id*.

Though [redacted] is far removed from the offenses that occurred, she is hindered from reintegrating further into society because of her record, which is a direct result of her status as a victim of a violent sex trafficker. In her own words:

> [N]o longer having these convictions on my record would allow me to fully move on with my life. I met [redacted] when I was fourteen years old, and he emotionally and physically abused me for many years. I now know that the abuse was not my fault. These convictions, however, are a hold that [redacted] and his abuse still has over me. Vacating them would be a validating step in leaving that part of my life behind. Having my convictions vacated would provide an example to other trafficking victims that your trafficker will not define you forever.

Id. at ¶ 18. Expunging and vacating her criminal record will allow her the closure she deserves, and allow the D.C. Council to reach the very type of person they hoped would be restored through this Act.

VI. CONCLUSION

There is substantial support for granting [redacted] motion for vacatur and expungement. [redacted] does not let her status as a victim define her. Instead, she uses her past circumstances as a mechanism to propel herself forward to achieve the stability she has long desired. As a communally engaged citizen, dedicated employee, and victim of child sex trafficking, [redacted] is entitled to relief under this Act, which the legislature codified as a path for victims to transform into survivors.

For the forgoing reasons, the Court should grant relief pursuant to D.C. Code § 22-1844 and issue an order to vacate all convictions and expunge all records for each of the convictions, arrests, and court proceedings that are subject to the motion.

WHEREFORE, for these reasons and others as may appear to the Court, [redacted] respects that the motion be respectfully granted.

Dated: June 5th, 2019

Respectfully submitted,

/s/ Maya Lentz

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Appendix A-04

DISTRICT COURT FOR
[redacted], MARYLAND

---------- X

STATE OF MARYLAND,

v.

[redacted]

Defendant.

---------- X

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO VACATE A CONVICTION

Case No. [redacted]

TO BE FILED UNDER SEAL PURSUANT TO RULE 16-1009

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TABLE OF CONTENTS

PRELIMINARY STATEMENT 3

I. Background 5

A. Elements of MD CODE ANN., CRIM. PROC. § 8-302(a) 5

B. Domestic Sex Trafficking 6

C. Ms. [redacted] History as a Trafficked Person 9

ARGUMENT 12

I. As a Victim of Sex Trafficking as Defined by Federal and Maryland State Law, Ms. [redacted] Prostitution Conviction Should Be Vacated 12

A. Ms. [redacted] Was a Sex Trafficking Victim under Federal and Maryland Law 12

B. Requirements for Filing for Vacatur under § 8-302 16

II. Ms. [redacted] Is Precisely the Type of Victim the HTVPA Is Meant to Benefit, and Her Conviction Should Be Vacated 16

CONCLUSION 18

[redacted] [redacted] moves to vacate her prior prostitution conviction pursuant to MD. CODE ANN., CRIM. PROC. § 8-302. Enacted in 2011, § 8-302 provides a remedy for persons convicted of prostitution to vacate their convictions, if they were acting under duress caused by having been a victim of human trafficking as defined under federal or state law.

Ms. [redacted] was a victim of human sex trafficking at the time of her arrest and conviction for prostitution and drug possession in Maryland in [redacted]. Although Ms. [redacted] has since fled her trafficker, she is unfairly burdened by her criminal record in her efforts to rebuild her life. Therefore, Ms. [redacted] seeks the remedy available to her under § 8-302 and asks this Honorable Court to vacate her prostitution conviction and shield the record of the associated conviction for drug possession.

PRELIMINARY STATEMENT

Survivors of human trafficking are often overlooked as victims of a crime, and instead are punished for conduct in which they invariably had no choice in which to engage.[1] This is due in part to the fact that many trafficking victims are exploited through forced involvement in prostitution and are not identified at the time of their arrest

[1] *See, e.g.*, 22 U.S.C. § 7101(b)(19) (2000) ("Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked."); Sex Workers Project, *Vacating Criminal Convictions for Trafficked Persons: A Legal Memorandum for Advocates and Legislators*, *available at* http://sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf ("Individuals who are trafficked are often arrested and convicted of prostitution and related offenses."); Colleen Owens, et al. *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States* 214, *available at* http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413249-Understanding-the-Organization-Operation-and-Victimization-Process-of-Labor-Trafficking-in-the-United-States.PDF ("Labor trafficking victims may also be arrested for crimes or violations committed pursuant to their labor trafficking victimization, such as operating as a food vendor without a license, quality of life crimes, stop and frisk violations, nonpayment of child support, or for being unauthorized immigrants.").

or conviction for the crime.[2] Additionally, traffickers prey on individuals who exhibit specific vulnerabilities, particularly those with a history of child sexual abuse, poverty, and homelessness, some of whom enter the sex industry in an effort to meet their most basic needs.[3] Once these individuals enter the sex trade, they are often held there by the stigma and criminalization that accompanies a life of prostitution, greatly increasing their vulnerability to exploitation by a trafficker.[4]

Compounding these challenges are the severe and longstanding consequences of prostitution-related criminal convictions, which hinder victims' ability to find good jobs, apply for education funding, secure decent housing, and reintegrate into society.[5] In an

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2 *See, e.g.*, Phyllis J. Newton et al., *Finding Trafficking Victims*, 44 (Nat'l Opinion Research Ctr. 2008) (report ordered by the Department of Justice) *available at* https://www.ncjrs.gov/pdffiles1/nij/grants/224393.pdf (reporting that only about ten percent of law enforcement respondents said they would be likely to recognize potential trafficking victims if they encountered them while working on the street or investigating another case); *see also* Sex Workers Project, *Kicking Down the Door: The Use of Raids to Fight Trafficking in Persons*, 24 (2009) *available at* https://www.sexworkersproject.org/downloads/swp-2009-raids-and-trafficking-report.pdf (presenting evidence of local law enforcement's failure to identify sex-trafficking victims); *See generally* Suzannah Phillips et. al., *Clearing the Slate: Seeking Effective Remedies for Criminalized Trafficking Victims* 21-25 (2014), *available at* http://www.law.cuny.edu/academics/clinics/iwhr/publications/Clearing-the-Slate.pdf.

3 McClanahan, et al., *Pathways into Prostitution Among Female Jail Detainees and their Implications for Mental Health Services* Psychiatric Services, Dec. 1999, Vol. 50, No. 2 1606, 1606 (citing research indicating that "[c]hildhood sexual victimization, by contrast, nearly doubled the odds of entry into prostitution throughout the lives of women.") (on file with author); Rachel McLean, et al., *The WINDOW Study: Release from Jail; Moment of Crisis or Window of Opportunity for Female Detainees in Baltimore City? available at http://www.powerinside.org/uploads/reports/WINDOW.Report.FinalRev.pdf* (identifying that, of the women surveyed, "34% had traded sex for money, drugs or a place to stay within the 30 days before their arrest."); Freedom Network USA, *Human Trafficking and Sex Workers Rights*,1 (2015), *available at http://freedomnetworkusa.org/wp-content/uploads/2012/05/%E2%80%8CFINAL-April-2015-HT-and-Sex-Workers-Rights.pdf* ("Poverty, gender inequality, and lack of economically viable job options contribute to people entering into sex work.").

4 Freedom Network USA, *Human Trafficking and Sex Workers Rights*, 1 (2015), *available at http://freedomnetworkusa.org/wp-content/uploads/2012/05/%E2%80%8CFINAL-April-2015-HT-and-Sex-Workers-Rights.pdf* ("[B]ecause sex work is so stigmatized, sex workers often face violence, discrimination and abuses of their rights."); Phillips, *supra* note 2 at 22-23 (discussing how the criminalization of sex work imposes additional harms on individuals involved in the sex trade, including putting them at higher risk for trafficking).

5 New York City Bar, *Report on Legislation by the Committee on Sex and Law*, 3-4 (2010), *available at* http://www.nycbar.org/pdf/report/uploads/20071848-CommentonLegislationreVictimsofSexTrafficking.pdf ("A record of prostitution-related offenses limits employment opportunities. It may limit housing opportunities, both public and private . . . [b]ut victims of sex trafficking need gainful employment [and] stable housing . . . in order to successfully reintegrate into

attempt to remedy this burden, Maryland enacted the Human Trafficking Victim Protection Act (hereinafter "HTVPA") in 2011.[6] Currently, Maryland is one of thirty-three states that have laws in place allowing trafficking victims to reduce the harms associated with their prostitution-related convictions.[7]

It is under Maryland's vacatur statute that Ms. [redacted] petitions this Court for relief and asks that her conviction for prostitution be vacated.

I. Background

A. Elements of § 8-302

Pursuant to MD. CODE ANN., CRIM. PROC. § 8-302(a), a motion to vacate a judgment of conviction may be granted where:

> [a] person convicted of prostitution under § 11-306 of the Criminal Law Article … was acting under duress caused by an act of another committed in violation of the prohibition against human trafficking under § 11-303 of the Criminal Law Article or under federal law.[8]

The statute further stipulates that the motion must: "(1) be in writing; (2) be signed and consented to by the State's Attorney; (3) be made within a reasonable period of time after

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society. Otherwise, the heinous acts that victimized them in the first place also ensure that they are permanently denied a life within mainstream society."); *People v. G.M.* 922 N.Y.S.2d 761, 765 (Crim. Ct. Queens Cnty. 2011) ("The passage of this new law was based on a recognition that '[v]ictims of sex trafficking who are forced into prostitution are frequently arrested for prostitution-related offenses and are saddled with the criminal record. They are blocked from decent jobs and other prospects for rebuilding their lives. Even after they escape from sex trafficking, the criminal record victimizes them for life.'"). (quoting New York State Assembly, *Memorandum for Bill A07670*, *available at* http://assembly.state ny.us/leg/?default_fld=&bn=A07670&term=2009&Memo=Y&Text=Y).

6 MD. CODE ANN., CRIM. PROC. § 8-302 (West 2011); *see also* Affirmation of Jessica Emerson (*hereinafter* "Attorney Affidavit"), Ex. A, pp. 15-16, Letter from Maryland Office of the Attorney General, Feb. 17, 2011 (expressing support for Md. C.P.L. 8-302 as addressing "what can rightly be viewed as an injustice. Under the present law, it is possible for a victim who was forced into prostitution to also be later convicted of that crime.").

7 *See* American Bar Association Survivor Re-Entry Project, *Vacatur Laws for Trafficking Survivors* (updated March 2016), http://www.americanbar.org/groups/human_rights/projects/task_force_human_trafficking/survivor-reentry-project html; *See generally* Sex Workers Project, *supra* note 1.

8 MD. CODE ANN., CRIM. PROC. § 8-302(a) (West 2011).

the conviction; and (4) describe the evidence and provide copies of any documents showing that the defendant is entitled to relief under this section."[9]

B. Domestic Sex Trafficking

Human trafficking is not confined to the physical movement of persons across state or national borders, nor is it limited to impoverished nations of the developing world. On the contrary, there is a vast and lucrative domestic trafficking industry in the United States that affects countless numbers of victims every year.[10] Much of this domestic trafficking activity occurs within the boundaries of American cities, where traffickers force vulnerable individuals to engage in prostitution for their benefit.[11]

Across the United States, traffickers typically target women and girls bearing certain hallmarks of heightened vulnerability, including a history of childhood sexual abuse, homelessness, and drug addiction.[12] Having selected vulnerable targets for

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9 MD. CODE ANN., CRIM. PROC. § 8-302(b) (West 2011).

10 *See* Chicago Alliance Against Sexual Exploitation, *Know The Facts: Domestic Sex Trafficking*, http://g.virbcdn.com/_f/files/77/FileItem-150157-KtF_DomesticSexTrafficking.pdf; *see also* Heather J. Clawson et al., *Human Trafficking Into and Within the United States: A Review of the Literature—Who are the Victims of Human Trafficking?* U.S. Dep't of Health and Human Servs., (Aug. 2009), http://aspe.hhs.gov/hsp/07/HumanTrafficking/LitRev/index.shtml#Who.

11 U.S. Dep't of State, *Trafficking in Persons Report* 387-88 (2016) [hereinafter *2016 TIP Report*], *available at* http://www.state.gov/documents/organization/258876.pdf ("The United States is a source, transit, and destination country for men, women, transgender individuals, and children— both U.S. citizens and foreign nationals—subjected to sex trafficking[.]"); *see also* Heather J. Clawson & Nicole Dutch, *Identifying Victims of Human Trafficking: Inherent Challenges and Promising Strategies from the Field*, 1 (Jan. 2008), *available at* http://aspe hhs.gov/hsp/07/HumanTrafficking/IdentVict/ib.pdf ("Current stereotypes depict the victim of human trafficking as innocent young girls from foreign countries who are manipulated, lied to, and often kidnapped and forced into prostitution. However it is not just young international girls who are trafficked. Men, women, children of all ages, U.S. citizens, and legal residents can all fall prey to traffickers[.]").

12 22 U.S.C.A. § 7101(b)(4) ("Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and [] lack of economic opportunities[.]"); Elizabeth Hopper & Jose Hidalgo *Invisible Chains: Pyschological Coercion of Human Trafficking Victims*, 1 Intercultural Hum. Rts. L. Rev. 185, 194 (2006), *available at* http://www.traumacenter.org/products/pdf_files/Invisible_Chains.pdf ("Victims may be vulnerable due to . . . membership in single-parent households, unemployment, homelessness, low social status . . . mental impairment, or substance dependence."); *Human Trafficking Into and Within the United States: A Review of the Literature*, 4,8-10 (Aug. 2009), *available at* http://aspe hhs.gov/hsp/07/HumanTrafficking/LitRev/index.pdf; *see also* American Psychological

exploitation, the trafficker sets about recruiting these targets, often through the use of false promises and mock displays of concern and empathy.[13] These initial gestures of compassion allow the trafficker to gain the trust and dependence of his victim, prior to initiating manipulative tactics designed to dissipate any feelings of autonomy.[14] Once he has established a bond of trust with his victims – who may begin interpreting this manipulation as true care and concern – the trafficker quickly turns the tables.[15] The trafficker then begins inflicting physical and emotional abuse to establish complete subjugation, including forcing his victims to engage in commercial sex for his benefit.[16]

Traffickers perpetuate their control and power over their victims through various physical and psychological tactics. Physical abuse may range from beatings to rape, to threats of death and serious physical harm.[17] To maintain their psychological hold,

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Association, *Report of the Task Force on Trafficking of Women and Girls* 35, *available at* http://www.apa.org/pi/women/programs/trafficking/report.pdf ("[T]raffickers may target women and girls with particular vulnerabilities such as homelessness, addiction, disabilities, [or] mental illness[.]").

13 Hopper, *supra* note 12, at 194 ("Traffickers typically use fraud as a method of persuasion during the recruitment phase. They typically offer misleading information to paint a picture of an ideal world."); Celia Williamson & Terry Cluse-Tolar, *Pimp-Controlled Prostitution: Still an Integral Part of Street Life* 8 Violence Against Women 1074, 1081 (2002) ("There was a sense of belonging that women longed for, a sense of exciting hope for the future, an adventure that would take them from their meager existence into a life with a man who told them they had special skills, intelligence, and beauty."); Polaris Project, *In Their Shoes: Understanding Victims' Mindsets and Common Barriers to Victim Identification*, 2, *available at* http://traffickingresourcecenter.org/sites/default/files/Understanding%20Victim%20Mindsets.pdf ("Traffickers use sophisticated methods of manipulating the human desire to hope through false promises and lies about a future better life.").

14 Hopper, *supra* note 12, at 194-195 ("Once victims are obtained, they are initiated into the culture of trafficking. Victims are forced to accept a distorted sense of reality where exploitation is expected and accepted. In this new environment, the traffickers are the ultimate authority.").

15 *Id.* at 198-99 ("Because of the intense attunement needed for survival, a connection is often made with the perpetrator. Captives begin to identify with their captors initially as a defense mechanism, but over time a traumatic bonding occurs . . . Victims tend to magnify small acts of kindness of their captors and may be sympathetic to them.").

16 *Id*. at 191 ("[T]hese coercive systems utilize high levels of control, exposure to chronic stress and threat, isolation, provocation of fear, and the creation of a sense of helplessness in victims.").

17 Polaris Project, *Domestic Sex Trafficking: The Criminal Operations of the American Pimp*, 1, *available at* https://www.dcjs.virginia.gov/victims/humantrafficking/vs/documents/Domestic_Sex_Trafficking_Guide.p

traffickers frequently deny their victims the capacity to make even the most basic of life decisions, such as when they may eat or sleep,[18] or when and with whom they may speak.[19] Moreover, traffickers usually confiscate all or substantially all of the money exchanged for prostitution, making victims entirely dependent on them for basic necessities such as food and shelter.[20] This complete emotional and physical isolation disconnects the victim from others and fosters complete dependence on the trafficker.[21]

The end result is that victims of trafficking are left feeling scared, alone, and hopeless, lacking the means or will to seek assistance.[22] Even victims who do manage to escape may be stigmatized by their involvement in prostitution and other criminal activities, which further compounds their isolation from society.[23] For those victims who

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df (describing the range of force and threats used by traffickers); Hopper, *supra* note 12, at 198 ("Instillation of fear is a major method of control utilized by traffickers.").

18 Jill Laurie Goodman, *What We Know about Human Trafficking: Research and Resources*, *in* LAWYER'S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS 1, 11 (Jill Laurie Goodman and Dorchen A. Leidholdt eds., 2011) [hereinafter LAWYER'S MANUAL] ("Abuse also takes the form of depriving victims of life's most basic necessities, including food, sleep, and secure shelter."); Hopper, *supra* note 12, at 197 ("Basic necessities, such as adequate food, water, clothing, shelter, and sleep may be withheld, leaving some victims resembling 'walking skeletons.'").

19 *Id*. at 10 ("Traffickers almost always cut victims off from their families, friends, communities, and cultures."); Hopper, *supra* note 12, at 192 ("Victims are typically isolated from the outside world. They may be . . . prevented from having friends, and prevented from talking to others.").

20 Polaris Project, *supra* note 17, at 2 (indicating that the trafficker "keeps all the money from the commercial sex acts of the women and girls he controls and prides himself on achieving higher and higher levels of blind obedience.").

21 Hopper, *supra* note 12, at 193 ("As victims become more isolated they grow 'increasingly dependent on the perpetrator, not only for survival and basic bodily needs, but also for information and even for emotional sustenance.").

22 Hopper, *supra* note 12, at 193 ("Cut off from contact with the outside world, [victims of trafficking] can lose their sense of personal efficacy and control[.]").

23 *See generally* Jolanda Sallman, *Living with Stigma: Women's Experiences of Prostitution and Substance Use,* 25 AFFILIA: J. OF WOMEN AND SOC. WORK 46 (May 2010) (noting the number of women involved in prostitution who reported daily societal discrimination and stigmatization); Joe Parker, Prostitution Research & Education, *How Prostitution Works*, *available at http://www.prostitutionresearch.com/How%20prostitution%20works.pdf* (discussing the societal stigma that makes prostitution an "identity"); Jean Bruggeman & Elizabeth Keyes, American Bar Association, *Meeting the Legal Needs of Human Trafficking: An Introduction for Domestic Violence Attorneys and Advocates*, 7 (2009), *available at* http://apps.americanbar.org/humanrights/docs/project_docs/DV_Trafficking.pdf ("[V]ictims are often left in poverty with few marketable skills and greatly damaged self-esteem.").

do successfully leave the commercial sex industry and attempt to start life anew, a dark and debilitating reminder of their former life remains in the form of a criminal history resulting from having been trafficked. Criminal records frequently prevent sex-trafficking victims from obtaining gainful employment and otherwise fully moving forward with their lives.[24]

C. Ms. [redacted] History as a Trafficked Person

Ms. [redacted] experience as a trafficked person began in early [redacted]. Her experience reflects many of the common characteristics of women victimized by a sex trafficker.

1. History of Sexual Abuse and Domestic Violence

Ms. [redacted] considerable history of sexual abuse and interpersonal violence made her vulnerable to exploitation by a trafficker. This chronic pattern of abuse began at the age of seven, when she was molested by her grandmother's boyfriend. *See* [redacted] Aff., ¶ 4. Two additional instances of sexual assault followed at ages twelve and sixteen, causing Ms. [redacted] to feel powerless over her body. *Id*. at ¶¶ 7, 11. Despite this history, Ms. [redacted] never received counseling for the harms she suffered at the hands of the adults in her life. *Id*. at ¶ 15. Instead, the low self-esteem and shame that resulted from these assaults led Ms. [redacted] to a series of violent romantic relationships in her adulthood. *Id*. at ¶¶ 12-14. This powerful combination of chronic sexual abuse coupled with prolonged periods of domestic violence made her a prime target for her trafficker, who would use her feelings of powerlessness, guilt, and shame to his advantage.

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24 *See generally* Phillips, *supra* note 2.

2. History of Substance Abuse and Homelessness

To cope with the emotional impact of her early childhood abuse and general instability, Ms. [redacted] began using alcohol and marijuana at a very young age. *See* [redacted] Aff. at ¶ 6. Her alcohol use intensified in adulthood as she struggled to manage symptoms of depression and anxiety brought on by violence at the hands of her romantic partners. *Id*. at ¶ 13-15. Although the alcohol helped Ms. [redacted] to numb the emotional pain she was experiencing, it also made her feel sluggish and increased her feelings of depression. *Id*. at ¶ 16. In her early twenties, however, she found an even more effective method of coping that made her feel energized and full of life—crack cocaine. *Id*.

As her crack addiction worsened, Ms. [redacted] lost her job as a personal care assistant. *Id*. at ¶ 18. Without a source of income to support her drug habit, she turned to trading sex for to support her drug habit, a transition that felt familiar to her following years of sexual abuse. *Id*. In [redacted], Ms. [redacted] entered a drug rehabilitation program and eventually got sober. *Id*. at ¶¶ 19-20. She successfully maintained her sobriety until [redacted], when an additional instance of domestic violence forced her back onto the streets. *Id*. at ¶ 24. Feeling like all her progress was for naught, she eventually relapsed and returned to trading sex for survival. *Id*. at ¶ 25.

3. Ms. [redacted] was a Trafficked Person at the Time of her Arrest for Prostitution in Maryland

In early [redacted], Ms. [redacted] met the man who would become her trafficker. After learning that she was homeless and trading sex to meet her survival needs, a man named [redacted] offered her shelter and his protection on the streets. *See* [redacted] Aff., ¶ 27. As a vulnerable woman homeless and barely surviving on the streets of [redacted],

Ms. [redacted] was moved by [redacted] concern for her well-being. *Id*. Shortly after moving in with him however, Ms. [redacted] learned that [redacted] promises of shelter and safety were anything but altruistic. [redacted] soon began demanding the money that Ms. [redacted] earned through acts of prostitution as payment for allowing her to stay with him. *Id*. at ¶¶ 28-29.

[redacted] furthered his control and power over her through both physical threats and coercion designed to exploit Ms. [redacted] particular vulnerabilities. *Id*. at ¶ 29. He would frequently brandish the gun he owned and threaten to harm her if she failed to bring in enough money to meet his needs. *Id.* He would also refuse to let her return home to eat or sleep until she earned an acceptable amount, despite the fact that it was routinely below freezing outside. *Id*. at ¶¶ 29-30. On the nights she was unable to earn enough money to satisfy him, Ms. [redacted] would risk frostbite and sleep on the streets, fearful of what would happen to her if she returned home without the money he demanded. *Id*. at ¶ 30.

By the time she was arrested for prostitution in [redacted], Ms. [redacted] had endured months of [redacted] manipulation and threats and felt she had no choice but to continue engaging in prostitution to have access to the food, shelter, and sleep that [redacted] controlled. *Id*. at ¶ 28-31. [redacted] then furthered his control over Ms. [redacted] by sexually assaulting her, an especially effective method of control given her sexual abuse history. *Id*. at ¶ 32. Although this attack prompted an initial effort at escape, Ms. [redacted] ongoing homelessness made it nearly impossible for her to escape [redacted] for very long. *Id*. at ¶ 33. Caught in this cycle of fear and coercion, she endured being trafficked on and off by [redacted] for the next several years. *Id*. at ¶ 33, 35.

ARGUMENT

I. As A Victim Of Sex Trafficking As Defined By Federal And Maryland State Law, Ms. [redacted] Prostitution Conviction Should Be Vacated.

Ms. [redacted] was convicted of prostitution in [redacted], Maryland on [redacted], case number. [redacted].[25]

A. Ms. [redacted] was a Sex Trafficking Victim Under Federal and State Law

Ms. [redacted] is eligible to vacate her prostitution conviction because at the time she committed the act giving rise to her arrest and ensuing conviction, she was acting under duress as a result of being a victim of sex trafficking, as defined under both the federal Trafficking Victims Protection Act (hereinafter "TVPA") and Maryland Criminal Law, § 11-303.

1. Standards for Sex Trafficking Under the Federal TVPA

The federal TVPA defines sex trafficking as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act."[26] The crime of trafficking is elevated to "severe" when "a commercial sex act is induced by force, fraud, or coercion."[27] Force and fraud have their ordinary meaning, but coercion is specifically defined as including either physical *or* non-physical harm:

> (A) threats of serious harm to or physical restraint against any person;
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> (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

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25 *See* Attorney Aff., Ex. B, Defendant Trial Summary of State of Maryland v. [redacted] District Court of Maryland for [redacted], case no. [redacted]

26 22 U.S.C. § 7101(19) (2013).

27 22 U.S.C. § 7102(8)(A) (2013).

(C) the abuse or threatened abuse of the legal process.[28]

Under the TVPA, a determination as to whether force, fraud, or coercion occurs depends on the victim's specific vulnerabilities.[29] Traffickers often target vulnerable individuals who come from dysfunctional environments, abuse drugs or alcohol, or who are emotionally or economically unstable.[30] They then use this information to craft the most effective method of recruitment.[31] Thus, there is not one specific act of economic, psychological, or physical coercion that defines the experience of being trafficked; rather, one must take into account the totality of a victim's trafficking experience.

Additionally, the TVPA specifically recognizes that an individual's initial consent to perform a commercial sex act does not preclude that individual from being victimized by a trafficker.[32] Even a victim who initially agrees to engage in sex work to benefit their trafficker is legally considered a trafficking victim if they are compelled to continue

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28 22 U.S.C. § 7102(3) (2008).

29 18 U.S.C. § 1591(e)(4) (2008) (Determining "serious harm" is an inquiry into "all the surrounding circumstances [which would] compel a reasonable person of the same background and in the same circumstances to perform . . . commercial sexual activity[.]"); *c.f.* H.R. Conf. Rep. No. 106-939 at 101 (2000), 2000 WL 1479163 (Oct. 5, 2000) (explaining relevance of victim's vulnerabilities in determining whether conduct amounts to coercion); *United States v. Kozminski*, 487 U.S. 931, 948, 952 (1988) (noting that under the related involuntary servitude statute, 18 U.S.C. § 1584, "the 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.").

30 *See generally*, *supra* text accompanying note 12.

31 *See, e.g.*, Kelly Hyland, *Protecting Human Victims of Trafficking: An American Framework*, 16 BERKELEY WOMEN'S L.J. 29, 35-36 (2001), *available at* http://heinonline.org/HOL/Page?handle=hein.journals/berkwolj16&div=6&g_sent=1&collection=journals (noting that "traffickers prey on vulnerabilities . . . [they] are deliberate in their actions and actively target their victims"); 22 U.S.C. § 7101(b)(4) ("Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination"); Attorney General's Report to Congress and Assessment of U.S. Gov't Activities to Combat Trafficking in Persons, 1 (2010), *available at* http://www.justice.gov/archive/ag/annualreports/agreporthumantrafficking2010.pdf ("Traffickers often prey on individuals who are poor and frequently unemployed or underemployed, and who may lack access to social safety nets.").

32 18 U.S.C. § 1591(e)(4) (2008) (Defining "serious harm" as that which is designed "to compel [an individual] to perform *or to continue performing* commercial sexual activity in order to avoid incurring that harm.") (emphasis added).

engaging in that work against their will.[33] It is the exploitive conduct of the trafficker that defines the crime of human trafficking, not the acts of the victim.[34]

2. Standards for Sex Trafficking Under MD. CODE ANN., CRIM. LAW § 11-303

MD. CODE ANN., CRIM. LAW § 11-303 defines the crime of sex trafficking through reference to the acts of the alleged trafficker. The offense includes those who knowingly:

> (i) take or cause another to be taken to any place for prostitution;
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> (ii) place, cause to be placed, or harbor another in any place for prostitution;
>
> (iii) persuade, induce, entice, or encourage another to be taken to or placed in any place for prostitution;
>
> (iv) receive consideration to procure for or place in a house of prostitution or elsewhere another with the intent of causing the other to engage in prostitution or assignation;
>
> (v) engage in a device, scheme, or continuing course of conduct intended to cause another to believe that if the other did not take part in a sexually explicit performance, the other or a third person would suffer physical restraint or serious physical harm; or
>
> (vi) destroy, conceal, remove, confiscate, or possess an actual or purported passport, immigration document, or government identification document of another while otherwise violating or attempting to violate this subsection.[35]

Under state law, no showing of force, fraud, or coercion is required– any person who takes another to "any place for prostitution" has committed the crime of human trafficking. However, as under the TVPA, the penalty of the crime is elevated if a

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33 2016 TIP Report at 30 ("People may be considered trafficking victims regardless of whether they were born into a state of servitude, were exploited in their hometown, were transported to the exploitative situation, *previously consented to work for a trafficker*, or participated in a crime as a direct result of being subjected to trafficking." (emphasis added).

34 Phillips, *supra* note 2, at 8.

35 MD. CODE ANN., CRIM. PROC. § 11-303(a)(1) (West 2011).

trafficker "knowingly take[s] or detain[s] another with the intent to use force, threat, coercion, or fraud to compel the other to . . . perform a sexual act."[36]

3. Ms. [redacted] Meets the Federal and State Definitions of a Trafficking Victim

When Ms. [redacted] was arrested in [redacted] in [redacted], she was a victim of sex trafficking under both federal and state law. She was controlled by a man who used threats of physical violence, coercion and financial dependence to exploit her.

Ms. [redacted] was acting under duress from her trafficker, [redacted] when she was arrested. [redacted] manipulated and coerced Ms. [redacted] into continuing to prostitute for his benefit. *See* [redacted] Aff., ¶ 27. As a woman struggling with drug addiction, homelessness, and a chronic history of sexual abuse and domestic violence, [redacted] easily lured Ms. [redacted] into his life based on his promises of shelter and protection. *Id*. at ¶¶ 27-28. Upon identifying Ms. [redacted] vulnerabilities, [redacted] used fraudulent promises to recruit and harbor Ms. [redacted] for the purpose of forcing her to continue engaging in prostitution, and used threats, coercion and fraud to maintain his control over her. *Id*. at ¶¶ 29-30. [redacted] actions make Ms. [redacted] a victim of human trafficking under the law.

[redacted] broke his promises to provide protection and shelter for Ms. [redacted] and instead, forced her to continue prostituting herself. *Id*. at ¶ 28. He would seize the money she made on the streets and deny her access to shelter if she did not make enough money to satisfy him. *Id*. at ¶ 29. He would also terrorize Ms. [redacted] by making threats to use the gun he owned on her if she disobeyed him. *Id*. As a result, Ms. [redacted] lived

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36 *Id*. at (b)(2).

in fear of [redacted] and his threats of violent acts. *Id*. at ¶¶ 29-30. Her fears were further justified when [redacted] brutally raped her shortly after her release from jail. *Id*. at ¶ 32.

These facts make it clear that Ms. [redacted] meets the definition of a trafficked person under both the federal TVPA and Maryland law. Ms. [redacted] committed the offense leading to her arrest and conviction in [redacted] while she was a victim of sex trafficking.

B. Requirements for Filing for Vacatur Under MD. CODE ANN., CRIM. PROC. § 8-302

1. Motion Signed and Consented To By State's Attorney

On [redacted], Ms. Emerson spoke with Ms. [redacted], an Assistant State's Attorney (hereinafter "ASA") for [redacted] about Ms. [redacted] case. Ms. [redacted] motion has been signed and consented to by ASA [redacted].

2. Motion Made Within a Reasonable Period Of Time

This motion is timely. Ms. [redacted] was convicted in [redacted], several years before the enactment of Maryland's vacatur law. Since learning of the law in [redacted] and securing *pro bono* counsel, she has diligently worked with her attorney to gather evidence and participated in preparing all necessary filings.

II. Ms. [redacted] Is Precisely the Type of Victim the HTVPA Is Meant To Benefit, and Her Conviction Should Be Vacated

The experience of being trafficked can cause "persistent and devastating" physical and psychological effects, which often leave victims vulnerable to further exploitation.[37]

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37 *See* Heather J. Clawson et al., *Treating the Hidden Wounds: Trauma Treatment and Mental Health Recovery for Victims of Human Trafficking*, 1-2 (U.S. Dep't of Health and Human Services 2008), *available at* http://aspe hhs.gov/hsp/07/humantrafficking/Treating/ib.pdf (describing trafficking victims' post-trauma reactions); *Lawyer's Manual on Human Trafficking*, *supra* note 18, at 11 (noting that prolonged exposure to stress compromises the immune system, making victims more susceptible to infections, and describing trafficking victims as being "left physically, emotionally, and spiritually

Thus, "it is not surprising that some victims of human trafficking experience difficulties . . . reintegrating back into society."[38] This is often evidenced by victims who actually manage to escape a trafficker, but remain debilitated by psychological and physical issues stemming from their trafficking experience, as well as, lacking money, marketable skills to pursue job prospects, and a support system.[39]

Despite these challenges, Ms. [redacted] has worked hard and persevered in building a successful new life**.** Since her arrest in [redacted], Ms. [redacted] has worked to maintain her sobriety,[40] stayed active in her church community, and has sought out care at a local medical services organization for people at risk of homelessness.[41] Ms. [redacted] aspires to continue her work providing nursing and supportive care for fragile adults. To that end, she completed 140 hours of Certified Nursing Assistant and Geriatric Nursing Assistant Training in [redacted].[42]

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shattered" as a result of psychological abuse); Erin Williamson et al., U.S. Dep't of Health and Human Services, National Symposium on the Health Needs of Trafficking Victims, 6 (2008), *available at* http://aspe hhs.gov/hsp/07/HumanTrafficking/Symposium/ib.shtml ("The consequences of human trafficking on mental health cannot be overstated. Victims of human trafficking have experienced considerable trauma, some of which does not present itself until years later."); Cathy Zimmerman et al., *Stolen Smiles: A Summary Report on the Physical and Psychological Health Consequences of Women and Adolescents Trafficked in Europe*, London School of Hygiene & Tropical Medicine, 12 (2006), *available at http://blogs.lshtm.ac.uk/samegroup/files/2015/05/Stolen-Smiles.pdf* (describing study finding that "psychological reactions [to trafficking] were multiple and severe, and compare to, or exceed, symptoms experienced by torture victims.").

38 *See* Clawson, *supra* note 37, at 2.

39 *See* Cathy Zimmerman & Charlotte Watts, World Health Organization, *WHO Ethical and Safety Recommendations for Interviewing Trafficked Women*, 2-3 (2003), *available at* http://whqlibdoc.who.int/publications/2003/9241546255.pdf?ua=1 (describing the "complex circumstances" of women who have left a trafficking situation); Jean Bruggeman & Elizabeth Keyes, *Meeting the Legal Needs of Human Trafficking Victims, An Introduction for Domestic Violence Attorneys and Advocates*, 7 (American Bar Association 2009), *available at* http://www.americanbar.org/content/dam/aba/migrated/2011_build/human_rights/dv_trafficking_intro.authcheckdam.pdf ("Victims are often left in poverty with few marketable skills and greatly damaged self-esteem.").

40 *See* Attorney Aff. Ex. C, Discharge Summary of [redacted] from [redacted] ([redacted]).

41 *Id*., Ex. F, Letter of Support from [redacted], Mental Health Therapist at [redacted], Inc. ([redacted]).

42 *Id*., Ex. E, 140-hour CAN/GNA Training Program Completion Certificate ([redacted]).

Ms. [redacted] is taking the steps necessary to further both her personal and professional life; however, it is critical to her success in moving forward that she not continue to carry the burden of her prostitution conviction. Maryland enacted the HTVPA's vacatur provision with trafficking survivors like Ms. [redacted] in mind and to give such individuals the opportunity to clear their records of crimes they were forced to commit by their traffickers.

CONCLUSION

Ms. [redacted] was a victim of sex trafficking and suffered from psychological force, fraud, and coercion at the hands of her trafficker. Maryland's human trafficking law[43] and the federal TVPA[44] both recognize that Ms. [redacted] should be considered a victim of trafficking under the law, and not a criminal. These laws, in conjunction with Maryland's recently enacted HTVPA[45] support Ms. [redacted] assertion that she should not be further punished by a criminal conviction that directly resulted from her actions as a trafficked person.

For these reasons, Ms. [redacted] respectfully seeks to vacate her conviction pursuant to MD. CODE ANN., CRIM. PROC. § 8-302 in order to obtain justice for the exploitation she suffered and allow her to finally move forward from this traumatic period of her life. Accordingly, she requests that this Honorable Court vacate the judgment of conviction for prostitution and shield the record of the associated drug possession conviction.

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43 MD. CODE ANN., CRIM. LAW § 11-303 (West 2012).
44 22 U.S.C. § 7101(19) (2013).
45 MD. CODE ANN., CRIM. PROC. § 8-302 (West 2011).

Dated: _____
Baltimore, Maryland

Respectfully submitted,

THE UNIVERSITY OF BALTIMORE SCHOOL OF LAW

By: _____
Jessica Emerson, Esq.

1420 North Charles Street
Baltimore, MD 21201
(410) 837-5706
jemerson@ubalt.edu

Signed and Consented to,

OFFICE OF THE STATE'S ATTORNEY FOR [redacted]

By: _____
[redacted], Office of the State's Attorney
[redacted]

Appendix A-05

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA	*	
	*	**Case Nos.**
	*	
v.	*	**Judge**
	*	**Closed Cases**
	*	
	*	
	*	
	*	**UNDER SEAL**

ORDER TO EXPUNGE CRIMINAL RECORDS

Upon consideration of the defendant's unopposed motion to expunge criminal records pursuant to D.C. Code § 22-1844(a), filed on XXXX, 20XX, the Court hereby enters the following findings:

The defendant was arrested on or about XXXX, and charged with one count of XXXX in D.C Superior Court case XXXX. On or about XXXX, she was found guilty by the Court and sentenced to ten days' incarceration, all suspended, and placed on probation for a period of three months.

The Court credits the defendant's version of events regarding the circumstances of the offense and finds by clear and convincing evidence that she is eligible for relief pursuant to D.C. Code § 22-1845(d) because she was convicted of an eligible offense, was a victim of trafficking at the time of her arrest and conviction, and that the conduct underlying the offense was a direct result of having been a victim of trafficking.

Accordingly, it is this ____ day of _____, 20XX,

ORDERED that the defendant's motion to expunge criminal records in this case is hereby GRANTED, and it is

FURTHER ORDERED that the defendant's conviction is hereby vacated and the case dismissed with prejudice; and it is

FURTHER ORDERED that the Clerk of the Superior Court shall issue a copy of this Order to the defendant, her attorney, and to the below listed agencies; and it is

FURTHER ORDERED, pursuant to D.C. Code ' 22-1846(b) that the United States Attorney's Office, the law enforcement agency responsible for defendant's arrest, the Metropolitan Police Department, the Federal Bureau of Investigation, the Pretrial Services Agency, the D.C. Department of Corrections, and the Court Services and Offender Supervision Agency, shall expunge any record that identifies the defendant as having been arrested, prosecuted, or convicted in this case; and it is

FURTHER ORDERED that the United States Attorney's Office arrange for any computerized record of defendant's arrest, prosecution, or conviction in this case to be eliminated; and it is

FURTHER ORDERED that the United States Attorney's Office, the law enforcement agency responsible for defendant's arrest, the Metropolitan Police Department, the Federal Bureau of Investigation, the Pretrial Services Agency, the D.C. Department of Corrections, and the Court Services and Offender Supervision Agency, each shall file with the Clerk of the Superior Court, within one year of the entry of this order, a certification that, to the best of the agency's knowledge and belief, all references that identify the defendant as having been arrested, prosecuted, or convicted in this case have been expunged; and it is

FURTHER ORDERED that the Clerk of the Superior Court shall purge any computerized record pertaining to the defendant's arrest, record, or conviction in this case; and it is

FURTHER ORDERED that the Clerk of the Superior Court shall collect this order, along with all Court records pertaining to the defendant's arrest, record, or conviction in this case, together with the certifications described above, and file them under seal, in a special file appropriately and securely indexed in order to preserve its confidentiality, within seven (7) days of the receipt of such records; and it is

FURTHER ORDERED that, unless otherwise ordered by the Court, the Clerk of the Superior Court shall reply in response to any inquiries concerning the existence of any record pertaining to the defendant's arrest, record, or conviction in this case that no records are available; and it is

FURTHER ORDERED that the defendant shall be restored, in the contemplation of the law, to the status the defendant occupied before being arrested and convicted in this case, and that the defendant may not be found guilty of perjury or giving a false statement by reason of defendant's failure to recite or acknowledge defendant's arrest, charge, or conviction in this case, in response to any inquiry made of defendant for any purpose.

_____

JUDGE
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

Copies to:

In the County Court of the
_____ Judicial Circuit,
in and for_____County,
Florida

State of Florida	)	
	)	
v.	)	
	)	
	)	Criminal Division
Defendant/Petitioner	)	
	)	Case No.
	)	

ORDER TO EXPUNGE DEFENDANT/PETITIONER'S CRIMINAL HISTORY RECORD PURSUANT TO SECTION 943.0583, FLA. STAT.

This cause having come on to be heard before me upon a petition to expunge the criminal history record related to the Defendant/Petitioner's arrest that occurred on_____, by the _____ for violation of Section_____, Florida Statutes (2007) under Case No. _____, and the court having heard argument of counsel and being otherwise fully advised in the premises, the court hereby finds the following:

1. Defendant/Petitioner was at all pertinent times a victim of human trafficking as defined under Section 787.06, Florida Statutes (2016), and federal law.

2. While a victim of human trafficking, Defendant/Petitioner committed an offense other than those offenses listed in 775.084(1)(b).

3. On_____, Defendant/Petitioner was arrested in_____County, Florida for a violation of Section_____, Florida Statutes (2015) under Case No._, which offense was committed while Defendant/Petitioner was a victim of human trafficking and under

the coercion of an operator of a scheme of human trafficking, as part of a scheme of human trafficking.

5. Defendant/Petitioner is no longer a victim of human trafficking.

6. Defendant/Petitioner has filed her petition with due diligence.

7. Defendant/Petitioner is eligible for expunction under Section 943.0583, Florida Statutes (2016).

8. Defendant/Petitioner does not have any other petition to expunge or seal pending before any court.

9. Official documentation exists that creates a presumption that Defendant/Petitioner's participation in the offenses was a result of having been a victim of human trafficking.

10. Defendant/Petitioner has filed her Petition in the circuit where her arrests occurred and in a court that has jurisdiction over the class of offenses sought to be expunged.

11. Defendant/Petitioner has served her Petition for Expunction of Defendant/Petitioner's Criminal History Record, Petitioner's Memorandum of Law in Support of Petition, and Petitioner's Sworn Statement on the State Attorney's Office. The State Attorney has represented to Defendant/Petitioner's counsel in writing that the State does not oppose Defendant/Petitioner's Petition.

12. Defendant/Petitioner has served her Petition for Expunction of Defendant/Petitioner's Criminal History Record, Petitioner's Memorandum of Law in Support of Petition, and Petitioner's Sworn Statement on the arresting agency, the _____ Police Department, as required under Section 943.0583.

13. Any conviction or any other disposition associated with the criminal history record expunged by this Order under Section 943.0583 is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.

Whereupon it is:

ORDERED AND ADJUDGED that Defendant/Petitioner's Petition to Expunge Defendant/Petitioner's Criminal History Record Under § 943.0583, Fla. Stat. is hereby granted. All court records pertaining to the above-styled cases shall be expunged in accordance with the procedures set forth in Section 943.0583, Florida Statutes, and Florida Rule of Criminal Procedure 3.692; it is further

ORDERED AND ADJUDGED that any conviction or other disposition expunged by this Order under Section 943.0583 is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings; it is further

ORDERED AND ADJUDGED that all fines, costs, fees, penalties, probation, warrants, and/or other results of the offenses that are the subject of the criminal history record expunged by this Order are hereby vacated; it is further

ORDERED AND ADJUDGED that the clerk of this court shall forward a certified copy of this Order to the state attorney and the_____Police Department, who will comply with the procedures set forth in Section 943.0583, Florida Statutes and Florida Rule of Criminal Procedure 3.692, and appropriate regulations of the Department of Law Enforcement, and who will further forward a copy of this Order to any agency that their records reflect has received the instant criminal history record information; and it is further

ORDERED AND ADJUDGED that the _____ Police Department and the _____ Sheriff's Office shall expunge all information concerning indicia of

arrest or criminal history information regarding Defendant/Petitioner in accordance with the procedures set forth in Section 943.0583, Florida Statutes, and Florida Rule of Criminal Procedure 3.692.

All costs of certified copies involved herein are to be borne by the Defendant/Petitioner.

DONE AND ORDERED in Chambers at_____County, Florida this_____day of_____, 2016.

_____
Circuit Judge

April T. Macaraeg (SBN 305303)
Coalition to Abolish Slavery & Trafficking
5042 Wilshire Blvd. #586
Los Angeles, CA 90036
Office: (213) 365-1906
Fax: (213) 365-5257
Email: april@castla.org

ATTORNEY FOR DEFENDANT
[redacted]

FILED
Superior Court of California
County of Los Angeles

AUG 21 2017

Sherri R. Carter, Executive Officer/Clerk
By [redacted]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

People of the State of California,

Plaintiff,

v.

[redacted]

Defendant.

Case No.:

Law Enforcement Agency Arrest Numbers:
[redacted]

~~[PROPOSED]~~ ORDER

TO ALL PARTIES AND THEIR REPRESENTATIVES:

Having reviewed all papers filed in support of the Defendant's Petition for Relief:

IT IS HEREBY ORDERED that pursuant to PC § 236.14, the Court:

1. Notify the Department of Justice that the defendant was a victim of human trafficking when she committed the crime, pursuant to § 236.14(h)(3).
2. Issue an order directing the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency that arrested the defendant or participated in the arrest of the defendant to seal their records of the arrest and the court order to seal and destroy the records within one year after the court order is granted, and thereafter to destroy their records of the arrest and the court order to seal and destroy those records, pursuant to § 236.14(k).

3. Provide the defendant with a copy of any court order concerning the destruction of the arrest records, pursuant to § 236.14(k).

4. Issue such other relief that the Court determines is just and proper.

Dated: 8/21/17

LOS ANGELES SUPERIOR COURT JUDGE

Michael García

Appendix A-06

Elizabeth Buner (SBN 315159)
Coalition to Abolish Slavery & Trafficking
3580 Wilshire Blvd. #900-37
Los Angeles, CA 90010
Phone: 213-986-9977
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Email: ebuner@castla.org

Attorney for Petitioner,
[redacted]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

The People of the State of California, Plaintiff, v. [redacted], Petitioner.	Case No.: [redacted] Related Case Nos: [redacted] (Los Angeles County), [redacted] (Ventura County) **NOTICE OF MOTION AND MOTION FOR VACATUR AND SEALING PURSUANT TO PENAL CODE SECTION 236.14; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; STIPULATION TO CONSOLIDATE INTO ONE HEARING; STIPULATION IN SUPPORT OF VACATUR RELIEF; [PROPOSED] ORDER** **Date:** **Time:** **Dept.: 56**

To the Honorable _____, to the City Attorney for the City of Los Angeles, and to the District Attorney for Ventura County:

PLEASE TAKE NOTICE that on _____ or soon thereafter when the matter may be decided without a hearing pursuant to 236.14(d) or heard in Dept. 56 of the above-entitled court located at the Clara Shortridge Foltz Criminal Justice Center, 210 West Temple Street, Los Angeles, CA 90012, Petitioner [redacted] will move, and hereby

does move, the Court for relief pursuant to Penal Code section 236.14. Petitioner seeks an order from the Court finding that Petitioner was a victim of human trafficking and that her adjudication in the above matters was the direct result of such trafficking, setting aside and vacating Petitioner's prior arrests, charges, and convictions, and directing all records pertaining to the above matters be sealed and subsequently destroyed pursuant to Penal Code section 236.14.

This motion is based on notice, the accompanying points and authorities, the attached declaration and exhibits, and such arguments and evidence that may be presented at a hearing.

Dated:

Respectfully submitted,

_____

Elizabeth Buner, Esq.

Attorney for Petitioner

I. PRELIMINARY STATEMENT

Petitioner, [redacted] ("Ms. [redacted]"), was a victim of sex trafficking between the years 2006-2012 during which time she was sexually exploited for commercial gain by her trafficker, [redacted] aka "[redacted]" or "[redacted]" ("trafficker"). Her trafficker used force and coercion to force her to engage in commercial sex against her will. Under her trafficker's continued physical violence and threats of physical violence if she refused to work, Ms. [redacted] believed she had no choice but to obey her trafficker and engage in commercial sex.

In February 2009, Ms. [redacted] was arrested twice in Los Angeles, California on prostitution charges stemming from her trafficking. On February 4, 2009, Ms. [redacted] was arrested by the Los Angeles Police Department for a violation of PC 647(B): Disorderly Conduct Prostitution. On February 6, 2009, she was brought to court and formally charged with violations of PC 647(B): Disorderly Conduct Prostitution and PC 653.22(A): Loiter:Intent:Prostitution. She was given a court date for later that month and was released from jail later that day. Her trafficker put her back on the street that evening, and shortly after, in the early morning hours of February 7, 2009, Ms. [redacted] was arrested by the Los Angeles Police Department for a violation of PC 647(B): Disorderly Conduct Prostitution. On February 10, 2009, she was brought to court and formally charged with two counts of PC 647(B): Disorderly Conduct Prostitution and one count of PC 653.22(A): Loiter:Intent:Prostitution. On February 24, 2009, she pled no contest to count one stemming from her February 4, 2009 arrest and was convicted under PC 647(B): Disorderly Conduct Prostitution. All other counts—the second count from the February 4, 2009 arrest and the three counts from the February 7, 2009 arrest—were dismissed. Ms. [redacted] was placed on formal diversion for 24 months. That was later revoked after she failed to appear for a court date, and a bench warrant issued. Ms. [redacted] turned herself in to clear up the warrant and address the open charges, was resentenced to 90 days in jail with time served, and on June 18, 2012, her case was dismissed in furtherance of justice.

On April 17, 2012, Ms. [redacted] was arrested by the Ventura County Sheriff's Office for a violation of PC 484(A): Petty Theft. Not long before, Ms. [redacted] and her daughter were kidnapped by her trafficker, and Ms. [redacted] was retrafficked. It was in

the aftermath of this, still reeling from the financial, emotional and psychological trauma from the most recent trafficking experience, as well as her previous periods of trafficking by the same individual, and while struggling to take care of herself and her daughter, that she was detained for petty theft. The police issued her a ticket to appear in court, and on July 6, 2012, she appeared as instructed, pled out to the charge of PC 484(A), and was sentenced to 36 months probation, which she completed without issue.

Ms. [redacted] arrests, charges, and convictions were all the direct result of her being a victim of human trafficking. Ms. [redacted] trafficker had been forcing her to engage in commercial sex for a few months at the time of her arrests for prostitution. (She was first trafficked by her trafficker for approximately three weeks in 2006, before being retrafficked by him at the end of 2008.) Ms. [redacted] remained in her trafficking situation until she was able to escape her trafficker in or about September 2009. Ms. [redacted] was retrafficked by the same person for approximately one week in early 2012, and it was shortly thereafter, still reeling from the ongoing financial, emotional and psychological trauma she was experiencing from the trafficking, that she was arrested for petty theft.

Since escaping her trafficker for the final time in early 2012, Ms. [redacted] has distanced herself from her trafficker and is working hard to rebuild her life. She went back to school—earning her GED, then an associate's degree, and she is currently finishing up her bachelor's degree—she had a second daughter, she got married, and she has moved out of state with her family. However, her record has continued to haunt her. In mid-2020, Ms. [redacted] contacted the Coalition to Abolish Slavery & Trafficking (CAST) seeking legal assistance, and she was identified as a trafficking survivor.

Ms. [redacted] seeks to move forward with her life and eliminate this legal burden to employment and personal opportunities. The arrests and convictions also serve as a constant reminder of the trauma Ms. [redacted] endured while she was a victim of human trafficking.

As set forth in greater detail below, Penal Code section 236.14 provides relief in cases precisely like this one, where a victim of human trafficking seeks to vacate arrests, charges, and convictions that were a direct result of her status as a human trafficking victim in order to obtain a fresh start in life.

For these reasons, Ms. [redacted] respectfully requests this Court to grant her petition for relief under Penal Code section 236.14.

II. STATEMENT OF FACTS

[redacted] [redacted] ("Ms. [redacted]") was sexually exploited by her trafficker who used force and coercion to compel her to engage in prostitution during three different time spans over a six year period for the purpose of commercial gain. (Exhibit F, Declaration in Support of [redacted] [redacted].)

In 2006, Ms. [redacted] was recruited to engage in prostitution in Los Angeles, California and her trafficker used force and coercion to compel her to engage in commercial sex. (Decl. ¶ 8-9.) Ms. [redacted] was merely sixteen years old and had just run away from her foster care group home when she was introduced to [redacted] aka "[redacted]" or "[redacted]" ("trafficker"). (Decl. ¶ 8.) One of the other girls working for him, [redacted], encountered the newly run away Ms. [redacted] outside a gas station, invited her to a party and offered her a place to stay. (*Ibid.*) Ms. [redacted] accepted, and followed [redacted] to an apartment in the San Fernando Valley where [redacted] and some other people were hanging out. (*Ibid.*) Later that evening, as Ms. [redacted] was preparing for bed, she exited the shower to find [redacted] standing by her bed and a skimpy outfit laid out waiting for her. (*Ibid.*) [redacted] told her to get dressed, that they were going out, and when Ms. [redacted] questioned him, he beat, choked, and threatened her. (*Ibid.*) That was the first night [redacted] forced Ms. [redacted] to engage in prostitution.

After that, [redacted] forced Ms. [redacted] to engage in commercial sex on a daily basis. (Decl. ¶ 9.) He took her to various locations throughout Los Angeles and the San Fernando Valley, and forced her to work, under his constant monitoring and threats, from approximately 7:00 in the evening until sometime between 6:00 and 8:00 the following morning. (*Ibid.*) Anything Ms. [redacted] earned, [redacted] kept. (*Ibid.*) This continued for two or three weeks. (Decl. ¶ 10.) Then one night, [redacted] took Ms. [redacted] to visit a client at his office. (*Ibid.*) After being repeatedly raped by this client, Ms. [redacted] could take it no more, and she asked him to request someone else. (*Ibid.*) The client reported back to the trafficker who came and got her, drove her back to the apartment, and proceeded to

mercilessly beat her and choke her for an extended period of time; Ms. [redacted] thought that she was going to die. (*Ibid.*) The next morning, unexpectedly, [redacted] let Ms. [redacted] go. (*Ibid.*)

After fleeing her trafficker, Ms. [redacted] landed back in a series of group homes, before aging out of the foster care system and being placed in an assisted living facility for transitional age youth. (Decl. ¶ 11, 12.) Things were not going well, and Ms. [redacted] decided she needed to leave. (Decl. ¶ 12.) She reached out to [redacted], the girl who originally recruited her, and who had contacted her repeatedly over the previous two years to apologize for what happened, pleading ignorance of her boyfriend's intentions, and offering her help in the future should Ms. [redacted] ever need it. (Decl. ¶ 11, 12.) [redacted] came and picked Ms. [redacted] up and brought her back to her apartment to Van Nuys. (Decl. ¶ 12.) Much to Ms. [redacted] surprise, and contrary to the promises [redacted] made her, [redacted] was waiting at the apartment; he proceeded to attack her and rape her, and then he made her get dressed and he took her out to work the street. (*Ibid.*)

From that day forward, [redacted] controlled all aspects of Ms. [redacted] life, in much the same manner as he had previously. (Decl. ¶ 13.) He rarely let her out of his sight, and if he did, [redacted] or one of the other girls was there to monitor her. (*Ibid.*) [redacted] used violence and threats of violence to force her to continue to work for him. (Decl. ¶ 14.) He also withheld food if Ms. [redacted] did not meet his demands. (*Ibid.*)

During this second time Ms. [redacted] was trafficked, between 2008-2009, she was arrested twice by the Los Angeles Police Department and charged with prostitution related offenses. (Exhibit A, California DOJ Live Scan report, Petitioner [redacted]; Exhibit B, FBI Live Scan report, Petitioner [redacted].) On February 4, 2009, Ms. [redacted] was arrested by Los Angeles Police Officers for a violation of Penal Code section 647 (B): Disorderly Conduct Prostitution (*Ibid*.) She was arraigned on February 6, 2009, at which times she was charged with one count of Penal Code section 647 (B): Disorderly Conduct Prostitution and one count of Penal Code section 653.22(A): Loiter:Intent:Prostitution, another court date was set for later that month, and she was released. (Exhibit C, Minute Order for Case No.: [redacted].) Her trafficker promptly put her back out on the street, where Ms. [redacted] was again arrested, just hours later on February 7, 2009, by Los

Angeles Police Officers. (Exhibit A, California DOJ Live Scan report, Petitioner [redacted].) She was arraigned on February 10, 2009, at which time she was charged with two counts of Penal Code section 647 (B): Disorderly Conduct Prostitution and one count of Penal Code section 653.22(A): Loiter:Intent:Prostitution; another court date was set for later that month, and she was released. (Exhibit D, Minute Order for Case No.: [redacted].) On February 24, 2009, Ms. [redacted] pled no contest to the charge of PC 647(B): Disorderly Conduct Prostitution stemming from her February 4, 2009 arrest, and the court dismissed the second charge from that arrest, as well as the three charges stemming from the February 7, 2009 arrest. (Exhibit C, Minute Order for Case No.: [redacted]; Exhibit D, Minute Order for Case No.: [redacted].) Ms. [redacted] was placed on formal diversion for 24 months, however, after failing to appear for a scheduled court date, her diversion was terminated and a bench warrant was issued; she was later resentenced to 90 days in jail with time served. (Exhibit C, Minute Order for Case No.: [redacted].) She ultimately satisfied all requirements of her sentence, and on June 18, 2012, the court dismissed her case pursuant to PC 1385. (*Ibid*.)

After these back to back arrests, [redacted] changed tactics; rather than putting Ms. [redacted] to work on the streets, [redacted] began advertising her services online and got her a job working at a strip club. (Decl. ¶ 15.) From then on, Ms. [redacted] either worked the strip club or met clients in motels that [redacted] arranged, with [redacted] working alongside her to keep an eye on her. (Decl. ¶ 13, 16.) During this time, Ms. [redacted] attempted to escape multiple times, however, each time [redacted] found out and beat her severely. (Decl. ¶ 17.) Ms. [redacted] remained in her trafficking situation for approximately nine months, until August or September 2009, when, after finding out that she was pregnant, she managed to successfully escape. (*Ibid*.)

However, things did not get easier for Ms. [redacted]. Following her escape, Ms. [redacted] tried seeking help from her sister, but that ended up doing her more harm than good. (Decl. ¶ 18.) Her daughter's birth in April 2010 was a bright spot in that year, however, a few months later, toward the end of 2010, she began dating someone who turned out to be abusive. (*Ibid*.) Ms. [redacted] managed to extricate herself from that abusive relationship at the beginning of 2012. (*Ibid*.)

Following her escape from her trafficking situation, Ms. [redacted] did not have any contact with [redacted] for more than two years, however, after her abusive relationship ended, all she could think about was her daughter and how she didn't want her to grow up without a family. (Decl. ¶ 19.) She decided to contact Bruce[redacted] a decision that she has since regretted—to let him know that he had a child and tell him that he could be part of their daughter's life if he wanted. (*Ibid*.) [redacted] wanted to meet his daughter and promised that he was trying to change; Ms. [redacted] agreed. (*Ibid*.) However, when they met up, [redacted] attacked and threatened Ms. [redacted] and then proceeded to kidnap her and their daughter. (*Ibid*.) So as to control Ms. [redacted] and get her to do what he wanted, he separated her from her daughter and put Ms. [redacted] back to work, retrafficking her yet again. (*Ibid*.) It was a week before they were finally reunited and Ms. [redacted] managed to escape with her daughter. (*Ibid*.) She immediately sought and received a restraining order, and she has not seen or spoken with [redacted] since. (*Ibid*.)

Ms. [redacted] tried to get her life in order, even clearing up the open warrant in connection with her February 2009 arrest, however, everything [redacted] did to her left her vulnerable and destitute. (Decl. ¶ 22, 26.) Ms. [redacted] and her daughter lacked stable housing, financial resources and support of any kind, and Ms. [redacted] was still experiencing the financial, emotional and psychological trauma from the trafficking. (Decl. ¶ 23, 27.) In April 2012, during this time of ongoing trauma, she was stopped by security while at a store getting essentials for her daughter and herself. (Decl. ¶ 23, 27.) When the police arrived, they issued her a ticket to appear in court. (Decl. ¶ 23.) On July 6, 2012, Ms. [redacted] appeared as instructed, pled out to PC 484(A): Petty Theft, a misdemeanor, and was sentenced to 36 months probation, which she completed without issue. (*Ibid*.)

Since that time, Ms. [redacted] has completely removed herself from the trafficking scheme. She has attempted to rebuild her life—she began a stable and healthy relationship, gave birth to another daughter, went back to school, and relocated away from California with her family—but her trafficking experiences continue to impact her life. (Decl. ¶ 28, 29, 31.) For years, Ms. [redacted] was unaware of resources available to her as a trafficking survivor, so she had to work through her traumatic experiences on her own. (Decl. ¶ 30.) It is only within the last two years that she has connected with supportive services, including

the Coalition to Abolish Slavery & Trafficking ("CAST"), to help her address some of the lingering trauma from her trafficking experiences. (Decl. ¶ 30, 34.)

Ms. [redacted] trafficking experiences left her with a criminal record that continues to burden her. It has impacted her ability to get employment, prevented her from volunteering at her daughter's school, and threatens to prevent her from pursuing her chosen career path upon receiving her bachelor's degree later this year. (Decl. ¶ 31, 32.) Her record has also affected her well-being, leaving her feeling stigmatized and ashamed. (Decl. ¶ 35.) Ms. [redacted] hopes that by clearing her criminal record, she will finally be free of the trafficking scheme that has caused so much trauma in her life and created barriers in her family life and to employment. (Decl. ¶ 35, 36.)

III. ARGUMENT AND AUTHORITIES

Petitioner, [redacted] ("Ms. [redacted]"), seeks relief under California Penal Code section 236.14 to vacate her arrests and convictions for crimes that were a direct result of her trafficking . Under Penal Code section 236.14, this Court has the authority to vacate her convictions and order the records of her arrests, charges, and convictions sealed and destroyed.

A. Legislative History and Purpose of Penal Code section 236.14

California Penal Code section 236.14 was created by Senate Bill No. 823 ("SB 823"), which went into effect on January 1, 2017 to afford protection to victims of human trafficking, a vulnerable and underserved population. Penal Code section 236.14 establishes a separate expungement petition process, vacatur relief, for a person who has been arrested or convicted of a nonviolent crime while he or she was a victim of human trafficking. (*See* Exhibit J, Penal Code § 236.14.) The California legislature recognized that existing expungement laws were insufficient to provide broad protection and repair the damage caused by erroneously arresting victims of trafficking. (*See* Exhibit K, Senate Floor Analyses of Sen. Bill No. 823 (2015-16 Reg. Session.) *as amended* May 31, 2016.) SB 823 was specifically designed to address the stigmatization faced by trafficking survivors who had been arrested, charged, and convicted as criminals for crimes they were forced to commit during their exploitation by their traffickers. (*Ibid*.) The legislative intent of SB

823 was to create a true vacatur law that offered "complete reprieve for victims of human trafficking by offering a clean slate… [to ensure] that no adverse consequences of the conviction remain after relief is granted." (*Ibid*.)

Penal Code section 236.14 serves the purpose of allowing survivors to move beyond their victimization and reintegrate into their communities with dignity and respect. Perhaps most importantly, it also affords victims an opportunity to regain the full range of rights and protections under the law that they deserve.

Ms. [redacted] experience of sexual exploitation, escape, recovery, and rehabilitation epitomizes the purpose and intent behind SB 823. Her case is exactly the type of case this law intended to address, and this Court should grant the relief set out in Penal Code section 236.14 to allow Ms. [redacted] to move beyond her victimization and fully reintegrate into her communities with dignity and respect.

B. California Penal Code section 236.14 Statutory Requirements

California Penal Code section 236.14 provides individuals who have been arrested, charged, or convicted of a nonviolent offense committed while he or she was a victim of human trafficking with the right to petition the court for vacatur relief. Under Penal Code section 236.14, a convicting court may grant the petitioner's application for vacatur relief, if after considering the totality of the evidence presented, the Court finds by clear and convincing evidence that:

a. The petitioner was a victim of human trafficking at the time the nonviolent crime was committed;
b. The commission of the crime was a direct result of being a victim of human trafficking;
c. The victim is engaged in a good faith effort to distance themselves from the human trafficking scheme; and
d. It is in the best interest of the petitioner and in the interests of justice.

(Cal. Pen. Code. § 236.14(g) (1-4).)

Under the law, once served with a petition for relief, the prosecutorial agency has 45 days to respond. (Cal. Pen. Code. § 236.14(c).) If the prosecutorial agency does not file an opposition, the Court "shall deem the petition unopposed" and may grant the petition. (Cal. Pen. Code. § 236.14(d).)

If the petition is opposed or if the Court otherwise believes it is necessary, the Court shall schedule a hearing on the petition. (Cal. Pen. Code § 236.14(f).) A court that grants relief pursuant to this section may take additional action as appropriate under the circumstances to carry out the purposes of this section. (Cal. Pen. Code § 236.14(r).)

Because Ms. [redacted] meets each statutory requirement put forth in Penal Code section 236.14(g)(1-4), she is eligible for and respectfully requests vacatur relief from this Court. In addition to meeting each statutory requirement put forth in Cal. Pen. Code § 236.14(g)(1-4), she is also eligible for relief in the alternative under Cal. Pen. Code § 236.14(r), which enables the court to grant such relief outside the statutory requirement put forth in Cal. Pen. Code § 236.14(g)(1-4), in the interest of justice.

IV. MS. [redacted] IS ENTITLED TO VACATUR RELIEF PURSUANT TO SECTION 236.14.

This Court should grant Ms. [redacted] request for vacatur relief of her arrests, charges, and convictions under PC 647(B): Disorderly Conduct; Prostitution (misdemeanor conviction later expunged; additional PC 647(B) charges dismissed), PC 653.22(A): Loiter:Intent:Prostitution (charges dismissed), and PC 484(A): Petty Theft (misdemeanor conviction) because she was a victim of human trafficking at the time the crimes were committed; the crimes were committed as a direct result of her trafficking; she has engaged in a good faith effort to distance herself from the human trafficking scheme; and it is in the best interest of Ms. [redacted] and in the interest of justice to grant relief.

A. Ms. [redacted] satisfies the legal definition of a victim of human trafficking.

Ms. [redacted] is a victim of human trafficking as defined in California Penal Code section 236.1(a-c) and the Trafficking Victims Protection Act ("TVPA"). (*See* 22 U.S.C. § 7102, *et seq*.) California Penal Code section 236.1, in pertinent part, defines trafficking as "a person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services." (Cal. Pen. Code § 236.1(a).) The California Legislature found that the definition of human trafficking in California Penal Code section 236.1 is "equivalent to the federal definition of a severe form of trafficking found in Section 7102(9) of Title 22 of the United States Code." (Cal. Pen. Code § 236.1(g).) The TVPA defines severe forms of

trafficking in persons as "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age" and "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery." (22 U.S.C. § 7102(11) (A).)

"Coercion" is defined under Penal Code section 236.1(h)(1) to "include a scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; the abuse or threatened abuse of the legal process; debt bondage; or providing and facilitating the possession of a controlled substance to a person with the intent to impair the person's judgment." This section goes further and defines "serious harm" as "any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or commercial sexual acts in order to avoid incurring that harm." (Cal. Pen. Code §236.1(h)(8).)

Ms. [redacted] fits the definition of a victim of human trafficking under California Penal Code section 236.1 and the TVPA. During three different time spans over a six year period, Ms. [redacted] was deprived of her personal liberty and sold for sex by her trafficker through the use of force and coercion for the purpose of commercial gain. (Exhibit F, Declaration in Support of [redacted].)

In 2006, Ms. [redacted] was recruited by her trafficker, [redacted] aka "[redacted]" or "[redacted]", to engage in prostitution in Los Angeles, California. (Decl. ¶ 8.) Her trafficker used force and coercion to recruit, harbor, transport, and provide Ms. [redacted] for commercial sex. (Decl. ¶ 8, 9.) At the time, Ms. [redacted] was a sixteen year old runaway. (Decl. ¶ 8.) When [redacted], one of the girls working for [redacted], offered her a place to stay, Ms. [redacted] accepted, not knowing that it was going to be the start of a nightmare. (*Ibid.*) The first night that Ms. [redacted] met [redacted], he beat, choked, and threatened her before taking her to the street to engage in prostitution for his benefit. (*Ibid.*)

For the next two to three weeks, [redacted] forced Ms. [redacted] to engage in commercial sex on a daily basis. (Decl. ¶ 9.) He took her to various locations throughout Los Angeles and the San Fernando Valley, and forced her to work, under his constant monitoring and threats, from approximately 7:00 in the evening until sometime between 6:00 and 8:00 the following morning. (*Ibid.*) Anything Ms. [redacted] earned, [redacted] kept. (*Ibid.*) Then one night, [redacted] took Ms. [redacted] to visit a client at his office. (Decl. ¶ 10.) After being repeatedly raped by this client, Ms. [redacted] could take it no more, and she asked him to request someone else. (*Ibid.*) The client reported back to her trafficker who came and got her, drove her back to the apartment, and proceeded to mercilessly beat her and choke her for an extended period of time; Ms. [redacted] thought that she was going to die. (*Ibid.*) The next morning, unexpectedly, [redacted] let Ms. [redacted] go. (*Ibid.*)

In 2008, Ms. [redacted] was once again trafficked by [redacted]. (Decl. ¶ 12.) After fleeing her trafficker in 2006, Ms. [redacted] landed back in a series of group homes, before aging out of the foster care system and being placed in an assisted living facility for transitional age youth. (Decl. ¶ 11, 12.) Things were not going well, and Ms. [redacted] decided she needed to leave. (Decl. ¶ 12.) She reached out to [redacted], the girl who originally recruited her, and who had contacted her repeatedly over the previous two years to apologize for what happened, pleading ignorance of her boyfriend's intentions, and offering her help in the future should Ms. [redacted] ever need it. (Decl. ¶ 11, 12.) [redacted] came and picked Ms. [redacted] up and brought her back to her apartment to Van Nuys. (Decl. ¶ 12.) Much to Ms. [redacted] surprise, and contrary to the promises [redacted] made her, [redacted] was waiting at the apartment; he proceeded to attack her and rape her, and then he made her get dressed and he took her out to work the street. (*Ibid.*)

From that day forward, [redacted] controlled all aspects of Ms. [redacted] life, in much the same manner as he had previously. (Decl. ¶ 13.) He rarely let her out of his sight, and if he did, [redacted] or one of the other girls was there to monitor her. (*Ibid.*) [redacted] used violence and threats of violence to force her to continue to work for him. (Decl. ¶ 14.) He also withheld food if Ms. [redacted] did not meet his demands. (*Ibid.*)

During this second time Ms. [redacted] was trafficked, between 2008-2009, she was arrested twice by Los Angeles Police Officers and charged with prostitution related

offenses. (Exhibit A, California DOJ Live Scan report, Petitioner [redacted]; Exhibit B, FBI Live Scan report, Petitioner [redacted].) After these back to back arrests, [redacted] changed tactics; rather than putting Ms. [redacted] back to work on the streets, [redacted] began advertising her services online and got her a job working at a strip club. (Decl. ¶ 15.) From then on, Ms. [redacted] either worked the strip club or met clients in motels that [redacted] arranged, with [redacted] working alongside her to keep an eye on her. (Decl. ¶ 13, 16.) During this time, Ms. [redacted] attempted to escape multiple times, however, each time [redacted] found out and beat her severely. (Decl. ¶ 17.) Ms. [redacted] remained in her trafficking situation for approximately nine months, until August or September 2009, when she found out that she was pregnant and subsequently managed to successfully escape. (*Ibid*.)

In 2012, Ms. [redacted] was retrafficked by [redacted] once more. (Decl. ¶ 19.) She had just gotten out of an abusive relationship, and all she could think about was her daughter and how she didn't want her to grow up without a family. (*Ibid*.) She decided to contact [redacted]—a decision that she has since regretted—to let him know that he had a child and tell him that he could be part of their daughter's life if he wanted. (*Ibid*.) [redacted] wanted to meet his daughter and promised that he was trying to change; Ms. [redacted] agreed. (*Ibid*.) However, when they met up, [redacted] attacked and threatened Ms. [redacted] and then proceeded to kidnap her and their daughter. (*Ibid*.) So as to control Ms. [redacted] and get her to do what he wanted, he separated her from her daughter and put Ms. [redacted] back to work, retrafficking her yet again. (*Ibid*.) It was a week before Ms. [redacted] and her daughter were reunited and able to escape. (*Ibid*.) That was the last time Ms. [redacted] saw or spoke with [redacted]. (*Ibid*.)

As these facts reveal, Ms. [redacted] was induced into engaging in commercial sex through force and coercion (though, in the first instance of trafficking, neither force nor coercion were necessary elements, as Ms. [redacted] was a minor at the time). Specifically, her trafficker used physical violence and threats to force her to continue engaging in prostitution. Ms. [redacted] was deprived of her liberty and forced to engage in commercial sex acts during three different time spans over a six year period before her final escape. Accordingly, Ms. [redacted] is a victim of human trafficking as defined under California Penal Code 236.1(a-c) and the TVPA.

B. Ms. [redacted] commission of the non-violent offenses were a direct result of being a victim of human trafficking.

Ms. [redacted] arrests, charges, and convictions are directly related to her human trafficking victimization.

During Ms. [redacted] second period of trafficking, between the end of 2008 and approximately September 2009, she was twice arrested by the Los Angeles Police Department while [redacted] had her working the streets. (Exhibit A, California DOJ Live Scan report, Petitioner [redacted] Exhibit B, FBI Live Scan report, Petitioner [redacted].) On February 4, 2009, she was arrested by LAPD for prostitution, and on February 6, 2009, she was charged with one count of PC 647(B): Disorderly Conduct Prostitution and one count of PC 653.22(A): Loiter:Intent:Prostitution. (Exhibit A, California DOJ Live Scan report, Petitioner [redacted] Exhibit C, Minute Order for Case No.: [redacted].) Another court date was set for later that month, and Ms. [redacted] was released. (Exhibit C, Minute Order for Case No.: [redacted].) [redacted] immediately put her back on the street, and not long after, in the early morning hours of February 7, 2009, she was again arrested by the Los Angeles Police Department. (Exhibit A, California DOJ Live Scan report, Petitioner [redacted].) On February 10, 2009, Ms. [redacted] was charged with two counts of PC 647(B): Disorderly Conduct Prostitution and one count of PC 653.22(A): Loiter:Intent:Prostitution. (Exhibit D, Minute Order for Case No.: [redacted].) On February 24, 2009, she returned to court where she pled no contest to the charge of PC 647(B): Disorderly Conduct Prostitution stemming from her February 4, 2009 arrest. (Exhibit C, Minute Order for Case No.: [redacted].) The court dismissed the second charge stemming from the February 4, 2009 arrest, as well as the charges stemming from the February 7, 2009 arrest. (Exhibit C, Minute Order for Case No.: [redacted]; Exhibit D, Minute Order for Case No.: [redacted].) Ms. [redacted] was placed on formal diversion for 24 months. (Exhibit C, Minute Order for Case No.: [redacted].) That was later revoked after she failed to appear for a court date and a bench warrant issued. (*Ibid.*) Ms. [redacted] turned herself in to clear up the warrant and address the open charges, was resentenced to 90 days in jail with time served, and on June 18, 2012, her case was dismissed in furtherance of justice. (*Ibid.*)

Just after Ms. [redacted] third period of trafficking, in early 2012, Ms. [redacted] was arrested by the Ventura County Sheriff's Office. (Exhibit A, California DOJ Live Scan report, Petitioner [redacted]; Exhibit B, FBI Live Scan report, Petitioner [redacted].) Ms. [redacted] recent kidnapping and retrafficking, in addition to everything [redacted] did to her over the years, left her with ongoing financial, emotional, and psychological trauma. (Decl. ¶ 23.) On April 17, 2012, during this time of ongoing trauma, while at a store getting essentials for her daughter and herself, she was stopped by security for petty theft, the police were called, and they issued her a ticket to appear in court. (*Ibid*.) On July 6, 2012, Ms. [redacted] appeared as instructed, pled out to PC 484(A): Petty Theft, and was sentenced to 36 months probation, which she completed without issue. (*Ibid*.; Exhibit A, California DOJ Live Scan report, Petitioner [redacted]; Exhibit E, Notice of Destruction for Case No.: [redacted].) The Court has since destroyed the case file, however, her conviction remains in the record. (Exhibit E, Notice of Destruction for Case No.: [redacted].)

Ms. [redacted] seeks to vacate not only the convictions, but also the arrests and charges on her record that occurred as a direct result of her trafficking. At the time of her arrests, charges, and convictions, Ms. [redacted] was either under the direct control of her trafficker or still experiencing the financial, psychological and emotional control of her trafficker and trauma of her trafficking. Ms. [redacted] would not have been arrested and charged for her crimes, but for the human trafficking scheme. As such, Ms. [redacted] convictions for nonviolent offenses were a direct result of being a victim of human trafficking.

C. Ms. [redacted] has engaged in a good faith effort to distance herself from the human trafficking scheme.

After escaping from her trafficker for the second time, in approximately September 2009, Ms. [redacted] did not have any contact with her trafficker until the beginning of 2012 when she reached out to him to notify him that he had a child and let him know that he could be part of their daughter's life if he wanted. (Decl. ¶ 18, 19.) However, when Ms. [redacted] and her daughter met with her trafficker, her daughter's father, he kidnapped them, took away her daughter, and proceeded to retraffick Ms. [redacted]. (Decl. ¶ 19.) This

lasted for approximately one week before Ms. [redacted] was able to get her daughter back, escape, and file a restraining order against her trafficker for kidnapping. (*Ibid*.) Since then, Ms. [redacted] has completely removed herself from the human trafficking scheme and has engaged in a good faith effort to distance herself from her trafficker; she has not seen or spoken with her trafficker since. (Decl. ¶ 19.)

Following her final escape, Ms. [redacted] worked hard to get her life in order, including clearing up an open warrant she had in connection with her 2009 arrest. (Decl. ¶ 26.) On March 19, 2012, she appeared in court and was resentenced to 90 days in jail with time served; three months later, on June 18, 2012, having fulfilled the court's requirements, she was able to get that charge expunged. (*Ibid*.; Exhibit C, Minute Order for Case No.: [redacted].)

Ms. [redacted] and her daughter, [redacted], moved around some before settling into their own apartment. (Decl. ¶ 28.) In 2015, she met her now husband, [redacted], they began dating, and shortly after, she got pregnant. (*Ibid*.) When [redacted] was offered a job in [redacted], Ms. [redacted] and [redacted] went with him, and Ms. [redacted] gave birth to their daughter, [redacted] in June 2016. (*Ibid*.) In the years since, Ms. [redacted] and [redacted] married, and their family has moved from [redacted] to [redacted] and most recently to [redacted]. (*Ibid*.) They have built a loving, safe, and stable family together.

Ms. [redacted], who had previously dropped out of school when she was in the 11th grade, also returned to school. (Decl. ¶ 29.) After receiving her GED in 2013, she decided to continue her education, and in December 2019 completed her Associate's Degree in Criminal Justice with honors. (Decl. ¶ 29; Exhibit I, Educational Accomplishments) She is currently working towards her Bachelor of Science in Criminal Justice, and she anticipates receiving her degree in May 2022. (*Ibid*.)

Unaware that there were resources to help her with what she went through, Ms. [redacted] had to work through much of her trauma and work on rebuilding her life on her own. (Decl. ¶ 30.) However, within the last two years, she connected with Center for Hope in El Paso, Texas and the Coalition to Abolish Slavery & Trafficking ("CAST") in Los Angeles, California, and has begun receiving services. (Decl. ¶ 30, 34.) Specifically, Ms.

[redacted] sought out CAST's assistance addressing the criminal record she has as a result of her trafficking. (Decl. ¶ 34.)

Since her final escape in early 2012, Ms. [redacted] has engaged in a good faith effort to distance herself from the human trafficking scheme. Ms. [redacted] has relocated away from the location of her trafficking, has grown her family and created a stable and loving home, has returned to school to pursue degrees in Criminal Justice, and has attempted to seek employment in her chosen field. Unfortunately, her criminal record related to her trafficking has been a barrier to her obtaining employment and volunteer opportunities in her field of study, has presented a barrier to involvement in her children's school, and has served as a lasting, traumatic reminder of all she endured at the hands of her trafficker.

D. The vacatur of Ms. [redacted] arrests and convictions is in her best interest and the interest of justice.

The vacatur of Ms. [redacted] arrests, charges, and convictions that were a direct result of her being a victim of human trafficking is in her best interest and in the interest of justice.

Before Ms. [redacted] met her trafficker, [redacted], her only contact with the law had been when she was picked up as a runaway. (*See* Exhibit A, California DOJ Live Scan report, Petitioner [redacted]). Now, because of what [redacted] did to her, Ms. [redacted] has multiple arrests and convictions. (*Ibid*.) This has impacted her ability to get a job in her field of interest as well as volunteer for her children's school, not to mention the mental toll of having a record. (Decl. ¶ 31, 32, 35.)

Relieving Ms. [redacted] of the stigmatizing criminal record that continues to shadow her efforts to integrate in her communities is in the best interest of justice. Victims of human trafficking "face stigmatization from being criminalized for crimes they were forced to commit during their exploitation, which limit[s] access to good employment and create[s] barriers to a variety of services such as housing and education." (Exhibit K, Senate Floor Analyses of Sen. Bill No. 823 (2015-16 Reg. Session.), (daily ed. Aug. 24, 2016) (statement of Sen. Block), http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB823

(last visited Jan. 24, 2017).) Vacatur is a significant step towards breaking the cycle of social stigma and reduces the likelihood of reoffending. (*Ibid*.)

Furthermore, given that the commission of the crimes were a direct result of Ms. [redacted] being a victim of human trafficking, Ms. [redacted] lacked the requisite intent to commit the offenses. Accordingly, the arrests, convictions, and adjudications are legally invalid due to legal defect at the time of the arrests and/or convictions. And because the arrests, convictions, and adjudications are legally invalid, it is in the best interest of Ms. [redacted] and in the interests of justice to vacate those arrests, convictions, and adjudications.

Ms. [redacted] was under the direct control of her trafficker on and off for almost six years during which time she was forced and coerced to engage in commercial sex for the exclusive benefit of her trafficker. (*See* Exhibit F, Declaration in Support of [redacted].) Since escaping her trafficker, Ms. [redacted] has focused on the betterment of her life. Her hopes for the future are simple—to start a career in her field of choice, engage in volunteer opportunities, and finally have her experiences acknowledged and be free of the trafficking scheme that has caused so much trauma in her life—however, her criminal record is making that extremely difficult. Ms. [redacted] exemplifies the legislative intentions behind passage of Penal Code section 236.14 to allow people in Ms. [redacted] position to be recognized as victims rather than criminals and be able to restore her to a clean slate to move forward.

For the aforementioned reasons, Ms. [redacted] meets all the requirements that entitle her to have her arrests, charges, and convictions vacated pursuant to Penal Code section 236.14.

IV. CONCLUSION

Based on this motion, the attached declaration and exhibits, and any further documentary and oral argument presented at a hearing, the following relief is respectfully requested:

1. Pursuant to Penal Code section 236.14(k), an order that all records in this case shall be sealed immediately, and that within one year from the date of

the arrest, or within 90 days after the granting of this Order, whichever occurs later, that all records shall be destroyed. This sealing and destruction order shall apply to the records in possession of the California Department of Justice, Los Angeles Police Department, Los Angeles County Sheriff's Department, San Rafael Sheriff's Department, Ventura County Sheriff's Department, Federal Bureau of Investigation, the Superior Court of California, County of Los Angeles, and the Superior Court of California, County of Ventura.

2. Additionally, an order that the Clerk of Court take all actions necessary to effectuate this relief, including notifying the above entities and their records of the above entitled matter shall be sealed and subsequently destroyed.
3. Pursuant to Penal Code section 236.14(q), an order that no public court record or index of this proceeding shall disclose petitioner's full name.
4. An order that, notwithstanding any other law, the records of any arrest, conviction, or adjudication included in this motion shall not be distributed to any state licensing board.
5. An order that petitioner shall receive a copy of the court order concerning the destruction of the arrest and conviction records.
6. Any additional action this Court deems appropriate under the circumstances to carry out the purpose of this motion.

Dated: March 30, 2022

Respectfully submitted,

_____

Elizabeth Buner, Esq.

Attorney for Petitioner

Appendix A-07A

IN THE _____ COURT OF _____ COUNTY

STATE OF GEORGIA

THE STATE OF GEORGIA,	*	
	*	
vs.	*	**CASE NO.** _____
	*	
	*	
_____	*	
	*	
Defendant.	*	

NOTICE OF REQUIREMENT TO FILE PETITION TO VACATE CONVICTION UNDER SEAL PURSUANT TO O.C.G.A. § 17-10-21(b)

Pursuant to O.C.G.A § 17-10-21(b), this Petition to Vacate Conviction package is required to be filed under seal.

This _____ day of _____, 20_____.

_____
Petitioner Name

_____
Petitioner Signature

IN THE _____ COURT OF _____ COUNTY

STATE OF GEORGIA

THE STATE OF GEORGIA,	*	
	*	
vs.	*	**CASE NO.** _____
	*	
	*	
_____	*	
	*	
Defendant.	*	

PETITION TO VACATE CONVICTION
PURSUANT TO O.C.G.A. § 17-10-21

I.

Having been convicted of an offense or offenses and sentenced or having been sentenced under the First Offender Act O.C.G.A. § 42.8.60 or having received Conditional Discharge O.C.G.A. § 16-13-2, as a direct result of being the victim of an offense of trafficking under O.C.G.A. § 16-5-46, this petitioner moves for the vacatur of such conviction pursuant to O.C.G.A. § 17-10-21.

II.

This petition is accompanied by a copy of the petitioner's criminal history background check report conducted by the Georgia Crime Information Center. Such report has been completed no more than three business days prior to the filing of the petition.

III.

There are no outstanding warrants for the Petitioner's arrest issued by any jurisdiction in the State of Georgia or any other state or by the United States.

IV.

The petitioner prays that if the prosecuting attorney consents in writing to the vacatur of such conviction, First Offender sentence under O.C.G.A. § 42.8.60 or Conditional Discharge sentence under O.C.G.A. § 16-13-2, or fails to respond to this petition within 30 days of service, the court imposing the conviction and sentence, without notice or hearing, shall issue an order vacating the conviction and sentence and also issue an order restricting access to criminal history record information for such offense or offenses, pursuant to O.C.G.A. § 17-10-21 (a)(4).

V.

If the prosecuting attorney objects in writing to the petition, the petitioner prays that the court hold a hearing within 90 days of the filing of this petition, pursuant to O.C.G.A. § 17-10-21 (a)(5)(A).

VI.

The following are included as Exhibits to demonstrate the Petitioner's status of as a victim of an offense of trafficking under O.C.G.A. § 16-5-46 at the time of the offense(s):

- ☐ Record(s), certification(s) or eligibility letter(s) from federal, state tribal or local proceeding(s)

- ☐ Affidavit(s), letter(s), or sworn testimony from member of the clergy, medical profession, member of a victim services organization or certified, licensed or registered professional from whom the petitioner has sought assistance counseling or legal counsel related to victimization under O.C.G.A. § 16-5-46

- ☐ Other _____

Pursuant to O.C.G.A. § 17-10-21(a)(2)(D), these exhibits shall create a rebuttable presumption that the petitioner was a victim of trafficking under O.C.G.A. § 16-5-46.

VII.

Should the offense be vacated, the petitioner prays that any fines or fees which were paid by the petitioner under such sentence be returned to the petitioner, pursuant to O.C.G.A. § 35-3-37(c).

Respectfully submitted, this _____ day of _____, 20_____.

_____
Name of Petitioner

(____) ____-_____
Phone Number

_____

_____
Address

_____
Petitioner Signature

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the within and foregoing Petition to Vacate Conviction Pursuant to O.C.G.A. §17-10-21, along with a copy of my criminal history background check report conducted by the Georgia Crime Information Center, upon the Prosecuting Attorney's Office,

☐ by hand delivery of a copy of the same to:

_____
District Attorney / Solicitor General

☐ by U.S. mail, with proper postage, to:

_____
District Attorney / Solicitor General

Address:
_____
_____
_____

This _____ day of _____, 20____.

_____
Petitioner Name

_____
Petitioner Signature

Appendix A-07B

IN THE _____ COURT OF _____ COUNTY

STATE OF GEORGIA

THE STATE OF GEORGIA,	*	
	*	
vs.	*	**CASE NO.** _____
	*	
	*	
_____	*	
	*	
Defendant.	*	

NOTICE OF REQUIREMENT TO FILE PETITION TO VACATE CONVICTION UNDER SEAL PURSUANT TO O.C.G.A. § 17-10-21(b)

Pursuant to O.C.G.A § 17-10-21(b), this Petition to Vacate Conviction package is required to be filed under seal.

This _____ day of _____, 20_____.

_____
Attorney for Petitioner

_____
Bar. No.

Address:
_____
_____
_____

( ) -_____
Phone

_____
Attorney Signature

IN THE _____ COURT OF _____ COUNTY

STATE OF GEORGIA

THE STATE OF GEORGIA,	*	
	*	
vs.	*	**CASE NO.** _____
	*	
	*	
_____	*	
	*	
Defendant.	*	

PETITION TO VACATE CONVICTION
PURSUANT TO O.C.G.A. § 17-10-21

I.

Having been convicted of an offense or offenses and sentenced or having been sentenced under the First Offender Act O.C.G.A. § 42.8.60 or having received Conditional Discharge O.C.G.A. § 16-13-2, as a direct result of being the victim of an offense of trafficking under O.C.G.A. § 16-5-46, this petitioner moves for the vacatur of such conviction pursuant to O.C.G.A. § 17-10-21..

II.

This petition is accompanied by a copy of the petitioner's criminal history background check report conducted by the Georgia Crime Information Center. Such report has been completed no more than three business days prior to the filing of the petition.

III.

There are no outstanding warrants for the Petitioner's arrest issued by any jurisdiction in the State of Georgia or any other state or by the United States.

IV.

The petitioner prays that if the prosecuting attorney consents in writing to the vacatur of such conviction, First Offender sentence under O.C.G.A. § 42.8.60 or Conditional Discharge sentence under O.C.G.A. § 16-13-2, or fails to respond to this petition within 30 days of service, the court imposing the conviction and sentence, without notice or hearing, shall issue an order vacating the conviction and sentence and also issue an order restricting access to criminal history record information for such offense or offenses, pursuant to O.C.G.A. § 17-10-21 (a)(4).

V.

If the prosecuting attorney objects in writing to the petition, the petitioner prays that the court hold a hearing within 90 days of the filing of this petition, pursuant to O.C.G.A. § 17-10-21 (a)(5)(A).

VI.

The following are included as Exhibits to demonstrate the Petitioner's status of as a victim of an offense of trafficking under O.C.G.A. § 16-5-46 at the time of the offense(s):

- ☐ Record(s), certification(s) or eligibility letter(s) from federal, state tribal or local proceeding(s)

- ☐ Affidavit(s), letter(s), or sworn testimony from member of the clergy, medical profession, member of a victim services organization or certified, licensed or registered professional from whom the petitioner has sought assistance counseling or legal counsel related to victimization under O.C.G.A. § 16-5-46

- ☐ Other _____

Pursuant to O.C.G.A. § 17-10-21(a)(2)(D), these exhibits shall create a rebuttable presumption that the petitioner was a victim of trafficking under O.C.G.A. § 16-5-46.

VII.

Should the offense be vacated, the petitioner prays that any fines or fees which were paid by the petitioner under such sentence be returned to the petitioner, pursuant to O.C.G.A. § 35-3-37(c).

This _____ day of _____, 20_____.

_____
Attorney for Petitioner

_____
Bar. No.

Address:
_____
_____
_____

( ) -
Phone

_____
Attorney Signature

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the within and foregoing Petition to Vacate Conviction Pursuant to O.C.G.A. §17-10-21, along with a copy of my criminal history background check report conducted by the Georgia Crime Information Center, upon the Prosecuting Attorney's Office,

☐ by hand delivery of a copy of the same to:

_____
District Attorney / Solicitor General

☐ by U.S. mail, with proper postage, to:

_____
District Attorney / Solicitor General

Address:
_____
_____
_____

This _____ day of _____, 20____.

_____
Attorney for Petitioner

_____
Attorney Signature

Appendix A-08

IN THE _____ COURT OF _____ COUNTY

STATE OF GEORGIA

THE STATE OF GEORGIA,	*	
	*	
vs.	*	**CASE**
	*	**NO.**
	*	
	*	
	*	
Defendant.	*	

NOTICE OF REQUIREMENT TO FILE PETITION TO RESTRICT CONVICTION UNDER SEAL PURSUANT TO O.C.G.A. § 35-3-37(j)(6)(E)

Pursuant to O.C.G.A § 35-3-37(j)(6)(E), this Petition to Restrict Conviction package is required to be filed under seal.

This _____ day of _____, 20_____.

_____
Attorney for Petitioner

_____
Bar. No.

Address:
_____
_____
_____

( ) -
Phone

_____
Attorney Signature

IN THE _____ COURT OF _____ COUNTY

STATE OF GEORGIA

THE STATE OF GEORGIA,	*	
	*	
vs.	*	**CASE NO.** _____
	*	
	*	
_____	*	
	*	
Defendant.	*	

PETITION TO RESTRICT CONVICTION
PURSUANT TO O.C.G.A. § 35-3-37(j)(6)

I.

Having been convicted of an offense or offenses and sentenced while being a victim of an offense of trafficking under O.C.G.A. § 16-5-46, this petitioner moves for the restriction of such conviction pursuant to O.C.G.A. § 35-3-37(j)(6).

II.

The petitioner prays that if the prosecuting attorney consents in writing to the restriction of such conviction or fails to respond to this petition within 30 days of service, the court imposing the conviction and sentence, without notice or hearing, shall issue an order restricting the conviction and sentence and also issue an order restricting access to criminal history record information for such offense or offenses, pursuant to O.C.G.A. § 35-3-37(j)(6).

III.

If the prosecuting attorney objects in writing to the petition, the petitioner prays that the court hold a hearing within 90 days of the filing of this petition to hear evidence or make a determination upon the pleadings or record, pursuant to O.C.G.A. § 35-3-37 (j)(6)(D).

IV.

The following are included as Exhibits to demonstrate the Petitioner's status as a victim of an offense of trafficking under O.C.G.A. § 16-5-46 at the time of the offense(s):

Record(s), certification(s) or eligibility letter(s) from federal, state, tribal or local proceeding(s)

Affidavit(s), letter(s), or sworn testimony from member of the clergy, medical profession, member of a victim services organization or certified, licensed or registered professional from whom the petitioner has sought assistance counseling or legal counsel related to victimization under O.C.G.A. § 16-5-46

Other _____

Pursuant to O.C.G.A. § 35-3-37(j)(6)(B)(ii), these exhibits shall create a rebuttable presumption that the petitioner was a victim of trafficking under O.C.G.A. § 16-5-46. V.

Petitioner prays that no fee, including any filing fees, be charged to an individual for restricting access to criminal history record information under the provision, pursuant to 35-3-37(6)(G)

Respectfully submitted, this _____ day of _____, 20_____.

_____
Attorney for Petitioner

_____
Bar. No.

Address:
_____
_____
_____

( ) -_____ Phone

_____
Attorney Signature

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the within and foregoing Petition to Restrict Conviction Pursuant to O.C.G.A. § 35-3-37, along with a copy of my criminal history background check report conducted by the Georgia Crime Information Center, upon the Prosecuting Attorney's Office,

by hand delivery of a copy of the same to:

_____
District Attorney / Solicitor General

by U.S. mail, with proper postage, to:

_____
District Attorney / Solicitor General

Address:
_____
_____
_____

This _____ day of _____, 20____.

_____
Attorney for Petitioner

_____
Attorney Signature

Appendix A-09

DISTRICT COURT FOR
[redacted] MARYLAND

---------- X

STATE OF MARYLAND,

v.

[redacted]

Defendant.

AFFIDAVIT OF
[redacted]

Case No. [redacted]

---------- X

TO BE FILED UNDER SEAL PURSUANT TO RULE 16-1009

[redacted] being duly sworn, deposes and says under penalty of perjury:

1. My name is [redacted] I am the person prosecuted and convicted under the name [redacted] in case number [redacted]. I submit this affidavit in support of the motion to vacate my [redacted] criminal conviction for prostitution in the State of Maryland.

I. Background and Childhood

2. I was born on [redacted] in [redacted] MD. I am the fifth of my mother's seven children. I never knew my father, as he was murdered before I was born.

3. When I was nine months old, my father's grandmother took me on vacation with her. When we returned two weeks later, my mother had disappeared. I found out later that she had been arrested after getting into a fight with someone in the neighborhood. Because she couldn't make bail, my brothers and sisters had been taken from the home and put in foster care. Upon learning this, my grandmother took custody of me and became the one who raised me throughout my childhood and young adulthood.

4. When I was seven years old, my grandmother moved us in with her boyfriend in the [redacted] section of [redacted]. Shortly after we moved in, my grandmother's boyfriend began sexually abusing me. Although I didn't understand what he was doing at the time, I knew it was wrong and that it made me feel dirty. I was afraid to tell my grandmother because they were supposed to get married, and I didn't want to upset her.

5. We moved again when I was nine years old, this time to a house off of [redacted] in [redacted] [redacted] Because my grandmother was working two jobs to support us, it was her boyfriend's job to watch me when she wasn't home. I didn't feel safe around him because of what he had done to me, so to avoid being home alone with him, I started hanging out with some of the local neighborhood kids.

6. It was around that time that I was first introduced to alcohol and marijuana, which I quickly learned made all the bad thoughts in my head go away. This was the beginning of a pattern of addiction that I would struggle with for my entire life.

7. A few years later when I was twelve years old, I was hanging out with an older teenage girl from the neighborhood. She took me to an apartment nearby, where she told me to wait while she met up with a boy she liked. That afternoon, an

older man in that same apartment sexually assaulted me. I don't remember the attack clearly; instead, I closed my eyes and pretended I wasn't there. After the assault, I felt used and unlovable. I had always been taught that sex was something to be given to the right person, like a precious jewel. I didn't have that jewel to give anymore, and I hated myself for it.

8. Shortly after I was assaulted, I started dating a boy from the neighborhood named [redacted] He was 17, but he lied and told me he was 14. The first time we had sex I didn't really want to, but by that time I didn't think it mattered very much what I wanted when it came to sex. [redacted] was physically violent toward me and abused me emotionally. He also provided me with alcohol and marijuana, even though he knew how young I was.

9. When I was 13, I got pregnant for the first time. I stopped attending school regularly because the school staff and the kids made me feel bad about being pregnant at such a young age. My school shipped me off to [redacted], which was a school for kids with behavior problems. The kids there teased me because I was pregnant, and so I transferred to [redacted]. I got a tutor and tried my best to stay in school.

10. On [redacted], I gave birth to my daughter, [redacted] Despite my efforts to continue my education, I dropped out of school shortly after [redacted] birth. I had my second child, [redacted] III, on [redacted], when I was 16 years old. After [redacted] birth, I went back to school at [redacted],

now known as [redacted] High School. There I was able to receive both educational and career training, which I enjoyed.

11. That same year, I tried to get a job at a store near my house to earn some extra money. The owner asked me to come to the store to meet with him, but when I got there, he forced me to have sex with him at knifepoint. After the assault, I felt depressed and worthless. I felt powerless over my own body, as my life experiences taught me that I had no control over what people did to it.

II. Coping Through Addiction

12. In the spring of [redacted], my family informed me that I had to marry [redacted] since I was then 18 and we already had two kids together. They wanted me to live like an "honest woman." Unfortunately, our marriage was not a happy one. [redacted] was running the streets and would cheat on me regularly. When I got angry at him for how he was treating me, he would hit me.

13. When the violence became too much, I'd take the children from the apartment we shared and return to my grandmother, but I always ended up coming back. I knew the pain of being raised without a father, and I didn't want [redacted] and [redacted] to have to grow up like I did. To cope with the sadness and anger I felt, I started drinking heavily. By the time I was 20, my relationship with [redacted] had ended completely, and I moved back in with my grandmother.

14. In [redacted], I met a man named [redacted] from the neighborhood, who went by the nickname [redacted] He had a stable job in construction, which made him different from the other men in the neighborhood. I liked being with [redacted] but he

became physically abusive when he was drunk. However, he provided for my kids and me in a way that [redacted] never did, so I stayed with him. By that time, I also thought violence was a normal part of any relationship, so instead of blaming him for hitting me, I blamed myself.

15. Over the next few years, I continued to date [redacted] and work as a personal care assistant. My drinking worsened, and I would often disappear for days at a time on a binge. I remember believing that I was going to die young just like my father did, so the way I treated my body became meaningless to me. I know now that this belief is a common symptom of Post-Traumatic Stress Disorder, although I did not receive treatment for this until much later in life. Counseling was never something that I had access to or was encouraged to seek by anyone in my life.

16. On [redacted], I had my third child, [redacted] Jr. After [redacted] Jr. was born, [redacted] violence toward me started increasing and we separated. Shortly after, I started using crack cocaine. Crack helped numb the emotional pain that the alcohol always had, and also made me feel alive and full of energy instead of sluggish and depressed like I did while using alcohol.

17. Although I was able to continue working as a personal care assistant during the first few years of my addiction, I would spend the weekends getting high. In my grandmother's neighborhood I was known as a junkie, but when I was getting high, I didn't feel judged.

18. As my addiction got worse, I lost my job and turned to exchanging sex for money to supply myself with drugs. I had learned from so many years of being

powerless over sex how to go numb and separate myself from the physical act. I had no self-esteem and just accepted that this was the way things were going to be for me.

III. Sobriety

19. I was arrested in [redacted] for drug possession and sentenced to 18 months of drug rehab, but I only completed 6 months before I relapsed again. I didn't return to rehab until [redacted], but that year I finally completed the program. I was sick of feeling like a junkie and I committed to staying clean.

20. Shortly after getting sober I moved back in with my grandmother and got a job working with the elderly. I maintained my sobriety through my faith in God, the skills I learned in rehab, and the need to rise above how I was living before. I also reunited with [redacted] and moved back in with him in an apartment outside of [redacted] where I was physically separated from my old life. I was happy for what felt like the first time in decades.

21. My life was stable and routine until early [redacted], when my daughter [redacted] took her children and moved down to Atlanta. Soon after they arrived, one of my granddaughters called me and said that they were homeless and sleeping on the street. I was terrified for them. I rented a van, drove down to Atlanta, and brought the kids back to Baltimore to live with me. [redacted] was very unhappy with my decision and forced me to choose between my grandkids and my life with him. I picked my grandkids.

22. I stayed at a family shelter with the children for two weeks, until a friend was able to rent me a house in [redacted], MD. Before we left the shelter, my

granddaughters went to stay with their aunt, while my middle grandson went to stay with his father. I kept the other three boys with me, who were 4, 5 and 7 at the time. The house was comfortable for us, and there was a church nearby that the boys liked to go to. I was able to find a job working at an assisted living facility called [redacted] in [redacted], MD. Things were finally going smoothly again.

23. In late [redacted], [redacted] returned from Atlanta and moved in with me and the children. [redacted] was in and out of unstable relationships during the time she was living with me, and as a result, there was often violence taking place in the home and around the children. Although I begged [redacted] to leave or to let me leave and take the kids with me, she refused. In the spring of [redacted], I fled the house in [redacted] for my own safety.

24. I tried to move back in with [redacted] but he was still angry with me for picking my grandkids over him the year before. After a few months his anger turned into threats of violence, and he eventually kicked me out of the house. With nowhere else to go, I ended up back on the street.

IV. Relapse and Exploitation

25. I returned to my old neighborhood looking for a place to stay. Some acquaintances I used to do drugs with agreed to take me in because I was still working and able to pay them for a room in the house. The return to my old life caused me to become very depressed, and, because I was surrounded by people using drugs, I eventually relapsed after over ten years of sobriety.

26. In late [redacted], I lost my job at the assisted living facility. I tried living with [redacted] for a time, but our chaotic lifestyles caused stress between us, and she eventually kicked me out. Without any income to pay for a place to stay, I started trading sex for money again. I felt terrible about myself, like all the work I had done to make changes in my life was for nothing. I remember thinking that this must be all that was out there for me. My own family was doing nothing to care for me. And sex for money seemed to be all that anyone else wanted from me.

27. In early [redacted], I met a man named [redacted] at an acquaintance's house where I was hoping to be able to stay for the night. He told me he didn't like the way the people in the house were treating me, and encouraged me to leave with him. [redacted] said that he knew that I was trading sex for money and wanted to be my protection on the streets. I know now that traffickers operate by figuring out what vulnerable people need and use this information to exploit them, but back then, I jumped at the chance to have someone take care of me.

28. [redacted] was living in an abandoned row house in the [redacted] section of [redacted] that had a bed, a TV, and an electric heater that he kept running with electricity from a neighboring property. When I first moved in with him, we were both bringing in money to support ourselves and our drug habits. But soon enough, [redacted] revealed that because he was providing a place for me to stay, it was my job to bring in money for the both of us.

29. [redacted] had a gun and bragged about using it to rob stores and people in the neighborhood. If I didn't bring him enough money for him to get high, he would threaten me with it and refuse to let me sleep or eat until I went back out and earned him

the money he demanded. His behavior was completely unpredictable and I was terrified of him, but because I had no place to go, I stayed with him.

30. When I didn't earn enough money, I would try and rest in an alleyway or under the awning of an abandoned house because I was too afraid to go home without the amount he demanded. I never really slept much on those nights because it was the middle of the winter, and I had to get up and walk around every few hours so that I didn't freeze to death. I felt like a zombie. My entire life had become about making enough money so that [redacted] would let me inside to warm up and sleep for a few hours.

31. On [redacted], I was arrested for prostitution and drug possession near [redacted] in [redacted] I wasn't able to afford bail so I stayed in jail until my court date ten days later. That day, I was told by my defense attorney that if I pled guilty I would be released that day. Being in jail for that long was scary and I was desperate to get out, so I took the plea. No one talked to me about how these convictions would impact me in the future, and I never told anyone about [redacted] because I was afraid of what he would do to me if I talked. After I was released from jail, I returned to him and the life he had forced upon me.

32. Soon after my arrest, I received my income tax money from the previous year when I had been working. In an effort to get some real rest for the first time in months, I rented a hotel room for the night. I didn't want [redacted] to stay with me, but he wouldn't take no for an answer. That night, he held me down in the hotel bed and raped me. I remember not resisting him, because I had learned from a lifetime of violence and sexual assault that if you fight it, you just get hurt.

33. After he assaulted me, I tried leaving him by avoiding the places I knew he hung around, but he always seemed to find me. During the times I was back under his control, he would force me to engage in sex acts for his benefit. He would also get physically violent with any man who looked at me but wasn't interested in being a customer. I was terrified of him.

34. I know now that [redacted] used my drug addiction and homelessness to control and profit off of me. Although he told me I was earning money through prostitution for the both of us, he is the only one who ever benefitted from it.

V. Recovery

35. At some point in [redacted], I reconnected with my godmother. She had a room in her home and said that I could stay with her, as long as I was working to remain sober. With her help and support, I began cutting my use down to a few days a week. The days I allowed myself to recuperate did a lot for both my appearance as well as my self-esteem. Staying with my godmother also gave me a way to stay off the streets and safe from [redacted]

36. I started attending church at [redacted], and was honest with the congregation about my struggles with drug addiction. I started volunteering at the church, which helped me feel like my life might have a purpose again.

37. During a church service in [redacted], the pastor requested that the congregation pray for me to find what I needed to maintain my sobriety. Shortly after, she told me that a church member had made contact with a substance abuse program and had arranged for me to attend a recovery program there. I started my journey back to

sobriety at [redacted] in [redacted] for twenty-eight days of recovery. A copy of my Discharge Summary is attached as Exhibit C. After that, I transferred to [redacted] to spend sixty days in a sober living program.

VI. Potential Hardships Resulting from Criminal Convictions

38. Once I was successful in getting sober and exiting prostitution, I began working to return to nursing care, which has been my passion since I began working in the field in [redacted]. A copy of my Maryland Medical Assistant Program Notification of Provider is attached as Exhibit D. On [redacted], I completed a 140-hour Certified Nursing Assistant/Geriatric Nursing Assistant training through the [redacted]. at the [redacted] in [redacted] A copy of my certification is attached as Exhibit E.

39. Because of my drug and prostitution convictions however, I have not been able to find a job in nursing care. I have applied for jobs at both local and national retail chains in the [redacted] area, but have always been turned down after the employer conducted a background check on me. I take odd jobs now where I can get them because I don't want to put myself through the humiliation of getting turned down for yet another job. I know what people think when they see the charges I have been convicted of, and it hurts too much to think about putting myself through that again.

40. Because I have no stable source of income, I am forced to rely on friends for places to stay. This instability has made it hard to stay focused on what I know is important- getting a job and staying sober. It is easy for me to get overwhelmed

thinking about everything I have been through, but I am doing the best I can to stay strong.

41. I attend Narcotics and Alcoholics Anonymous meetings daily, many of which are held at the [redacted] in [redacted] I have also reconnected with my healthcare providers at [redacted], who started me on Gabapentin and Trazodone to treat my anxiety and depression. I am also seeing a counselor there regularly. A letter from my therapist, [redacted] is attached as Exhibit F.

42. For these reasons, I am now seeking to have my prostitution conviction vacated, as it represents obstacles to my future progress and success. This conviction bars me from specific types of employment and housing, and has other negative consequences for me. I have worked hard to move on from my painful past and begin life again, yet I am forced to endure the costs associated with a criminal record for conduct I was forced to engage in by my trafficker.

43. I respectfully request that this Honorable Court grant this motion and enter an order vacating the judgment of conviction for prostitution entered under Case No. [redacted] and shield the record of the associated drug conviction.

Wherefore, I declare under penalty of perjury, this __ day of ____ 20[redacted] in [redacted], MD that the foregoing is true and correct to the best of my knowledge.

_____
[redacted]

Sworn before me this _____ day of _____ 20[redacted]

_____

Appendix A-10

B-2. Sample Defendant's Affidavit in Support of Motion to Vacate Judgment

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____ [xviii]

The People of the State of New York	:	
Plaintiffs,	:	AFFIDAVIT
- against -	:	Indictment No._____ [xix]
_____, [xx]	:	
Defendant.	:	

State of New York)
County of _____ [xxi] ss.:)

_____, [xxii] being duly sworn, deposes and says:

1. I am the defendant in the above-entitled proceeding. I make this affidavit in support of a motion, pursuant to section 440.10, subdivision _____, [xxiii] to vacate the judgment of conviction herein, upon the ground that _____. [xxiv]

2. I was indicted for _____. [xxv] At the arraignment I entered a plea of "not guilty" and posted bail in the amount of $_____. [xxvi] I was tried in this court before Hon. Judge_____ _____ [xxvii] on_____, _____. [xxviii] The case was submitted to a jury, which rendered a verdict of guilty. [xxix]

3. On _____, _____, [xxx] I was sentenced to _____. [xxxi]

4. The evidence adduced at my trial may be summarized as follows:

_____
_____
_____. [xxxii]

5. _____. [xxxiii]

6. [*If applicable, include*:] Among the evidence gathered by the State in its investigation of the crime and admitted at my trial [*or*] but not admitted at my trial was _____, which contains Deoxyribonucleic Acid (DNA). DNA testing of _____ is relevant to proof of guilt in that _____ _____. My conviction occurred prior to January 1, 1996, to wit, on _____, _____. [xxxiv]

7. The ground(s) for relief raised upon this motion has (have) not previously been determined on the merits upon a prior motion or proceeding in a court of this state, or upon an appeal from the judgment, or upon a prior motion or proceeding in a federal court. [xxxv]

WHEREFORE, I respectfully request that my conviction be vacated on the ground that_____ _____, [xxxvi] and that this Court grant such other and further relief as it may deem just and proper [*or if applicable*:] WHEREFORE, I respectfully request an Order of this Court pursuant to N.Y. Crim. Proc. Law § 440.30(1-a), directing that forensic Deoxyribonucleic Acid (DNA) testing be conducted upon _____ _____. [xxxvii]

_____ [xxxviii]

_____ [xxxix] _____

Sworn to before me this:
day of _____, 20____

_____ [xl]
NOTARY PUBLIC

Appendix A-11

B-4. Sample Defendant's Affidavit in Support of Motion to Set Aside Sentence

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____[lv]

The People of the State of New York Plaintiffs, - against - _____,[lvii] Defendant.	AFFIDAVIT Indictment No._____[lvi]

State of New York)
County of _____[lviii] ss.:)

_____,[lix] being duly sworn, deposes and says:

1. I am the defendant in the above-entitled proceeding. I make this affidavit in support of a motion, pursuant to section 440.20 to set aside the sentence herein, upon the ground that _____ _____.[lx]

2. I was indicted for _____.[lxi] At the arraignment I entered a plea of "not guilty" and posted bail in the amount of $_____.[lxii] I was tried in this court before Hon. Judge _____ _____[lxiii] on _____, _____.[lxiv]

3. After a trial[lxv] held on _____ _____, _____,[lxvi] I was found guilty of count(s) _____[lxvii] of the indictment charging _____ in the _____ degree, a Class _____ felony.[lxviii] Bail was revoked and I was held in the _____, located at _____, _____ _____,[lxix] New York, until the sentencing for my conviction held on _____, _____[lxx] before Hon. Judge _____[lxxi] in Criminal Term Part _____ of the _____ _____[lxxii] County Supreme Court.

4. I was sentenced to a _____ term of imprisonment at _____Correction Facility, _____,[lxxiii] New York.

5. _____.[lxxiv]

6. _____.[lxxv]

7. The ground(s) for relief described by this affidavit has (have) not previously been determined on the merits upon a prior motion or proceeding in a court of this state other than an appeal from the judgment, or upon a prior motion or proceeding in a federal court.[lxxvi]

WHEREFORE, I respectfully request that this Court enter an order, pursuant to section 440.20 of the Criminal Procedure Law, setting aside the sentence imposed upon me and resentencing me in accordance with law, and granting such other and further relief as the Court may deem just and proper.

_____
_____[lxxvii]
Sworn to before me this:
day of _____, 20____
_____[lxxviii]
NOTARY PUBLIC

Appendix A-12A

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK, PART AR6
----------X
THE PEOPLE OF THE STATE OF NEW YORK,

- against -

AFFIDAVIT

Docket No.
_____

CLIENT NAME,

Defendant.
----------X

TO BE FILED UNDER SEAL PURSUANT TO CIVIL RIGHTS LAW § 50-B

STATE OF NEW YORK
ss.:
COUNTY OF NEW YORK

CLIENT NAME, being duly sworn, deposes and says:

1. My name is CLIENT NAME. I am the person prosecuted and convicted in the above-captioned docket. I submit this affidavit in support of the motion to vacate my prior prostitution-related conviction because that conviction is the result of my being a victim of trafficking.

Childhood in Mexico

2. I was born on January 3, 1980 in Monterrey, Mexico. I was the youngest of three children. My father left us when I was six years old.
3. Our financial situation was difficult after my father left. My mother never graduated from high school and it was difficult for her to earn enough to support me and my

brothers. As far as I know, my father my father never sent any money to my family after he left us.

4. I dropped out of school in Mexico when I was sixteen years old. After dropping out, I went to work with my cousin who cleaned houses. I worked as a live-in domestic worker about an hour from home for eight months. After that, I worked in a bakery with a different cousin and lived with her in the same town.

Meeting my Trafficker

5. On a Friday morning in November 1998, as I walked through a park near my cousin's house, a man I did not know began following me. He appeared older, and I later found out he was 32. As he followed me and said nice things to me, I became less nervous and was flattered by his attention. He introduced himself as Ricardo. He then asked me for my telephone number and I gave him the bakery's number.
6. Ricardo and I went on a few dates and after about two weeks he told me he wanted me to meet his family. He told me his family lived in a nearby town and that we would have to take a bus to get there. Ricardo took me to the bus station where he bought tickets to a location unknown to me. About thirty minutes into the ride, I became scared and kept asking him where we were going. He refused to tell me. I insisted to Ricardo that we get off the bus but he kept telling me we were almost there. We were on the bus for three hours without stopping.
7. We arrived in a very small town in an area I'd never been to before around 2PM. We went to a two-story house that was empty when we arrived. Ricardo told me

his family would arrive shortly and we would have dinner with them. We waited for a long time but no one showed up.

8. Around 8PM, I begged Ricardo to take me back to my cousin's house. He scolded me, saying it would be rude to come all the way to his family's house and not meet them. He would not let me leave, and since I had no idea where I was, I was afraid to leave on my own. I eventually fell asleep, and when I woke up the next morning Ricardo had taken my purse and keys. He refused to take me home and did not let me call my cousin or boss to tell them where I was. Ricardo's parents and four brothers were also in the house when I woke up and I discovered that they all lived in the home together.
9. After a few days at Ricardo's house, I realized that he was never going to take me back home.
10. On the third day in Ricardo's house, I began a sexual relationship with him. I was only eighteen and believed we were going to get married.
11. Soon after we began a sexual relationship, Ricardo became abusive towards me. One time, he came home drunk and wanted to have sex. I told him I didn't want to have sex but he got on top of me anyway. I pushed him off and ran downstairs. Ricardo followed me to the kitchen and punched me, then forced me to have sex.
12. I ended up spending about a month at Ricardo's house. While I was there, Ricardo told me not to leave the house because I would get robbed. While in the house, I cooked and cleaned.

13. Ricardo allowed me to call my mother one time while I was living with him. I told my mother that I was with him and she cried and asked why I would do that. I told her it was okay and we would visit soon so Ricardo could ask her for my hand in marriage. Ricardo stood next to me the entire time I was on the phone.

Trafficked into the U.S.

14. One night, after that month in the house, Ricardo told me we were going over to his uncle's house for dinner. When we got to his uncle's house, I found out that his uncle was a coyote and that Ricardo planned for the two of us to go to the U.S. Ricardo paid his uncle $2500 to help us cross the border and get us both fake birth certificates. I did not want to try and cross the border but I had no money and nowhere to turn, so I obeyed what Ricardo said.
15. In January 1999, we crossed into the U.S. We walked from house to house and then got into the back of a van where we drove for hours and hours. I am not sure where we were during that time but we ended up in New York.
16. We stayed in the basement of a house with Ricardo's brother and his girlfriend. A few weeks went by and Ricardo was spending less and less time at the house. I kept asking him about getting a job, but he said I didn't need to work because his brother was lending us money.

Victim of Severe Form of Trafficking with Ricardo

17. After about two months, in March 1999, Ricardo told me I should engage in prostitution to get money. He said we had to pay back his uncle and that if we saved enough money we could build a house in Mexico. Ricardo told me his brother's girlfriend was already engaging in prostitution and that she was making good money.
18. For a few weeks, I refused to engage in prostitution. I cried all the time and said I wanted to go home. Ricardo told me I had to make money if I wanted to go home. Because I had nowhere to go, spoke no English, and knew no one else in the U.S., I felt like I had no choice but to start engaging in prostitution. I was expected to be at a different brothel each week, for six days a week. If I missed any days, Ricardo would hit me.
19. Ricardo's brother's girlfriend made the arrangements for us. We would take taxis to brothels in neighborhoods all around New York. Ricardo made me give him all the money I made.
20. Ricardo became physically abusive toward me, especially when he drank. He hit my face, punched my arms and legs, kicked me, and locked me in the bathroom. Sometimes I locked myself in the bathroom to escape him but he would force the door open and come in and hit me.
21. When he had been drinking, Ricardo expected me to have sex with him whenever he wanted. On more than one occasion, after drinking, he raped me.
22. Ricardo prostituted me for four years. I often told him that I did not want to engage in prostitution, but he always told me that I had to. I thought that I loved Ricardo

and did not want him to leave me. I did not know anyone else in the U.S. but Ricardo and his family and I depended on them. He always told me he loved me, and since he was sometimes kind to me, I believed him. He promised that when we had enough money we would move back to Mexico and build a house. He told me he knew exactly how much we needed to save for flights and construction on a home and that we were getting closer to having enough.

23. I felt helpless throughout this time. I felt I did not have any choice but to engage in prostitution. I never left the house except to make money or when Ricardo took me out. Ricardo told me not to speak to anyone, and I know that his brother's girlfriend reported back to him each morning.

Arrest

24. Ricardo had given me specific instructions as to what I should do if I were arrested. He told me to give the police a fake name. I received additional instructions from the people who ran the brothels. They told us not to provide any information to the police and that they would arrange lawyers for us.
25. I was arrested only one time. I was charged with prostitution and trespassing. The lawyer told me to plead guilty to both charges because I would not have to spend time in jail. I gave both the lawyer and the court a fake name, which is why this conviction is under a different name. I think there were other women arrested at the same time as me because they were at the same brothel that day.

Escape from my Trafficker

26. One day in the spring of 2003, I woke up and Ricardo was not there. It was not unusual for him to be gone for a few days at a time, and I was not feeling well so I did not go out that day.
27. The next day, I went out to the brothel and when I got home afterwards Ricardo was still not there. Only now, the clothes that I had and the small amount of money I had hidden away were gone.
28. I confronted Ricardo's brother about it and he said he didn't know anything about it. He also told me that Ricardo was with another woman and was not coming back.

Return to Prostitution

29. I was very upset with Ricardo, but also relieved in some way because I thought I would not have to engage in prostitution anymore. A girl I knew from one of the brothels let me stay with her for a few months. I started to look for work to support myself but employment agencies told me I needed work papers. I had no English skills or legal status in the U.S. so I was unable to find work
30. I learned through some of the girls at the different brothels that Ricardo was looking for me. I tried to avoid brothels where his brother's girlfriend engaged in prostitution, but we still ended up at the same places on a few occasions. I had bought a new cell phone and somehow he got the number and started calling me repeatedly. I would answer because part of me still felt like I loved him, but I was too scared to ever meet up with him in person. I was worried he would try to

prostitute me again and hurt me if I refused. After a few weeks, the calls from Ricardo slowed down to one every few months.

31. I hated that I was still engaging in prostitution but I could not do anything else. My friend got evicted from her apartment so we rented a studio apartment together but it was very expensive and prostitution was the only way I had to support myself because I did not speak English or have the skills to work a different job.

32. I was also very afraid that someone would recognize me. I thought that, even if I could get a job outside of prostitution, I might run into some of the clients I was forced to have sex with. I worried about seeing them outside of the brothel because I did not know what they would say to me or if they would harass me and embarrass me in front of others, especially those in my Mexican community. It would have been horrendous for people to know that I engaged in prostitution, even if they know I was forced to do it.

Rebuilding my Life

33. My roommate was ultimately arrested and she got a lawyer with Legal Aid. Her lawyer connected her with a social worker, and when she felt comfortable with the social worker, she told me I should reach out to that agency as well. I reached out and was linked with a social worker they very next day.

34. With the help of my social service providers, I have moved on and received counseling. I know now that it is okay for me to participate in regular society and that I am worthy of the community. My social worker helped me get out of prostitution. I am doing better now and would never consider entering into

prostitution again. I have rebuilt my life and get emotional strength from my social worker, my new friends (other women who were also trafficked into sex work from Mexico) and my family.

35. My social worker helped me find employment at a restaurant. I have worked at the restaurant for about three years now and have performed most roles: hostess, dishwasher, and waitress. I am very interested in learning how to cook well and my manager lets me back into the kitchen when it is slow so that I may be able to work as a cook there some day.
36. I worry that my record will hurt my chances of advancing my employment or finding other employment in the future.
37. In addition, it is crucial for me to vacate the convictions for peace of mind. I have been through a lot and wiping the record clean would help me to put the pain of those years behind me.
38. With my record clean, I will also be able to focus on my future. I'd like to learn English and maybe even go to school for cooking. I also dream of buying a home some day and maybe having a child.
39. In light of the above, and based on the arguments of my counsel, I respectfully request that this Court grant this motion and enter an order vacating the judgments of conviction entered in the above-styled cases, and dismissing the accusatory instruments.



I certify under penalty of perjury that the above statements have been read to me in Spanish and are true and correct to the best of my knowledge.

_____
CLIENT NAME

Dated: December __, 2017
New York, New York

_____
CLIENT NAME

Sworn to before me this __ day of December, 2017.

_____
NOTARY PUBLIC

Appendix A-12B

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK, PART AR6
----------X
THE PEOPLE OF THE STATE OF NEW YORK,

- against -

AFFIDAVIT

Docket No.
_____

CLIENT NAME,

Defendant.
----------X

TO BE FILED UNDER SEAL PURSUANT TO CIVIL RIGHTS LAW § 50-B

STATE OF NEW YORK
ss.:
COUNTY OF NEW YORK

CLIENT NAME, being duly sworn, deposes and says:

Background

1. I am the defendant prosecuted [under the names ALIAS 1, ALIAS 2] (if applicable) in the above captioned docket[s].
2. I was born on August 8, 1985 in Miami, Florida. My parents are very conservative Southern Baptists and had difficulty raising a free-spirited girl.
3. Growing up, I was often bullied by my peers for everything from my clothing choices to the attention I received from boys. My parents did not deal with this well, and I didn't feel like they ever really listened to me. I was smart and did well in school when I was young, but had real problems fitting in.

4. When I started 6th grade I began avoiding school and missing classes in response to the way I was treated by other kids my age. As a result, I changed school environments several times in two years. In my new school where I started 9th grade I again experienced bullying and abuse. Being in the best school program and one of the most dangerous areas was a bad combination. I did not feel safe there.
5. In 2000, at the beginning of 10th grade, a girl I didn't know approached me and asking if I wanted a ride home. She was a senior, and I thought she could be a new friend. She ended up taking me to her apartment where she gave me a drink which I thought was water. The next thing I knew I was regaining consciousness in the apartment. My clothes were disheveled and blood-stained and I was confused and afraid. I ran to a nearby McDonalds to try and gather myself and someone there called 911.
6. I was taken to Miami Hospital, where I learned later that I had been raped by three members of a gang.
7. From the hospital, my parents took me to the police precinct to make a report. The officers told me that what happened to me sounded like a gang initiation. When my parents heard this, they refused to let me come home with them. They told me that I was going to hell and should be ashamed of my behavior. I was placed in a group home in a nearby city. I felt horribly alone and neglected, and I was afraid because of the gang-related activity in the area.

8. I ran away from the group home back to my own neighborhood. For about four months, I had no real home. I stayed on friends' couches or the bus terminal when the weather was good.
9. My parents showed up to my school one afternoon and told me they were ready to forgive me and I was to come home. There was a lot of friction when I returned home. I was upset, angry, and hurt that they could abandon me because I was raped. My parents, in turn, couldn't understand why I was angry with them. I left my parents' house and went to live with the one person I felt I could rely on, my boyfriend. His name was Alex.
10. I moved to Atlanta with Alex when I was 17 years old, and my life seemed to improve. I finally felt like I had someone in my life I could trust and that made me feel safe. We got engaged and I became pregnant.
11. After the birth of our daughter on April 2, 2003, Alex became controlling and abusive. He would lock me in our apartment and not allow me to leave. He also became violent. On one occasion, he beat me severely and threw a glass at my head.
12. During this time, I became depressed and was engaging in self-destructive behavior like cutting myself and drinking excessively. Alex threatened that he was going to take my daughter away from me because I was an alcoholic. I was terrified that he was telling me the truth, but I couldn't stop drinking.
13. One morning, I woke up and Alex and my daughter were gone. He left me a note saying they were going to St. Louis to stay with his family and that I was not welcome to follow them because I had to get my life together first.

14. I was stunned and devastated that Alex had done this to me. For the next week, I called Alex repeatedly and, the few times he answered, he told me I needed help and that I could see our daughter when I was sober. I continued to drink heavily over this week. I wanted to fly to St. Louis but I had no money for a plane ticket, and I didn't even have money to keep paying rent on our small apartment. I didn't have a job and knew that I wouldn't be able to survive for long without an income.

Initial Interaction with Traffickers

15. After about a week, I was out drinking at a bar when I met a man named Jimmy who manipulated me into prostitution. We talked for a long time and I told him I was having trouble with money and I needed money for a flight to see my daughter. He told me he owned a business and that I could work for him if I wanted. I felt like it was too good to be true. He didn't give any more details about his business but said that I would make good money and I could start right away. He said we should celebrate and his friend would come give us a ride to another bar.
16. Within a minute a blue Honda pulled up, driven by a man I later learned was called "Slim". Slim and some other men put me into the backseat, with a man on one side of me, and took me to a one-story house in the Southern part of town. I was confused why were at a house and not another bar, but I didn't want to mess up my job offer.
17. When we entered the house, there were many young men there smoking marijuana, and some women there too. Jimmy took my identification, cell phone, and benefits card. He talked to me about pimping, then left the room to find me clothes I could

wear to engage in prostitution. While he was looking for clothes for me, I thought about trying to escape. The latch on the window was painted over, but I tried to pry it open anyways. Jimmy entered the room as I was doing this and he punched me. He beat me up pretty bad, and then he locked me in a closet. I did not engage in prostitution that night. Instead, Jimmy kept me in the house and did not feed me for two days. From then on, I was rarely out of his sight; he would even accompany me to the bathroom.

Forced into Prostitution

18. After a few days, Jimmy drove me to New York. The drive took us several days. When we got there, he had me begin to engage in prostitution. I was terrified of him, but I thought I might be able to get away from him. It turned out that Jimmy and his friends had an elaborate operation, working together to watch the girls of each pimp and communicating on throw-away cell phones. Jimmy only had other girls, but some of the other pimps had up to a dozen girls engaging in prostitution for them.
19. In my first week with Jimmy, I got into a car with a john and begged him to just drive me away. I told him I would do anything if he would just start driving and drop me off in a different neighborhood. Instead, he turned his car around and told my pimp that I was trying to escape. Jimmy was enraged. He threw gasoline on my feet and then threw his lighter at me. I was able to get the fire out before it burned me too badly, but I realized then how crazy he was. I tried to do what he told me after that, because I knew he could kill me.

20. After I tried to escape, I was kept in a room in the house. I was still forced to engage in prostitution, but instead of getting into cars, johns would come to the house. I didn't have any more opportunities to leave.
21. After a few months of being kept at the house, Jimmy started putting me onto the streets again. We would go with other pimps and their girls, and although I would only see Jimmy to give him the money I was earning every couple of "dates," I was being constantly watched by the other pimps.
22. Even during this terrible period, I remained hopeful that I would be able to see my daughter again soon if I could hold on to some of my money. Although I no longer had my cell phone, I would call Alex from payphones in between "dates" and talk briefly to my daughter. I didn't tell Alex what I was doing but I think he knew I was in trouble. Jimmy also knew about my desire to go see my daughter, and he regularly told me that when I earned enough money he would buy me a plane ticket.
23. Although the pimps tried to avoid areas with a lot of police activity, I was arrested twice when I was engaging in prostitution for Jimmy – once in the County of New York and once in Queens. I actually did not mind getting arrested in a small way because then I could get some rest.
24. After my second arrest, Jimmy beat me again for "wasting his time." This time was even more severe than all the other times. I don't have any memories of the incident other than waking up in the hospital. I was told that the neighbors called the police after they saw me, naked and covered in blood, crawling out of the apartment, and Jimmy grabbing me by the hair and pulling me back into the apartment. The police

asked if I wanted to press charges, but I said no because I was afraid. After the beating, one of Jimmy's cousins bought me a bus ticket to Miami because he thought I was causing too much trouble. Jimmy stayed in Las Vegas.

Road to Recovery

25. I was able to exchange the bus ticket to Miami for one to St. Louis. When I arrived there, I called Alex and he came and picked me up. He showed me that he had a final order granting him sole custody of my daughter. He said I could stay with them and his parents for a few days to visit and collect myself.
26. Seeing my daughter for those few days was amazing. She had gotten so much bigger and I felt so happy being around her. After four days, though, Alex told me I had to leave because I wasn't a good influence for her. I decided to stay in the area so that I could keep the chance of seeing my daughter again in the future. I also didn't really have anywhere else to go.
27. When my face healed I returned to prostitution for a short time because that was all I knew how to do. I got a cheap apartment that was near Alex and my daughter, and even though he didn't let me see her, I felt peace knowing she was close. Like before, I had to get drunk to engage in prostitution. Now, however, when I got drunk I was haunted by my memories. I realized I was killing myself. I realized I wanted more out of my life. I wanted my daughter back in my life. I stopped engaging in prostitution and began the three-year journey of reclaiming my life.
28. Despite my personal and family struggles, I have made other substantial changes in my life. I have fully reconciled with my parents and am working on a better

relationship with them. Alex and I now have joint custody of my daughter, who remains the most important part of my life.

29. In 2008, I enrolled in a Veterinary Science Certificate Program with the Veterinary School of Florida, and I graduated a year later with my certificate.
30. I have been working to overcome the things I have gone through, but I believe that the convictions on my record have been a barrier to my success. For example, I was denied public housing in 2009, and I have been unable to gain employment using my certificate. I believe that if my convictions were vacated I would be able to move on with my life.
31. I recently began therapy at the recommendation of an organization I was referred to in Florida. I find therapy is helping me deal with these things from my past. I am excited to continue with my progress in life and am hopeful that if this conviction is vacated, I will be able to accomplish many of my goals.
32. For these reasons, I respectfully request that this Court grant this motion to vacate.

Dated: December __, 2017
New York, New York

_____
CLIENT NAME

Sworn to before me this __ day of December, 2017.

_____
NOTARY PUBLIC


Freedom Network USA

Appendix A-13

The following appendix is a PDF of Professor Stephanie Richard's expert declaration. You may submit the declaration in your case, provided that you inform Professor Richard via email at Stephanie.Richard@lls.edu, cc: richard_stephani@hotmail.com; and fill out a short questionnaire at https://airtable.com/appVzzZ7AUiaS21LN/pagvIcBUHKY0PVto8/form

EXPERT DECLARATION OF STEPHANIE RICHARD

I, Stephanie Richard, declare as follows

1. This expert declaration can be used to explain the dynamics in human trafficking cases involving forced criminality and factors that often result in the arrest and/or conviction of human trafficking victims for crimes they were forced to commit.

2. My name is Stephanie Richard, and I have spent my career as a human trafficking victim service provider. I am currently a Visiting Associate Clinical Professor at Loyola Law School and the Director of the Sunita Jain Anti-Trafficking Initiative (SJI). Prior to assuming leadership of SJI, I directed Loyola Law School's Rights in Systems Enforced (RISE) Clinic for three years.

3. Before joining Loyola, I served for 14 years as the Policy & Legal Services Director / Senior Policy Counsel at the Coalition to Abolish Slavery and Trafficking (CAST), a nationally and internationally recognized organization dedicated to serving survivors of human trafficking. Since 1998, CAST has provided comprehensive social and legal services to trafficking victims throughout the United States. In my role at CAST, I oversaw both the legal services program and the national technical assistance and training program for attorneys representing trafficking survivors across the country.

4. During my tenure as Director of Policy & Legal Services, I directly served and supervised hundreds of trafficking cases and provided technical consultation on thousands more. Individuals are eligible for CAST services only after being identified as victims of human trafficking. CAST works closely with law enforcement partners to ensure traffickers are held accountable, and the organization is a founding member of both the Los Angeles Metropolitan Area Task Force on Human Trafficking and the Los Angeles County Sheriff's Regional Human Trafficking Task Force, which include federal, state, and local law enforcement agencies.

5. CAST played a key role in the passage of the Trafficking Victims Protection Act of 2000 (TVPA), and I personally worked on each subsequent reauthorization of the legislation. The TVPA recognized the many forms of modern-day slavery, established new federal criminal statutes, and expanded protections and benefits for victims. I also sponsored and drafted the California provisions establishing both an affirmative defense and criminal vacatur relief for trafficking victims compelled to engage in criminal conduct as a result of their victimization.

6. I earned a Bachelor of Arts from Rice University, graduating with a triple major in Policy Studies, Sociology, and English. I received my Juris Doctor from American University Washington College of Law in 2005. I am admitted to practice law in California, Maryland, the District of Columbia, and Minnesota.

7. My work on human trafficking issues began in 2002, when I helped organize the first national conference for human trafficking service providers to advocate for the reauthorization of the Trafficking Victims Protection Act of 2003. Throughout law school, I intentionally focused my studies and professional experiences on this emerging area of law.

8. In 2006, I joined CAST as a Staff Attorney, where I directly represented more than 120 victims of human trafficking and conducted intake assessments to determine eligibility for CAST services. After one year in that position, I returned to CAST in January 2008 as Managing Attorney. In addition to continuing direct representation and conducting eligibility assessments, I began providing nationwide technical assistance and case consultation to attorneys and service providers. I hosted a monthly national consultation call addressing case-specific legal questions and regularly provided technical assistance to approximately 15 to 20 organizations each month.

9. I also developed extensive training materials for judges, law enforcement officers, attorneys, and social service providers. Among these resources, I authored a 150-page legal resource manual and produced a practitioner template toolkit that has been widely used throughout California. These materials were certified for Minimum Continuing Legal Education (MCLE) credit by the State Bar of California. Three to four times each year, I delivered a seven-hour State Bar-certified legal training program for attorneys across California.

10. In January 2009, I became Policy & Legal Services Director at CAST. In that capacity, I continued overseeing CAST's legal services and technical assistance programs while also directing the organization's federal and state legislative advocacy efforts. I served as a liaison with numerous federal agencies, including the U.S. Department of Justice, Department of Health and Human Services, Department of Labor, and Department of Homeland Security. I also worked closely with the Los Angeles Police Department Human Trafficking Task Force, the Los Angeles County Sheriff's Department, the Los Angeles City Attorney's Office, and the Los Angeles County District Attorney's Office to implement critical protections and services for trafficking victims throughout Los Angeles County.

11. I have extensive expertise in the issue of labor trafficking involving forced criminality. Throughout my career, I have interviewed, identified, and represented victims who were compelled by traffickers to engage in criminal activity. In 2015, I collaborated with the National Survivor Network to draft a report examining the criminalization of trafficking survivors and documenting how many victims become involved in criminal conduct as a direct result of coercion and abuse by their traffickers.

12. In 2016, I used CAST's original data to publish a white paper entitled *Arrest Is Not*

the Answer, which documented the increased likelihood that trafficking survivors would be arrested while being trafficked. Based on this research, I worked on both federal and California legislation establishing affirmative defenses and criminal record relief for trafficking victims forced to commit crimes by their traffickers.

13. In 2024, I published a law review article entitled *Child Labor Trafficking: The Overlooked Issue*, which examines the ways child labor trafficking has been overlooked within the child welfare system and discusses the issue of labor trafficking by forced criminality. That same year, I supervised the publication of a report by a staff member of the Sunita Jain Anti-Trafficking Initiative entitled *Identifying and Addressing the Needs of Youth Who Are Labor Trafficked Through Forced Criminality in the Los Angeles Area*.

14. Starting in 2023 I have supported both the Los Angeles County Department of Children and Family Services and the California Department of Social Services by providing expert guidance on improving systems, protocols, and training designed to identify and protect child victims of forced criminality. In September 2026, I served as the keynote speaker for the Cook County Task Force on Human Trafficking Annual Conference in Indiana, where I presented on labor trafficking involving forced criminality. In November, I provided specialized training on this topic to juvenile-focused prosecutors in the Los Angeles County District Attorney's Office.

Background: What Is Human Trafficking? (Federal Law)

15. Under federal law, human trafficking is defined by the Trafficking Victims Protection Act (TVPA) and its criminal provisions at 18 U.S.C. §§ 1589–1591. These statutes prohibit obtaining a person's labor, services, or commercial sex acts through force, threats of force, fraud, coercion, or abuse of legal process.

Forced Labor (18 U.S.C. § 1589)

A person commits forced labor when they knowingly provide or obtain the labor or services of another through:

- Force or threats of force
- Serious harm or threats of serious harm
- Physical restraint or threats of restraint
- Abuse or threatened abuse of law or legal process.
- Any scheme, plan, or pattern intended to make a person believe they would suffer serious harm if they did not perform the labor or services.

"**Serious harm**" includes physical, psychological, financial, or reputational harm—any harm that would compel a reasonable person in the victim's circumstances to continue providing labor or services.

Sex Trafficking (18 U.S.C. § 1591)

Sex trafficking occurs when a person recruits, entices, harbors, transports, provides, obtains, or maintains another person for a commercial sex act through force, fraud, or coercion, or when the person induced to engage in the act is under 18 years old, regardless of force, fraud, or coercion.

Coercion Under Federal Law

Federal law defines coercion broadly to include:

- Threats of serious harm
- Physical restraint
- Psychological manipulation
- Debt manipulation
- Abuse of legal process
- Threats of deportation or arrest
- Schemes designed to make a person believe they have no safe alternative but to comply.

16. These provisions reflect Congress's recognition that traffickers often rely on non-physical forms of control that overbear a person's free will.

Who Is a "Victim" Under the TVPA 22 U.S.C. § 7102(15)

17. The TVPA defines a "victim of a severe form of trafficking in persons" as:

    1. A person subjected to sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act is under 18 years of age; or

    2. A person subjected to labor trafficking, meaning the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through force, fraud, or coercion for the purpose of involuntary servitude, peonage, debt bondage, or slavery.

18. This definition makes clear that a person is a trafficking victim based on what was done to them, not on whether they were able to escape, resist, or self-identify.

Forced Criminality

19. Although the term "human trafficking for forced criminality" does not appear in the TVPA, the U.S. Department of State formally recognized this terminology in the 2014 Trafficking in Persons (TIP) Report and continues to identify it as a distinct and frequently overlooked form of trafficking.

20. The 2014 TIP Report documents cases in which traffickers compel adults or children to commit unlawful acts as part of their exploitation, including:

    - Organized criminal groups in Mexico coercing children and migrants into drug production, transport, and targeted killings.

- Roma children in France forced to commit burglaries under threat and violence.
- Insurgent and militant groups in Afghanistan and Pakistan using children as suicide bombers.
- Vietnamese and Chinese victims forced to cultivate cannabis in the United Kingdom and Denmark

21. In 2014 the TIP office reported that Victims coerced into criminal activity are often misidentified as offenders due to inadequate screening and lack of awareness of the non-punishment principle.[1] The research being conducted today highlights that this same issue continues, including the high rates of victims arrested and criminalized for crimes they were forced to commit due to inadequate screening and systemic bias.[1]

Definition: Human Trafficking by Forced Criminality

22. Human trafficking by forced criminality refers to the recruitment, harboring, transportation, provision, or obtaining of a person through force, fraud, or coercion for the purpose of compelling them to engage in unlawful activities. The criminal acts—such as theft, drug production & sales, or armed violence—are carried out under threats, coercion, or exploitation of vulnerability, making the individual's criminalized conduct a direct consequence of their trafficking situation.

23. Recent global data show that detected cases of trafficking for forced criminality are increasing with about 22% of all the victims identified in Western and Southern Europe as victims of forced criminality, including drug trafficking.[2] In 2017, the operator of the U.S. National Human Trafficking Hotline identified "illicit industries" as one of the top 25 categories of trafficking reported to the hotline during its first decade of operation.[3] A 2023 article documents how labor-trafficking victims in the United States are forced to commit crimes—under threats, coercion, or fraud and are routinely misidentified as offenders rather than victims. The authors draw on case studies, survivor interviews, and multidisciplinary research to show that forced

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[1] U.S. Dep't of State, Office to Monitor & Combat Trafficking in Persons, *The Use of Forced Criminality, Victims Hidden Behind the Crime* (June 2014) Available at https://2009-2017.state.gov/documents/organization/233938.pdf; [2] Northeastern Univ., Ctr. on Crime, Race & Just., *Understanding the Scope and Nature of Forced Criminality in the United States* (Jan. 17, 2025) Available at https://cssh.northeastern.edu/crj/understanding-the-scope-and-nature-of-forced-criminality-in-the-united-states/ (describing a federally funded study examining the scope, risk factors, and criminal-legal consequences of human trafficking forced criminality, including the high rates at which victims are arrested, misidentified, and further criminalized due to inadequate screening and systemic bias); *See also* Julia Einbond, Kaitlyn Zedalis & Hanni Stoklosa, *A Case of Mistaken Identity: The Criminalization of Victims of Labor Trafficking by Forced Criminality*, 59 Crim. L. Bull. (May 8, 2023) Available at https://covenanthousenj.org/labor-

[2] U.N. Office on Drugs & Crime, *Global Report on Trafficking in Persons* 53 (2024), https://www.unodc.org/documents/data-and-analysis/glotip/2024/GLOTIP2024_BOOK.pdf ;*See also* U.N. Office on Drugs & Crime, *Global Report on Trafficking in Persons 15* (2022) https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_web.pdf (documenting that although there has been decreased detection of human trafficking cases overall globally, identification of cases of human trafficking for forced criminality "has increased rapidly over the last five years.")

[3] *P*olaris Project, *The Typology of Modern Slavery: Defining Sex and Labor Trafficking in the United States 48-49* (2017), https://polarisproject.org/wp-content/uploads/2019/09/Polaris-Typology-of-Modern-Slavery-1.pdf (Documenting illicit industries as one of the top forms of trafficking reported to the human trafficking hotline.)

criminality is widespread but continues to be an under-underrecognized form of trafficking, and that the criminal legal system frequently fails to identify victims at the time of arrest.[4]

Trafficking Survivors Relief Act (TSRA): Purpose and Legislative History

24. The Trafficking Survivors Relief Act (TSRA) was signed into law in January 2026 in recognition of a longstanding gap in federal law: for years trafficking victims had been arrested, prosecuted, and/or convicted of federal offenses that were a direct result of their victimization. Prior to the TSRA, federal law offered no mechanism for survivors to vacate or expunge these convictions, even when the underlying conduct was compelled by force, fraud, or coercion.

25. The TSRA creates a federal process allowing survivors to petition courts to:

    a. Vacate convictions.

    b. Expunge records.

    c. Seal related law-enforcement and court documents.

when the criminal conduct was a direct result of their trafficking experience. The law aligns federal practice with standards reflected for years in state vacatur statutes given the widespread nature of trafficking victims being arrested and convicted of crimes they were forced to commit.

Legislative History

26. The TSRA was finally passed after over 10 years of bipartisan advocacy by survivors, legal scholars, and anti-trafficking organizations who documented the widespread criminalization of trafficking victims. Congressional hearings highlighted:

    - The frequency with which victims were arrested for crimes they were forced to commit.
    - The lifelong consequences of federal convictions, including barriers to housing, employment, education, and immigration relief.
    - The inconsistency between federal anti-trafficking policy and the absence of a remedy for criminalized survivors

    Members of Congress emphasized that the federal government could not credibly claim to protect trafficking victims while simultaneously allowing their coerced criminal convictions to stand. The TSRA ultimately passed with bipartisan support as part of a broader recognition that identification failures within the criminal legal system had harmed survivors for decades.

27. The Act represents a significant shift in federal policy: it acknowledges that many trafficking victims were never identified as such and that their criminal records are themselves evidence of the forced, fraud or coercion they endure.

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[4] Julia Einbond, Kaitlyn Zedalis & Hanni Stoklosa, *A Case of Mistaken Identity: The Criminalization of Victims of Labor Trafficking by Forced Criminality*, 59 Crim. L. Bull. (May 8, 2023) https://covenanthousenj.org/wp-content/uploads/2023/05/LTFC-Crim-Law-Bulletin.pdf

KEY FEATURES OF HUMAN TRAFFICKING CASES

Human Trafficking Cases Often Do Not Look Like What People Expect

28. One of the most significant barriers to identifying human trafficking victims is the widespread misconception that trafficking always involves physical restraint, captivity, or visible physical abuse. Many people envision trafficking victims as being locked in rooms, chained, constantly monitored, or subjected to severe physical violence. While such cases do occur, they represent only a portion of trafficking situations.

29. In reality, trafficking is often maintained through what survivors and advocates commonly describe as "invisible chains" of force, fraud, coercion, manipulation, fear, trauma, debt, emotional dependency, or threats of harm. As a result, **trafficking victims may appear to outsiders to have freedom and autonomy even when they are experiencing severe exploitation.**

30. Some trafficking survivors have access to cars, cell phones, bank accounts, or social media. Some live in their own apartments, reside with family members, attend school, maintain other employment, attend religious services. Others may appear to move freely and make independent choices. To an untrained observer, these facts may seem inconsistent with victimization. However, traffickers frequently permit or even encourage such appearances because they help conceal the exploitation and reduce suspicion from law enforcement, service providers, and the public. Traffickers commonly use a combination of rewards and punishments, often referred to as a "carrot and stick" approach, to maintain control. Rather than relying solely on physical violence, traffickers may use emotional manipulation, financial dependence, threats against loved ones, debt obligations, housing insecurity, immigration concerns, psychological abuse, or the constant threat of retaliation. Victims may believe that if they stop engaging in commercial sex or cease participating in criminal activities for the benefit of the trafficker, they or their family members will suffer serious harm. In many cases, this fear is based on prior threats, prior acts of violence, or the trafficker's demonstrated ability to carry out retaliation.

31. Each Human trafficking case is therefore highly complex and dynamic. The exploitation often develops gradually over months or years, making it difficult for victims, family members, community members, and even professionals to recognize what is occurring. Many survivors do not identify themselves as victims because the coercive relationship has become normalized, because they blame themselves for their circumstances, or because they have been conditioned to view the trafficker as a source of protection, affection, or survival. As a result, **trafficking victims frequently do not seek help, report their exploitation, or disclose victimization during encounters others may think they could have asked for or sought help**. Their statements, actions, and continued contact with traffickers may appear confusing or contradictory to individuals unfamiliar with the dynamics of trafficking. Understanding these realities is critical because trafficking cannot be accurately identified through stereotypes or assumptions about what a victim "should" look like. Instead, effective identification requires a careful assessment of the totality of circumstances, including the presence of force, fraud, coercion, manipulation, and the victim's reasonable fear of serious harm if they refuse to comply with the trafficker's

demands.

Trafficking Survivors Are Often Arrested and/or Convicted Multiple Times

32. Trafficking victims are frequently arrested and convicted multiple times, a pattern that has been documented consistently across national research, survivor-based studies, and direct practice. The National Survivor Network (NSN) conducted a landmark national survey in 2015–2016, updated in 2018 with 130 survivors responding. This survey documented the impact of arrests and convictions on trafficking survivors and found that **90.8% of survivors reported being arrested**, demonstrating that arrest is the norm rather than the exception for individuals coerced into criminal activity. **Out of 130 respondents, only seven survivors** had never been arrested, and one of those had been detained and then returned to her trafficker, underscoring how deeply entangled victims become in criminal-legal systems. The survey further revealed that **40% of trafficking survivors were arrested nine or more times,** showing that repeated arrests are a defining feature of trafficking victimization rather than an outlier.[5] Polaris's 2023 national analysis on the need for criminal-record relief for trafficking survivors was driven by survivors' consistent reports that they were routinely arrested for crimes directly caused by their trafficking and often accumulated long criminal histories because law enforcement failed to identify trafficking at the time of arrest. The report emphasizes that survivors frequently have multiple arrests across jurisdictions, reflecting the chronic nature of coerced criminal activity and the complex dynamics of human trafficking. Polaris also highlights the long-term consequences of these arrests, including barriers to housing, public benefits, education, and other supportive programs, underscoring why comprehensive vacatur relief is essential.[6]These findings align with CAST's 2016 report, *Arrest Is Not the Answer,* which analyzed arrest data from trafficking survivors and found that individuals arrested only for crimes directly related to their trafficking w**ere arrested between one and forty-two times, with an average of 14.86 arrests,** and thats some victims were a**rrested 30 to 40 times** solely for trafficking-related offenses.[7]This extensive arrest history of identified trafficking victims reflects the reality that traffickers place victims in high-risk environments, compel them to engage in criminal conduct repeatedly, and create conditions where victims cannot avoid law-enforcement contact. These data-based findings mirror my own experience over nearly two decades of practice, during which I have represented or advised attorneys supporting survivors who were arrested dozens of times for trafficking-related conduct, including clients whose records took years to clear through state vacatur processes. T**hus, the data consistently demonstrates that repeated arrests are not evidence against trafficking — they are evidence of trafficking.**

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[5] National Survivor Network, *Impact of Arrests and Convictions on Survivors of Human Trafficking* 1, 4-5 (2016), updated 2018, https://nationalsurvivornetwork.org/wp-content/uploads/2019/08/NSNVacate-Survey-2018.pdf

[6] Polaris Project, *Criminal Record Relief for Trafficking Survivors* (2023), https://polarisproject.org/wp-content/uploads/2023/04/Criminal-Record-Relief-for-Trafficking-Survivors-by-Polaris.pdf.

[7] Coalition to Abolish Slavery & Trafficking (CAST), *Arrest Is Not the Answer* 5-6 (2016) https://www.castla.org/wp-content/uploads/2025/04/CAST_Arrest_is_Not_the_Answer_Jan_2016.pdf

Delayed Disclosure, Conflicting Information, and Evolving Narratives In Trafficking Cases

33. Delayed disclosure is a well-documented and expected feature with human trafficking cases. Trafficking survivors often cannot immediately articulate what happened to them because trauma disrupts memory consolidation, sequencing, and the ability to narrate events coherently. Many survivors disclose only partial information at first, and fuller disclosure emerges gradually over time as safety, trust, and stability increase or with an experienced interviewer or mental health professional specialized in human trafficking.[8]

34. Trauma-impacted memory does not simply delay disclosure—it can also produce conflicting or inconsistent information, changes in detail over time, and situations where survivors may initially agree to a statement and later retract or correct it.[10] Human trafficking survivors may also provide information they believe will satisfy authority figures because they fear retaliation, want to avoid conflict, or have learned through prior coercive experiences that compliance is safer than honesty.[11] **Federal guidance further confirms that trafficking cases often have inconsistent statements. Federal training materials emphasize that fragmented, delayed, or evolving narratives are expected and that specialized interviewing techniques and/or specialized interviewers are required to overcome these barriers in human trafficking cases.[9]**

35. The literature therefore supports the conclusion that professionals working with trafficking survivors should expect accounts to be fragmented, inconsistent, or evolving. Such reporting patterns are consistent with the effects of trauma on memory and recall and should not be interpreted as indicators that undermine a victim's credibility.[10]

Trafficking Victims Rarely Disclose Trafficking at Arrest

32. It is also well documented in the trafficking field that victims often do not disclose

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[8] *See* Shobana Powell, *Expecting Delayed Disclosure in Human Trafficking* (Feb. 2024), https://shobanapowell.medium.com/expecting-delayed-disclosure-in-human-trafficking-1de48d3fca88

[10] Seda Altun et al., *Mental Health and Human Trafficking: Responding to Survivors' Needs*, 14 BJPsych Int'l 21 (2017), https: https://pmc.ncbi.nlm.nih.gov/articles/PMC5618827/ (explaining that trafficking survivors may have difficulty recalling and recounting their experiences; and that trauma can affect recall of their experience.)
See also Deborah Strange & M.K. Takarangi, *Memory Distortion for Traumatic Events: The Role of Mental Imagery*, 6 Frontiers Psychiatry 27 (2015), https://doi.org/10.3389/fpsyt.2015.00027(Explaining trauma-related memory distortion increases errors and fragmented and evolving recall.)

[9] S*ee* Office for Victims of Crime Training & Technical Assistance Ctr., *Human Trafficking Task Force Guide* 99 (rev. 2025), https://www.ovcttac.gov/downloads/resourceLibrary/Human-Trafficking-Guide_508c_JP_1-23-26.pdf; Nat'l Inst. of Just., *Identifying and Investigating Human Trafficking: Guidance for Law Enforcement* 3, 13–15 (2024), https://www.ojp.gov/pdffiles1/nij/309058.pdf;*See also* Int'l Org. for Migration, *Investigating Human Trafficking Cases Using a Victim-centered Approach: A Trainer's Manual on Combating Trafficking in Persons for Capacity-building of Law; Enforcement Officers https://publications.iom.int/system/files/pdf/investigating_human_trafficking.pdf*

[10] *See* Elizabeth Hopper & José Hidalgo, *Invisible Chains: Psychological Coercion of Human Trafficking Victims*, 1 Intercultural Hum. Rts. L. Rev. 185 (2006), https://scholarship.stu.edu/ihrlr/vol1/iss1/17. (Providing a foundational analysis of psychological coercion in human trafficking and explaining how traffickers use fear, threats, manipulation, isolation, and dependency to control victims. The coercive strategies used by traffickers thus have greater influence, effectively creating a cyclical psychological "trap" for victims. Coercion often produces compliance and minimization all of which are predictable trauma responses.)

their exploitation at the time of arrest or during initial law-enforcement contact. This pattern is consistent across national research, federal guidance, and my own experience interviewing hundreds of trafficking survivors. Trafficking victims are typically arrested in moments of crisis, fear, or confusion, often while still under the trafficker's control. In these circumstances, disclosure is rare.

33. Several factors contribute to this dynamic in my experience. First, **many law-enforcement agencies have limited training** on labor trafficking and forced criminality, making it difficult for officers to recognize indicators of coercion during a brief custodial interview.[11] Second, traffickers frequently script victims' statements and threaten severe consequences if they reveal the truth. Third, many victims—particularly immigrants and individuals from marginalized communities—carry deep **mistrust of law enforcement** and fear that disclosure will lead to retaliation against themselves or loved ones, especially against family remaining in home countries. Fourth, trafficking narratives are often complex, long-term, and **difficult to explain in the short, pressured context of an arrest.** Finally, trauma, fear, and psychological coercion profoundly inhibit disclosure; victims may be too terrified, ashamed, or confused to articulate what has happened to them. It is well documented that victims often feel complicit in their own trafficking-even though the law makes clear you cannot consent to your own enslavement.[12]In my experience interviewing hundreds of trafficking survivors, it often takes multiple interviews to fully understand the trafficking dynamics. Survivors frequently disclose their exploitation gradually, as trust builds and as they feel safer. A victim's **failure to disclose trafficking at arrest is not evidence that trafficking did not occur; rather, it is evidence of how trafficking works.** The absence of disclosure at the moment of arrest is a hallmark of trafficking, not a contradiction of it.

Early Indicators of Human Trafficking Are Often Missed by Law Enforcement

32. Having worked closely with law enforcement for many years and possessing an understanding of both officer-safety protocols and human trafficking dynamics, I routinely begin law enforcement trainings by emphasizing that identifying trafficking victims is extraordinarily difficult. **Trafficking victims rarely self-identify, and**

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[11] William Adams et al., *Evaluation of the Enhanced Collaborative Model to Combat Human Trafficking, Technical Report, NCJRS* Doc. No. 300863 57-58 (May 2021) https://www.ojp.gov/pdffiles1/nij/grants/300863.pdf(finding that law enforcement faces particular challenges in identifying labor trafficking offenses and that labor trafficking victims are less likely to report their victimization to law enforcement); Little Hoover Commission on California State Government Organization & Economy, L*abor Trafficking: Strategies to Uncover This Hidden Crime*, Report No. 251 (Sept. 2020), https://lhc.ca.gov/wp-content/uploads/sites/lhc.ca.gov/files/Reports/251/Report251.pdf (finding that labor trafficking is often more difficult to identify than sex trafficking because of limited law enforcement training and the historical focus of antitrafficking efforts on sex trafficking.)

[12] *See also* Katherine Hoogesteyn & Travis A. Taniguchi, P*ractices for Law Enforcement Interviews of Potential Human Trafficking Victims: A Scoping Review,* Nat'l Inst. Just. Rsch. Rep. 3-4 (July 2024); Reed & Anna White Hewitt, *Literature Review on a Victim-Centered Approach to Countering Human Trafficking (RAND Corp. 2024)https://www.rand.org/pubs/research_reports/RRA2429-1.html* ***(v***ictim-centered practices; trauma-informed interviewing; build trust and safety; expect evolving disclosure)
https://www.ojp.gov/pdffiles1/nij/309058.pdf(reviewing additional reasons why trafficking victims do not cooperate with the police)

officers must be trained to recognize subtle indicators of exploitation. In my experience, identifying cases involving labor trafficking, and particularly labor trafficking through forced criminality, **requires specialized training that many law enforcement officers do not receive**. Without such training, officers are unlikely to recognize victims.

33. In my experience officers often receive intensive training on drug enforcement activities but none of this training coverings training on human trafficking for forced criminality for drugs sales and the specific questions law enforcement may need to ask to identify victims of this crime and other types of human trafficking for forced criminality. Specifically, officers who see these signs of trafficking should ask:

    a. Whether anyone is forcing the person to sell drugs or taking the proceeds of those sales;

    b. Whether the person had been threatened;

    c. Whether they owed a debt to another person;

    d. Whether they feared retaliation if they stopped selling drugs; or

    e. Whether they were acting under force, fraud, coercion, or the direction of another individual.

34. In my experience effective identification of trafficking victims also requires trauma-informed and culturally responsive interviewing practices. Victims of forced criminality often do not self-identify as trafficking victims, may distrust law enforcement, fear retaliation from traffickers, or experience trauma-related responses that affect their ability to disclose exploitation. In some communities, language barriers, cultural norms, immigration concerns, prior negative interactions with authorities, and experiences of discrimination may further inhibit disclosure.

35. As a result, **traditional interrogation techniques may fail to elicit accurate information and can inadvertently reinforce a victim's fear and reluctance to cooperate.** Training officers in trauma-informed interviewing techniques helps create an environment in which individuals feel safe enough to disclose abuse, coercion, and exploitation. Culturally responsive approaches further ensure that officers understand the unique experiences and vulnerabilities of diverse communities and can communicate effectively with potential victims.

36. By combining targeted screening questions with trauma-informed and culturally responsive interviewing practices, law enforcement agencies can improve victim identification, reduce the criminalization of trafficking survivors, and strengthen efforts to hold traffickers accountable. Unfortunately, unless specialized human trafficking taskforce members are involved in interviewing potential victims, this generally in my experience is not the case.

Victims' Testimony Is Often the Only Evidence Available in Criminal Trafficking Cases

37. In criminal trafficking prosecutions it is well-documented that the **victim's testimony is often the only evidence available** to prove coercion, force, fraud, or

exploitation. Human trafficking is intentionally designed to be hidden. Traffickers' isolate victims, monitor their movements, threaten them, and prevent them from retaining documents, communications, or witnesses who could corroborate their experience. As a result, both criminal cases and in this case vacatur petitions often must rely almost entirely on the victim's own statement, because other evidence is lacking or would put others at risk of harm.

38. The Human Trafficking Legal Center's comprehensive report, *Prosecuting Human Trafficking: The Role of the Material Witness*, documents that **trafficking prosecutions routinely depend on victim testimony as the central—and often sole—source of evidence.** The report explains that victims are frequently the only individuals with direct knowledge of the coercion, threats, violence, and fraud used by traffickers, and that prosecutors rely on victims as "material witnesses" precisely because there is no physical evidence, no third-party witnesses, and no documentation of the coercive acts. The report further notes that victims may be too afraid to testify, may disappear, may remain under traffickers' control, or may fear retaliation, making their statements both indispensable and vulnerable.[13] **The U.S. Department of Justice also recognizes that trafficking victims are often the only ones who can explain the coercive dynamics of the crime**.[14] In a 2024 Guide designed for police investigating trafficking cases they state "Victim statements currently play a significant role in human trafficking cases, and many cases rely on them entirely," [15]Force, fraud, and coercion used on trafficking victims frequently occurs in private settings with no witnesses, and it is common that investigators must rely heavily on victim statements alone because traffickers deliberately conceal their conduct. This evidentiary reality is even more pronounced in criminal vacatur proceedings, where the underlying criminal case often contains no mention of trafficking or minimal information because the victim was too afraid to disclose coercion at the time of arrest and/or prosecution.

39. These system failures in criminal matters related to human trafficking mean that a victim's later declaration is often the only evidence of the trafficking that caused the criminal conduct.

40. Practitioners document that state vacatur statutes[16] and T-visa adjudications[17] all recognize this reality and routinely grant relief based solely on a sworn victim

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[13] Human Trafficking Legal Ctr., *Prosecuting Human Trafficking: The Role of the Material Witness 1, 7* (Apr. 2020), https://www.htlegalcenter.org/wp-content/uploads/Material-Witness-Report-FINAL-FOR-PUBLICATION_April-2020.pdf

[14] U.S. Dep't of Justice, *Human Trafficking Task Force E-Guide* 81 (2025) https://www.justice.gov/humantrafficking/task-force;

[15] Justice & Car**e,** *Guidance for Police on Investigating Human Trafficking* 21 (2024), https://justiceandcare.org/app/uploads/2024/08/Guidance-for-police-on-investigating-human-trafficking.pd

[16] *See* Free to Thrive, *California Criminal Record Relief for Survivors of Human Trafficking Related to Their Victimization* 60 (2024), https://www.lls.edu/media/loyolalawschool/academics/clinicsexperientiallearning/sji/publicationsandreports/Free%20to%20Thrive%20California%20Vacatur%20Practice%20Guide.pdf **(**noting that many CA vacatur petitions are successful without any supporting documentation except for the client's declaration).

[17] *See* Coalition to Abolish Slavery & Trafficking (CAST), FAQ *Evidentiary Requirements for T Visas*, CAST Technical Assistance & Training, https://casttta.nationbuilder.com/evidentiary_requirements.("T visa applications are regularly approved with the client declaration serving as the only evidence of the trafficking victimization.)

statement.

41. The published literature mirrors what I have observed in practice. **Over nearly two decades of working with trafficking survivors, the overwhelming majority of T-visa applications, and state vacatur petitions I have prepared, supervised or provide technical assistance on have relied solely on the survivor's sworn declaration,** because no other evidence exists or is reasonably obtainable given feared or actual potential retaliation. Trafficking victims rarely have access to documents, photographs, communications, or witnesses who could corroborate their exploitation. Traffickers often control victims by monitoring their movements or communications and prevent them from retaining any records. Many victims flee without belongings, phones, or identification. Other individuals who might corroborate a survivor's account are frequently still under traffickers' control, too afraid to come forward, or they disappear or are deported before they can be contacted. Additionally, **many victims do not want to involve loved ones, family members or other potential witnesses in their case because of perceived or real danger.** Because of these realities, state criminal-record vacatur courts in California and nationally routinely grant relief based on sworn declarations alone, recognizing that the victim's statement is often the only evidence available.

42. Further trafficking victim providing live testimony can be deeply retraumatizing, can expose the survivor to danger, and can undermine the purpose of vacatur statutes, which are designed to remedy the wrongful criminalization of trafficked persons. Best-practice guidance, including the *Human Trafficking Task Force Guide* published by the Office for Victims of Crime, emphasizes the need for trauma-informed courts.[18] This guidance indicates courts are in a unique position to send a message to human trafficking victims that the justice system is trustworthy, fair, and a place to seek help. Research strongly supports the conclusion that enhancing procedural justice improves a victim's experience and long-term recovery, regardless of the particular outcome of the case.

43. For these reasons, courts evaluating trafficking-related criminal conduct may wish to understand that **a victim's declaration is not merely sufficient evidence; in many cases, it is the only evidence that can exist,** and its singularity is a hallmark of trafficking rather than a weakness in the claim. A careful, trauma-informed review of a sworn declaration is therefore both appropriate and consistent with national best practices in trafficking adjudication. And although a court may understandably wish to hear live victim testimony—as is the common practice in criminal proceedings—the dynamics of trafficking, and the well-documented difficulty associated with requiring survivors to testify after the exploitation, make reliance on a sworn declaration the approach most aligned with trauma-informed principles and the realities of these cases.

Executed August 26, 2026

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[18] Office for Victims of Crime Training & Technical Assistance Ctr**.,** *Human Trafficking Task Force Guide* 124-126 (revised 2025), https://www.ovcttac.gov/downloads/resourceLibrary/Human-Trafficking-Guide_508c_JP_1-23-26.pdf

Signed



Stephanie Richard

Appendix A-14

PROPOSED JURY INSTRUCTION: Human Trafficking Duress Defense
18 U.S.C § 28

A person who commits [name of criminal act] because of duress is not guilty of that charge.

In determining whether [Name of defendant] acted under duress in this case you must consider whether [Name of defendant] was a victim of trafficking at the time at which [Name of defendant] committed the offense.

The term "victim of trafficking" means a person subject to a act or practice such as:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(C) the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

[Name of defendant] must prove by a preponderance of the evidence that s/he acted under duress/was a victim of trafficking.

Appendix A-15

791 [COERCION:][1] TRAFFICKING: DEFENSE FOR A VICTIM OF § 940.302(2) or 948.051 — § 939.46(1m)

INSERT THE FOLLOWING AFTER THE ELEMENTS OF THE CRIME ARE DEFINED BUT BEFORE THE CONCLUDING PARAGRAPHS.[2]

Defense for a victim of human trafficking or trafficking of a child

The defense for a victim of (human trafficking) (trafficking of a child) is an issue in this case. This defense allows a person to engage in conduct that would otherwise be criminal under certain circumstances.

The State must prove by evidence which satisfies you beyond a reasonable doubt that the defendant was not acting lawfully under this defense.[3]

The law allows the defendant to act under this defense if the defendant was a victim of (human trafficking) (trafficking of a child) and the offense of (identify crime)[4] was committed as a direct result of (human trafficking) (trafficking of a child).

CONTINUE WITH THE APPROPRIATE BRACKETED OPTION(S)

[Human trafficking, as defined in section 940.302 of the Criminal Code of Wisconsin, is committed by one who knowingly [(recruits) (entices) (harbors) (transports) (provides) (obtains)] [attempts to (recruit) (entice) (harbor) (transport) (provide) (obtain)] an individual for the purpose of (labor or services) (a commercial sex act[5]) and does so by (insert applicable term or terms.)[6]]

[Trafficking of a child, as defined in section 948.051 of the Criminal Code of Wisconsin, is committed by one who knowingly [(recruits) (entices) (provides) (obtains)

(harbors) (transports) (patronizes) (solicits)] [attempts to (recruit) (entice) (provide) (obtain) (harbor) (transport) (patronize) (solicit)] any child for the purpose of commercial sex acts.[7]

"Commercial sex act" means (sexual contact) (sexual intercourse) (sexually explicit performance) (any conduct done for the purpose of sexual humiliation, degradation, arousal, or gratification) for which anything of value is given to, promised, or received, directly or indirectly, by any person.[8]]

This defense applies to any offense committed as a direct result of (human trafficking) (trafficking of a child) without regard to whether anyone was prosecuted or convicted for (human trafficking) (trafficking of a child).[9]

Direct Result

An offense is committed as a direct result of (human trafficking) (trafficking of a child) if there is a logical, causal connection between the offense and the trafficking such that the offense is not the result, in significant part, of other events, circumstances, or considerations apart from the trafficking.[10] The offense need not be a foreseeable result of the trafficking and need not proceed relatively immediately from the trafficking.[11]

Jury's Decision

If you are satisfied beyond a reasonable doubt that all _____ elements of this offense have been proved,[12] and that the defendant did not act lawfully under the defense of being a victim of (human trafficking) (trafficking of a child), you should find the defendant

guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 791 was approved by the Committee in April 2023.

This instruction is drafted for the defense set forth in sub. (1m) of sec. 939.46. It may be raised by a defendant claiming to be the victim of a trafficking crime and claiming that the crime with which the defendant is charged was committed as a direct result of the trafficking crime:

> **939.46 Coercion. (1m).** A victim of a violation of § 940.302(2) or § 948.051 has an affirmative defense for any offense committed as a direct result of the violation of § 940.302(2) or § 948.051 without regard to whether anyone was prosecuted or convicted for the violation of § 940.302(2) or § 948.051.

Although set forth in § 939.46, which is titled "Coercion," the defense in sub. (1m) is defined in completely different terms. The traditional coercion defense recognizes a situation commonly referred to as a "choice of evils," where individuals are presented with circumstances that force them to choose between committing a crime and facing death or significant bodily injury. The requirements of this defense are enumerated in § 939.46(1) as follows:

- a threat from another person [other than a coconspirator]
- causes the person to reasonably believe
- that his or her [criminal] act is the only means
- of preventing imminent death or great bodily harm to that person or another.

Further, in a prosecution for first-degree intentional homicide, coercion under § 939.46(1) is not a complete defense but mitigates the crime to second-degree intentional homicide. See also Wis JI-Criminal 700 sec. II. A. 4.

The defense defined in sub. (1m) does not share any of the requirements of traditional coercion. Specific threats are not required, nor is an inquiry into what the person believed ["reasonably" or not]. Moreover, committing the crime does not have to be the sole method of preventing harm, and there is no requirement of imminent death or great bodily harm. Furthermore, the scope of the defense is not limited when it is applied to first-degree intentional homicide. Given these disparities, the Committee has determined that it is advisable to refrain from using the term "coercion" in the instructional language to the extent that it can be avoided.

Subsection (1m) specifically designates this defense as an "affirmative defense." This means that "the defendant must produce **some evidence** on which a reasonable jury could find that the defense applies." (Emphasis added.) State v. Kizer, 2022 WI 58, ¶19, 403 Wis.2d 142, 976 N.W.2d 356. See also, State v. Johnson, 2021 WI 61, ¶19, 397 Wis.2d 633, 961 N.W.2d 18. Though the burden of producing "some

evidence" is commonly referred to as the defendant's burden, that is not literally correct. The source of the evidence may be facts presented by the prosecution, facts elicited from prosecution witnesses by defense cross-examination, or evidence affirmatively presented by the defense. State v. Coleman, 206 Wis.2d 199, 214, 556 N.W.2d 701 (1996). The two elements that must be satisfied in order to utilize this defense are as follows: (1) the defendant was a victim of either human trafficking, as defined in § 940.302, or child trafficking, as defined in sec. 948.051; and (2) the crime for which the defendant is charged was committed as a direct result of the trafficking crime.

To satisfy the "some evidence" standard, the defendant must provide some degree of specification as to what trafficking crime or crimes are allegedly involved. Section 940.302 and § 948.051 are complex and provide many alternative methods of commission. See Wis JI-Criminal 1276 for violations of § 940.302 and Wis JI-Criminal 2124 for violations of § 948.051.

If the defendant successfully meets the "some evidence" standard, the burden of proof shifts to the State to demonstrate, beyond a reasonable doubt, that the defense does not apply. The State may satisfy this burden by showing that either: (1) the defendant was not a victim of a trafficking crime or (2) the crime for which the defendant is charged was not committed as a direct result of the trafficking crime.

Affirmative defenses and the "some evidence" standard are discussed in JI 700 Law Note Theory Of Defense Instructions; Instructing The Jury On Defensive Matters. See Section I, C.

The defense in sub. (1m) is a complete defense to "any offense committed as a direct result of the violation without regard to whether anyone was prosecuted or convicted for the violation of § 940.302(2) or § 948.051." See § 939.46(1m). See also State v. Kizer, 2022 WI 58, ¶5, 403 Wis.2d 142, 976 N.W.2d 356.

In Kizer, supra, the Wisconsin Supreme Court addressed the question of whether the provisions of § 939.46(1m) create a complete defense or merely mitigate a conviction for first-degree intentional homicide to one of second-degree intentional homicide, as is the case with coercion under § 939.46(1). After examination of the legislative history of § 939.46(1m), the Court found the statute to be ambiguous with respect to whether it creates a complete or mitigating defense to first-degree intentional homicide. In accordance with the principle of lenity, the Court resolved the ambiguity in favor of the defendant and held that § 939.46(1m) operates as a complete defense to a charge of first-degree intentional homicide. Id. at ¶¶27-29. See also State v. Cole, 262 Wis. 2d 167, ¶68, 663 N.W.2d 700.

Wis JI-Criminal 791 EXAMPLE is provided to demonstrate that selecting appropriate alternatives can simplify this instruction.

1. A trial judge has the authority to determine whether to include, exclude, or modify the title of an instruction when submitting it to the jury. If the court chooses to include the title of this instruction, the omission of the bracketed term "coercion" is advised. Although the affirmative defense of being a victim of human trafficking or trafficking of a child as set forth in § 939.46 is titled "Coercion," the defense in sub. (1m) is defined in completely different terms. Therefore, including the term in the instruction may cause misunderstandings among the jurors. See the comment above for more information.

2. The Committee recommends that all instructions on defensive matters be combined with the instruction on the underlying offense. Combining the instructions will help the jury understand the issues and clarify the allocation of the burden of persuasion.

Subsection (1m) specifically calls this defense an "affirmative defense." This means that it is not an issue in the case until raised by the evidence and is not necessarily inconsistent with any element of the crime. The Committee recommends combining the instruction on the defense with that for the underlying crime by inserting Wis JI-Criminal 791 after the explanation of the elements of the crime but before the concluding paragraphs. The nonexistence of the defense should then be included in the concluding paragraph. This will clarify for the jury the facts that it must find in order to return a guilty verdict and make it less likely that the instructions could be interpreted as shifting the burden of persuasion to the defendant. The Wisconsin Court of Appeals has suggested this as "the better policy." State v. Staples, 99 Wis.2d 364, 299 N.W.2d 270 (Ct. App. 1980).

3. In Moes v. State, 91 Wis.2d 756, 284 N.W.2d 66 (1979), the Wisconsin Supreme Court held that the burden is on the State to disprove an asserted coercion defense [under sec. 939.46(1)] beyond a reasonable doubt.

4. Here, insert the specific crime for which the defendant has been charged (e.g., first-degree intentional homicide). See Wis JI-Criminal 791 Example for how this instruction would be adapted for the offense of battery.

5. If the purpose chosen is a commercial sex act, include the definition of the term directly after the bracketed language pertaining to human trafficking. See footnote 8 below.

6. Here, insert at least one of the following ways in which the trafficking was done:

- Causing or threatening to cause bodily harm to any individual.
- Causing or threatening to cause financial harm to any individual.
- Restraining or threatening to restrain any individual.
- Violating or threatening to violate a law.
- Destroying, concealing, removing, confiscating, or possessing, or threatening to destroy, conceal, remove, confiscate, or possess, any actual or purported passport or any other actual or purported official identification document of any individual.
- Extortion.
- Fraud or deception.
- Debt bondage.
- Controlling or threatening to control any individual's access to an addictive controlled substance.
- Using any scheme or pattern or other means to directly or indirectly coerce, threaten, or intimidate any individual.
- Using or threatening to use force or violence on any individual.
- Causing or threatening to cause any individual to do any act against the individual's will or without the individual's consent.

§ 940.302(2)(a)2.a.-L. (See Wis JI-Criminal 1276).

For example, in a human trafficking case where the trafficking is done by use of force on an individual, the instructions would read:

Human trafficking, as defined in section 940.302 of the Criminal Code of Wisconsin, is committed by one who knowingly recruits an individual for the purpose of labor or services and does so by use of force.

7. See Wis JI-Criminal 2124 for additional information concerning the offenses of-trafficking of a child.

8. The definition of commercial sex act will be given in [adult] human trafficking cases that rely on that alternative and in all child trafficking cases.

This is the definition provided in § 940.302(1)(a) as amended by 2013 Wisconsin Act 362 [effective date: April 25, 2014]. Section 948.051(1) specifically refers to this definition. For a definition of "sexual contact," see Wis JI-Criminal 934 and § 939.22(34). The Committee concluded that the definition in § 939.22(34) applies to the offense because § 948.051(1) specifically refers to trafficking "any child for the purpose of commercial sex acts, as defined in s. 940.302(1)(a) . . ." The definition in § 940.302(1)(a) refers to "sexual contact" and, since that statute is not part of § 940.225 or in Chapter 948, the definition of "sexual contact" in § 939.22(34) applies.

9. See Wis. Stat. § 939.46(1m).

10. In Kizer, supra, the Wisconsin Supreme Court concluded that with regard to the phrase "committed as a direct result of the violation," § 939.46(1m) "does not require that the trafficker be aware of the offense, or that it occur at the trafficker's behest in furtherance of the trafficking violation. It simply requires that the offense occur as a direct result of the violation of the trafficking statutes." Id. at ¶18.

11. Kizer, supra, held that "an offense that is unforeseeable or that does not occur immediately after a trafficking offense is committed can be a direct result of the trafficking offense, so long as there is still the necessary logical connection between the offense and the trafficking." Id. at ¶15.

12. The Committee recommends that the absence of the claimed trafficking defense be added to the concluding paragraph. See note 1, supra. The appropriate number of elements should be inserted in the blank. Refer to the applicable instruction for the offense.

For example, incorporating the elements of the offense of battery along with the absence of the human trafficking defense would result in the following:

If you are satisfied beyond a reasonable doubt that all four elements of battery have been proved, and that at the time of the act the defendant did not act lawfully under the defense of being a victim of human trafficking, you should find the defendant guilty.

(See Wis JI-Criminal 1220, Battery.)

Appendix A-16

5.7 Duress, Coercion, or Compulsion (Legal Excuse)

The defendant contends [he] [she] acted under [duress] [coercion] [compulsion] at the time of the crime charged. [Duress] [coercion] [compulsion] legally excuses the crime of [*specify crime charged*].

The defendant must prove [duress] [coercion] [compulsion] by a preponderance of the evidence. A preponderance of the evidence means that you must be persuaded that the things the defendant seeks to prove are more probably true than not true. This is a lesser burden of proof than the government's burden to prove beyond a reasonable doubt each element of [*specify crime charged*].

A defendant acts under [duress] [coercion] [compulsion] only if at the time of the crime charged:

First, there was a present, immediate, or impending threat of death or serious bodily injury to [the defendant] [a family member of the defendant] if the defendant did not [commit] [participate in the commission of] the crime;

Second, the defendant had a well-grounded fear that the threat of death or serious bodily injury would be carried out; [and]

Third, the defendant had no reasonable opportunity to escape the threatened harm[.] [; and]

[Fourth, the defendant surrendered to authorities as soon as it was safe to do so.]

If you find that each of these things has been proved by a preponderance of the evidence, you must find the defendant not guilty.

Comment

The bracketed fourth element should be used only in cases of prison escape. *See United States v. Solano*, 10 F.3d 682, 683 (9th Cir. 1993). "[I]n order to be entitled to an instruction on duress or necessity as a defense to the crime charged, an escapee must first offer evidence justifying his continued absence from custody as well as his initial departure[.]" *United States v. Bailey*, 444 U.S. 394, 408 (1980). Although not an element in non-escape cases, whether the defendant surrendered to authorities upon reaching a point of safety is nevertheless relevant to whether the third element is satisfied. *United States v. Zaragoza-Moreira*, 780 F.3d 971, 978 (9th Cir. 2015) (citations omitted).

In *Dixon v. United States*, 548 U.S. 1, 7-8 (2006), the Supreme Court held that when a statute is silent on the question of an affirmative defense and when the affirmative defense does not negate an essential element of the offense, the burden is on the defendant to prove the elements of the defense by a preponderance of the evidence. "Like the defense of necessity, the defense of duress does not negate a defendant's criminal state of mind when the applicable offense requires a defendant to have acted knowingly or willfully; instead, it allows the defendant to 'avoid liability . . . because coercive conditions or necessity negates

a conclusion of guilt even though the necessary mens rea was present.'" *Id*. (quoting *Bailey*, 444 U.S. at 402).

Use this instruction when the defendant alleges that he or she committed the alleged criminal act under duress, coercion, or compulsion. *See United States v. Meraz-Solomon*, 3 F.3d 298, 299 (9th Cir. 1993) (in prosecution for importation of cocaine, burden is on defendant to prove duress, coercion, or compulsion by a preponderance of the evidence). A defendant is not obligated to admit guilt to a crime as a precondition for raising the affirmative defense of duress. *See United States v. Haischer*, 780 F.3d 1277, 1284 n.1 (9th Cir. 2015) (clarifying that defendant does not have to admit knowing or intentional commission of crime to assert duress defense).

"[A] defendant is not entitled to present a duress defense to the jury unless the defendant has made a prima facie showing of duress in a pre-trial offer of proof." *United States v. Vasquez-Landaver*, 527 F.3d 798, 802 (9th Cir. 2008). The phrase "present, immediate, or impending threat" in the first element of the instruction was used in *Vasquez-Landaver*, 527 F.3d at 802.

Expert testimony about Battered Women's Syndrome may be relevant to both the second and third elements of the duress defense, as well as in rehabilitating a defendant's credibility. *See United States v. Lopez*, 913 F.3d 807, 822-23 (9th Cir. 2019).

Duress is not a defense to murder, nor will it mitigate murder to manslaughter. *United States v. LaFleur*, 971 F.2d 200, 206 (9th Cir. 1991). In cases where duress-like evidence may be admitted on the issue of a defendant's mental state, a clarifying instruction may be appropriate "to help guide the jury on the parameters for which it could consider the duress-like evidence." *United States v. Justus*, 162 F.4th 962 (9th Cir. 2025).

Revised March 2026

Appendix A-17

310.10 COMPULSION, DURESS[1], OR COERCION.

NOTE WELL: The trial judge is reminded that this instruction must be combined with the substantive offense instruction in the following manner: (1) the jury should be instructed on the elements of the charged offense; (2) the jury should then be instructed on the definition of compulsion, duress, or coercion set out in this instruction below; (3) the jury should be instructed on the mandate for compulsion, duress, or coercion as set out below in this instruction; and (4) the jury should then be instructed on the mandate of the charged offense. ***The failure to charge on all of these matters constitutes reversible error.***

There is evidence in this case tending to show that the defendant acted only because of [compulsion] [duress] [coercion]. The burden of proving [compulsion] [duress] [coercion] is on the defendant[2]. It need not be proved beyond a reasonable doubt, but only to your satisfaction.

COMPULSION

[Compulsion is the act of compelling; the quality, state, or condition of being compelled.[3]]

DURESS

[Duress is where the unlawful act of another induces the defendant to perform some act under circumstances which deprive defendant of the exercise of free will.[4]

The defendant would not be guilty of [name crime] because of duress if the defendant proves to your satisfaction the following two things:

First, the defendant's reasonable fear that the defendant would suffer immediate death or serious bodily injury if the defendant did not so act.

And Second, the defendant did not have a reasonable opportunity to avoid doing the act without undue exposure to death or serious bodily harm.][5]

COERCION[6]

[Coercion is compulsion of a free agent by physical, moral, or economic force or threat of physical force.[7]]

The defendant's assertion of [compulsion] [duress] [coercion] is a denial that the defendant committed any crime. The burden remains on the State to prove the defendant's guilt beyond a reasonable doubt.[8]

If the defendant has proven to your satisfaction that the defendant (describe action of the defendant) at the time of the alleged offense because of [compulsion] [duress] [coercion] you will not consider this case further and it would be your duty to return a verdict of not guilty.

However, if you do not so find then you must decide if the defendant is guilty of (name offense). If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant (give final mandate for offense charged).

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1. The defense of duress is not available to a defendant charged with murder.

2. *State v. Strickland*, 307 N.C. at 297 (1983).

3. Compulsion, *Black's Law Dictionary* (10th Ed. 2014).

4. *Stegall v. Stegall*, 100 N.C. App. 398, 401, 397 S.E.2d 306, 307 (1990).

5. *State v. Smarr*, 146 N.C. App. 44, 54–55, 551 S.E.2d 881, 888 (2001).

6. The distinction between duress and coercion has blurred. *See State v. Smarr*, 146 N.C. App. 44, 54 n.1, 551 S.E.2d 881, 887 n.1 (2001) ("North Carolina case law uses the terms duress and coercion interchangeably").

7. Coercion, *Black's Law Dictionary* (10th Ed. 2014).

8. *State v. Sherian*, 234 N.C. 30 (1951).

Appendix B

Appendix B

Practice Resources

Interviewing and Working with the Client

Document	Source and internet address
Sample Questionnaire for Survivor of Human Trafficking — question set for the client interview	Appendix B-1 DC Vacatur Toolkit, attach. A — https://freedomnetworkusa.org/app/uploads/2020/02/DC-Vacatur-Toolkit-Revised-February-2021.pdf
A Practical Guide to Interviewing Potential Human Trafficking Victims	Nat'l Inst. of Just. — https://nij.ojp.gov/topics/articles/practical-guide-interviewing-potential-human-trafficking-victims
Client Declaration Outline	Free to Thrive, at 56–58 — https://www.lls.edu/media/loyolalawschool/academics/clinicsexperientiallearning/sji/publicationsandreports/Free%20to%20Thrive%20California%20Vacatur%20Practice%20Guide.pdf

Reading and Correcting a Criminal Record

Document	Source and internet address
Job Aid: How to Read an Identity History Summary — annotated federal rap sheet, seven figures	U.S. Dep't of Just. (Jan. 2021) — https://www.justice.gov/tribal/page/file/1354861/dl
Job Aid: How to Run and Read a Criminal History — Interstate Identification Index records	U.S. Dep't of Just. (Jan. 2021) — https://www.justice.gov/tribal/page/file/1354866/dl
Procedure to challenge or correct an F.B.I. record	28 C.F.R. § 16.34 — https://www.ecfr.gov/current/title-28/section-16.34
Fingerprint submission instructions (Cal.)	Cal. Dep't of Just., Vacatur Relief Toolkit, at 5 — https://oag.ca.gov/system/files/attachments/press-docs/Vacatur%20Toolkit.pdf
Service to update private background-check databases after relief is granted	Found. for Continuing Just. — https://www.continuingjustice.org/our-projects/criminal-database-update/

Appendix B-1

Client: _____

Date: _____

Questionnaire

As a starting point, it is important to understand that your client will likely carry emotional, physical, and/or psychological trauma from their experiences as a survivor of human trafficking that will need to inform your approach to the interview. This includes not only the individual questions you ask, but also how you phrase them.

In order to prepare for the unique challenges of interviewing a potential survivor, we recommend that you first read the following helpful resources.

- Amara Legal Center, *Best Practices when Interviewing a Survivor of Sexual Assault,* available at: https://www.amaralegal.org/wp-content/uploads/2016/06/Interview-Guide-for-Survvivors-of-Sexual-Assault.pdf
- The Office for Victims of Crime – Training and Technical Assistance Center, *Trauma-Informed Victim Interviewing,* available at: https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/53-victim-interview-preparation/trauma-informed-victim-interviewing/
- The ABA Guide, Part IV and V
- *Interviewing victims of human trafficking: Survivors offer advice,* available at: https://www.commdiginews.com/life/interviewing-victims-of-human-trafficking-survivors-offer-advice-11238/

Your interview should have two broad aims. The first is to identify any gaps in your client's story that could be material to the case or impact how the Court or prosecutor view your client's credibility. It is important to remember that trauma affects memory, so your client may not easily remember details about his or her trafficking experience. If a client provides inconsistent information, it is not necessarily a reflection of his or her credibility, but may instead be an effect of trauma on their brain and recollection. The second aim is to record your client's narrative and construct a timeline to prepare your client's affidavit. The affidavit will need to cover: (i) your client's life before and up until the victimization; (ii) your client's life and circumstances while they were being trafficked, including details of any arrests or prosecutions; and (iii) your client's life as a survivor including their aspirations, any educational or professional accomplishments, and any obstacles that they have or are fearful of encountering as a result of their criminal record.

The ABA Guide suggests, for the purposes of preparing a client's narrative and affidavit, that it may be helpful to "separate the timeline into [these] three periods: *pre-trafficking, trafficking,* and *post-trafficking."* The high-level outline presented below may be helpful as a checklist to use as you conduct the interview:

Client Affidavit Outline

1. Pre-trafficking (background, context, specific vulnerability)
2. Trafficking (victimization and nexus to convictions)
3. Post-trafficking (connection to services, educational/professional accomplishments or aspirations, obstacles caused by convictions)

Please read or ideally paraphrase to client after introductions, so they know what to expect from their meeting with you.

I am [insert name and title] with _____. The purpose of us meeting today is an initial consultation to see if we can identify any areas where it might be helpful for you to get additional legal advice, particularly with respect to whether we may be able to help clear your record of any arrests, convictions or prosecutions. I may then be able to make an appropriate referral for you to get further and more in-depth advice.

As we go through this interview, I will be asking some questions. I understand that some of my questions may make you feel uncomfortable, but that is not my intention. My purpose for asking these questions is to gather information that I need to assess your case and properly advise you. If you would rather not talk about a particular subject, let me know and we will move on. I will try to steer our conversation, but ultimately you are in control. We can take a break at any time and you can end the meeting at any time.

Client Narrative

To begin the interview, ask the client to describe their circumstances in their own words, encouraging them to give their full life story from their childhood up until the point of your meeting. Note the language that your client uses to describe the circumstances of their trafficking and their traffickers so that you can incorporate it into more focused questions to build a comprehensive narrative and timeline. You should also note any obvious gaps in your client's description and flag those for yourself as points to return to and clarify at a later time.

Remember the purpose of your interview: (i) identify any gaps in your client's story that could be material to the case or impact how the Court or prosecutor view your client's credibility, and (ii) to capture information about your client's life before, during, and after their trafficking so that you are ultimately able to have sufficient information to prepare an affidavit.

As an approach to establishing the backbone of the client's narrative, taken in part from the ABA Guide, it is suggested that you:

1. **Start with basic biographical information.** For example: How old are you? Where were you born? Where have you lived? Where do you live now? What is your contact information?
2. Identify other **orienting dates** in your client's life to construct a chronology of events. For example, if your client has children, you might ask if an incident occurred before or after their children were born. Major world events can also help a client position their own memories and experiences.
3. **Use the arrest(s) as orienting dates**. Your client's arrest(s) is/are the most concrete, tangible, and relevant orienting fact that you can easily pin down.

4. If your client provides **conflicting information**, point out the conflicts in a non-accusatory way, as this can stem from trauma. Ensure that your client feels as if you are assisting them to sort out the facts, not that you think they are lying.

If it appears that your client has arrests, prosecutions, or convictions that could be subject to the 2018 Trafficking Survivors Act, we have included some suggested questions to elicit the specific information needed to: 1) analyze whether the 2018 Trafficking Survivors Act applies to your client; and 2) evaluate the probability of success of a motion to vacate judgment(s) and/or expunge records.

Initial Client Discussion

1. **Client Description of Life Events**

2. **Pre-trafficking (background, context, specific vulnerability, if any)**

3. **Trafficking (victimization and nexus to convictions)**

4. **Post-trafficking (connection to services, educational/professional accomplishments or aspirations, obstacles caused by convictions)**

Issues Identified:

- Existing conviction of eligible offense
- Ongoing prosecution in relation to eligible offense
- Arrest for eligible offense
- Conviction/Arrest/Prosecution of ineligible offense

CONVICTIONS	
1) Does the client have a criminal record? □ Yes □ No 2) Please ask the client to list all **<u>convictions</u>** (not arrests). What was the date of each conviction, what was the conviction for, and where were they convicted (can they remember the court)? 3) How old was the client when they committed the offense they were convicted of? (You need to determine if the client made any misrepresentations about their age that might have led to a conviction despite the fact they were a minor. If they were convicted of an offense despite having been a minor, they may have grounds to vacate the conviction on jurisdiction in addition to a remedy under the 2018 Trafficking Survivors Act) 4) Please note if any of the matters described by the client could fall into one of the following offenses: ● Assault with intent to kill or poison, or to commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse; ● Sex trafficking of children; ● Murder in the first degree; ● Murder in the first degree — Placing obstructions upon or displacement of railroads; ● Murder in the second degree; ● Murder of law enforcement officer; ● Solicitation of murder; ● Armed carjacking; ● First degree sexual abuse; ● First degree child sexual abuse; ● First degree sexual abuse of a minor; ● First degree sexual abuse of a secondary education student; ● First degree sexual abuse of a ward, patient, client, or prisoner; ● First degree sexual abuse of a patient or client; ● An act of terrorism; ● Provision of material support or resources for an act of terrorism; ● Solicitation of material support or resources to commit an act of terrorism; ● Manufacture or possession of a weapon of mass destruction; ● Attempt or conspiracy to manufacture or possess a weapon of mass destruction;	

● Use, dissemination, or detonation of a weapon of mass destruction; ● Attempt or conspiracy to use, disseminate, or detonate a weapon of mass destruction; and/or ● Attempt or conspiracy to commit any of the ineligible offenses, except conspiracy to commit sex trafficking of children.	
ARRESTS	
1) Please ask the client to list all arrests. Where were they arrested, what was the date of each arrest, and what was the arrest/charge for? 2) If there are arrests for offenses not listed at [Question 1 above], clarify with the client whether there was or will be any related prosecution?	
PROSECUTIONS	
1) Please ask the client to list and describe any prosecutions that have been terminated without conviction. 2) Please ask the client to list any ongoing prosecutions, and ask: ● What is the status of the prosecution? ● What is the prosecution for? ● What is your next court date? ● Do you have any paperwork? ● Are you represented by an attorney?	

CORROBORATING EVIDENCE	
1) Ask the client if they have any official documentation that evidences their status as a survivor of human trafficking. ● Do you know if you have a T-Visa? ● Do you know if you have a U-Visa? ● Do you know if you have a Form I-914, Supplement B (Declaration of Law Enforcement Officer for Victim of Trafficking in Persons)? Did you ever comply with requests from law enforcement for assistance in a trafficking investigation and prosecution, such that we could get this form? ● Do you know if you have a Form I-918, Supplement B (U Nonimmigrant Status Certification)? Have you ever assisted in the investigation or prosecution of the crime you experienced? ● Do you know if you have ever been granted the status of Continued Presence? ● Do you have any letters from the Department of Health and Human Services (or similar state agencies) that certify that you are eligible to receive public benefits as a result of your victimization/trafficking experience?[18] ● Do you know if your experience was ever mentioned in any court proceedings? (civil proceedings for damages to survivors, criminal proceedings against traffickers, subpoenas issued to the client, notifications from a victim notification system) ● Do you have any communications (letters, messages, emails) from any federal or state agency regarding your trafficking experience? 2) Ask the client if they have or are aware of any of the following that might provide evidence of their experience. ● Arrest records of traffickers ● Medical records ● Tattoos, branding, or scars ● Newspaper articles ● Photographs ● Email, text, or voice mail records ● Internet listings, print advertisements, or business cards that evidence how the client was victimized	

[18] Clients often do not self-identify as trafficking victims or survivors. It can be harmful to call clients "victims" or to discuss their "victimization" if that is not how they identify and feel. Try to mirror the client's language and use their words to describe their experience. For instance, clients may refer to their trafficker as their ex-boyfriend. Instead of referring to their victimization, you may say "during the time you were with your ex-boyfriend."

● Financial records, including records of hotel stays, or employment in venues such as massage parlors, strip clubs, or escort services. 3) Ask your client if they have worked with or sought assistance from any persons or organizations that might have assisted them in relation to being a survivor of human trafficking. ● Lawyers ● Doctors ● Therapists ● Social Workers ● Law enforcement officials ● Clergy ● Educators ● Victim service providers ● Clinicians ● Community mental health centers ● Domestic violence agencies ● Rape crisis centers ● Court diversion programs ● Transitional supportive housing programs ● Substance treatment centers ● Case managers	

Before concluding the consultation, you should inquire whether your client is engaged in any process where it may be necessary to search for and/or disclose their criminal record (for example, a visa application) and point out that they should consider how that process could be impacted if their DC criminal record is subsequently cleared. If they are working with advisors (for example, an immigration attorney) they should discuss the fact that they are considering a legal procedure to have their criminal record cleared.

At the conclusion of the consultation, thank the client for their time and fully explain the next steps. Let them know that, with the information that they provided you will assess whether you can assist. Be sure to tell the clients when they can expect to hear from you.

Appendix C

Appendix C

Vacatur Resources by State

A. National Resources

Organization or resource	Internet address
Freedom Network USA — Survivor Reentry Project	https://freedomnetworkusa.org/advocacy/survivor-reentry-project/
American Bar Association, Commission on Domestic & Sexual Violence — Survivor Reentry Project	https://www.americanbar.org/groups/domestic_violence/our-projects/survivor-reentry-project/
ABA/SRP — Post-Conviction Advocacy for Survivors of Human Trafficking: A Guide for Attorneys	https://freedomnetworkusa.org/app/uploads/2026/02/ABA-Post-Conviction-Advocacy-Guide-For-Attorneys.pdf
Polaris — Criminal Records Relief	https://polarisproject.org/criminal-records-relief/
Human Trafficking Legal Center — services for survivors	https://htlegalcenter.org/survivors/
HHS Office on Trafficking in Persons — Information Memorandum on Criminal Record Relief (2024)	https://acf.gov/sites/default/files/documents/otip/Criminal-Record-Relief-Trafficking-IM.pdf
National Human Trafficking Hotline — service provider directory	https://humantraffickinghotline.org/en/get-help
Immigration Advocates Network — nonprofit immigration legal directory	https://www.immigrationadvocates.org/legaldirectory/
Legal Services Corporation — civil legal aid locator	https://www.lsc.gov/about-lsc/what-legal-aid/i-need-legal-help

B. State-by-State Analysis of the Law

Jurisdiction	Organization	Internet address
California	Coalition to Abolish Slavery & Trafficking (CAST)	https://www.castla.org/get-help/
California	Free to Thrive / Sunita Jain Anti-Trafficking Initiative, Loyola Law School — California Criminal Vacatur Practice Guide (2024)	https://www.lls.edu/media/loyolalawschool/academics/clinicsexperientiallearning/sji/publicationsandreports/Free%20to%20Thrive%20California%20Vacatur%20Practice%20Guide.pdf
D.C., Md., Va.	Amara Legal Center	https://amaralegal.org/
Georgia	Wilbanks CEASE Clinic, University of Georgia School of Law — Survivors First Vacatur Project	https://cease.law.uga.edu/survivors-first-vacatur-project/

Jurisdiction	Organization	Internet address
Michigan	Michigan Courts (SCAO) — Form MC 227b, Application for Human Trafficking Victim to Set Aside Conviction	https://www.courts.michigan.gov/siteassets/forms/scao-approved/mc227b.pdf
New Jersey	Rutgers Law School — International Human Rights Clinic	https://law.rutgers.edu/news/clinic-secures-vacatur-expungement-for-trafficking-survivor
New York	The Legal Aid Society — Exploitation Intervention Project	https://legalaidnyc.org/programs-projects-units/exploitation-intervention-project/
New York	Sanctuary for Families — Anti-Trafficking Initiative	https://sanctuaryforfamilies.org/our-approach/client-services/anti-trafficking-initiative/
Virginia	Regent University Center for Global Justice — Human Trafficking Clinic	https://globaljustice.regent.edu/human-trafficking-clinic/

Appendix D

Appendix D

State and District Criminal Record Relief for Trafficking Survivors

Jurisdiction	Citation	Form of relief and notable features
Alabama	Ala. Code §§ 15-27-1, 15-27-2	Expungement of misdemeanor and felony records; trafficking-victim ground
Arizona	Ariz. Rev. Stat. Ann. § 13-909	Vacatur of sex-trafficking victim's conviction; clear and convincing evidence
Arkansas	Ark. Code Ann. § 16-90-1412	Sealing of certain convictions
California	Cal. Penal Code § 236.14 (see also § 236.15)	Vacatur, sealing and destruction; clear and convincing; must show lack of requisite intent
Colorado	Colo. Rev. Stat. § 18-1-410.7	Vacatur; offense carve-outs incl. child victims
Connecticut	Conn. Gen. Stat. § 54-95c	Application to vacate conviction
Delaware	Del. Code Ann. tit. 11, § 787(j)(2)	Motion to vacate adjudication or conviction; expungement of related records
District of Columbia	D.C. Code § 22-1844	Vacatur and expungement; “direct result” standard
Florida	Fla. Stat. § 943.0583	Human trafficking victim expunction
Georgia	Ga. Code Ann. § 17-10-21 (Survivors First Act); § 35-3-37 (record restriction)	Vacatur of any offense; preponderance; rebuttable presumption from official documentation
Hawaii	Haw. Rev. Stat. § 712-1209.6	Motion to vacate prostitution conviction
Idaho	Idaho Code § 67-3014	Expungement for victims of human trafficking
Illinois	725 Ill. Comp. Stat. 5/116-2.1; 20 Ill. Comp. Stat. 2630/5.2	Vacatur of prostitution convictions; expungement, sealing and immediate sealing
Indiana	Ind. Code § 35-38-10-2	Relief for trafficked person
Kansas	Kan. Stat. Ann. § 21-6614	Expungement; separate ground where the person acted under statutorily defined coercion
Kentucky	Ky. Rev. Stat. Ann. § 529.160	Expungement where offense was the direct result of trafficking
Louisiana	La. Code Crim. Proc. Ann. art. 983(H) (cross-referencing La. Stat. Ann. § 14:46.2); see also art. 923	Expungement on prosecutor certification that the offense resulted from trafficking
Maine	Me. Rev. Stat. Ann. tit. 15, § 2262-A	Sealing of prostitution convictions (not trafficking-specific on its face)
Maryland	Md. Code Ann., Crim. Proc. § 8-302	Vacatur; “direct result” standard with an express multi-factor nexus test at § 8-302(d)(2)
Massachusetts	Mass. Gen. Laws ch. 265, § 59	Vacatur of conviction, delinquency adjudication or continuance
Michigan	Mich. Comp. Laws §§ 780.621(3), 780.621d	Set-aside (expungement), not vacatur; preponderance; no waiting period

Jurisdiction	Citation	Form of relief and notable features
Mississippi	Miss. Code Ann. § 97-3-54.6	Injunctive and other relief under the Human Trafficking Act
Missouri	Mo. Rev. Stat. § 610.131	Expungement of prostitution conviction where person was under 18 at the time of the offense
Montana	Mont. Code Ann. § 46-18-608	Motion to vacate conviction; "direct result" standard
Nebraska	Neb. Rev. Stat. § 29-3005	Motion to set aside conviction (sex trafficking victims)
Nevada	Nev. Rev. Stat. § 179.247	Vacatur and sealing; reaches any non-violent offense
New Hampshire	N.H. Rev. Stat. Ann. § 633:7(VIII)	Annulment/vacatur; "direct result" standard; excludes violence
New Jersey	N.J. Stat. Ann. § 2C:44-1.1; N.J. Ct. R. 3:21-11	Vacatur and expungement; rebuttable presumption from agency documentation
New Mexico	N.M. Stat. Ann. § 30-52-1.2	Sealing of records of human trafficking victims
New York	N.Y. Crim. Proc. Law § 440.10(1)(i)	Vacatur; broadest nexus ("a result of"); any conviction since the 2021 amendment
North Carolina	N.C. Gen. Stat. §§ 15A-1416.1, 15A-145.9 (see also § 15A-1415)	Motion to vacate a non-violent offense; expunction of trafficking-related offenses
North Dakota	N.D. Cent. Code § 12.1-41-14	Motion to vacate and seal conviction
Ohio	Ohio Rev. Code Ann. § 2953.36	Expungement of certain crimes for victims of human trafficking
Oklahoma	Okla. Stat. tit. 22, § 19c	Expungement of arrest or charge resulting from trafficking, on the court's motion
Oregon	Or. Rev. Stat. § 137.221	Vacation of judgment of conviction for prostitution
Pennsylvania	18 Pa. Cons. Stat. § 3019(d)	Motion to vacate conviction (within "Victim protection during prosecution")
Rhode Island	11 R.I. Gen. Laws § 11-67.1-17	Motion to vacate and expunge conviction
South Carolina	S.C. Code Ann. § 16-3-2020(F)	Affirmative defense plus expungement; preponderance; "direct result of, or interrelated to"
South Dakota	S.D. Codified Laws § 26-7A-115.1	Juvenile expungement for victims of trafficking or sexual exploitation
Tennessee	Tenn. Code Ann. § 40-32-105	Expunction of records for offenses related to victim status
Texas	Tex. Gov't Code Ann. § 411.0728	Order of nondisclosure for certain trafficking victims
Utah	Utah Code Ann. § 78B-9-104(1)(h)	Postconviction vacatur or modification for enumerated offenses committed under force, fraud or coercion
Vermont	Vt. Stat. Ann. tit. 13, § 2658	Motion to vacate by victim of human trafficking
Virginia	Va. Code Ann. §§ 19.2-327.16 to -327.19	Writ of vacatur for victims of human trafficking
Washington	Wash. Rev. Code § 9.96.080 (applied through § 9.96.060(3))	Vacatur of misdemeanor and gross misdemeanor convictions; preponderance
West Virginia	W. Va. Code § 61-14-9	Petition to vacate and expunge conviction or juvenile adjudication
Wisconsin	Wis. Stat. § 973.015(2m)	Vacatur and expungement (special disposition)

Jurisdiction	Citation	Form of relief and notable features
Wyoming	Wyo. Stat. Ann. § 6-2-708	Victim defenses; vacating convictions