

DISTRICT COURT FOR
[REDACTED], MARYLAND

----- X
STATE OF MARYLAND,

v.

[REDACTED] [REDACTED]

Defendant.

MEMORANDUM OF
LAW IN SUPPORT OF
MOTION TO VACATE A
CONVICTION

Case No. [REDACTED]
----- X

TO BE FILED UNDER SEAL PURSUANT TO RULE 16-1009

THE UNIVERSITY OF BALTIMORE SCHOOL OF LAW
1420 North Charles Street
Baltimore, MD 21201
(410) 837-5706

Attorney for Defendant/Movant

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██████████ 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. ██████████ was a victim of human sex trafficking at the time of her arrest and conviction for prostitution and drug possession in Maryland in ██████████. Although Ms. ██████████ has since fled her trafficker, she is unfairly burdened by her criminal record in her efforts to rebuild her life. Therefore, Ms. ██████████ 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

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. ██████ 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

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

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: Psychological 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,

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

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. ██████████ History as a Trafficked Person

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

1. History of Sexual Abuse and Domestic Violence

Ms. ██████████ 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* ██████████ Aff., ¶ 4. Two additional instances of sexual assault followed at ages twelve and sixteen, causing Ms. ██████████ to feel powerless over her body. *Id.* at ¶¶ 7, 11. Despite this history, Ms. ██████████ 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. ██████████ 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.

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. ██████ began using alcohol and marijuana at a very young age. *See* ██████ 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. ██████ 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. ██████ 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 ██████, Ms. ██████ entered a drug rehabilitation program and eventually got sober. *Id.* at ¶¶ 19-20. She successfully maintained her sobriety until ██████, 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. ██████ was a Trafficked Person at the Time of her Arrest for Prostitution in Maryland

In early ██████, Ms. ██████ 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 ██████ offered her shelter and his protection on the streets. *See* ██████ Aff., ¶ 27. As a vulnerable woman homeless and barely surviving on the streets of ██████,

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

██████ furthered his control and power over her through both physical threats and coercion designed to exploit Ms. ██████ 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. ██████ 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 ██████, Ms. ██████ had endured months of ██████ 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 ██████ controlled. *Id.* at ¶ 28-31. ██████ then furthered his control over Ms. ██████ 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. ██████ ongoing homelessness made it nearly impossible for her to escape ██████ for very long. *Id.* at ¶ 33. Caught in this cycle of fear and coercion, she endured being trafficked on and off by ██████ 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] [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;
- (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

²⁵ See Attorney Aff., Ex. B, Defendant Trial Summary of State of Maryland v. [REDACTED] [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

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;
- (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 assignment;
- (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

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 exploitive 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. ██████ Meets the Federal and State Definitions of a Trafficking Victim

When Ms. ██████ was arrested in ██████ in ██████, 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. ██████ was acting under duress from her trafficker, ██████ when she was arrested. ██████ manipulated and coerced Ms. ██████ into continuing to prostitute for his benefit. *See* ██████ Aff., ¶ 27. As a woman struggling with drug addiction, homelessness, and a chronic history of sexual abuse and domestic violence, ██████ easily lured Ms. ██████ into his life based on his promises of shelter and protection. *Id.* at ¶¶ 27-28. Upon identifying Ms. ██████ vulnerabilities, ██████ used fraudulent promises to recruit and harbor Ms. ██████ 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. ██████ actions make Ms. ██████ a victim of human trafficking under the law.

██████ broke his promises to provide protection and shelter for Ms. ██████ 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. ██████ by making threats to use the gun he owned on her if she disobeyed him. *Id.* As a result, Ms. ██████ lived

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

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. ██████████ has worked hard and persevered in building a successful new life. Since her arrest in ██████████, Ms. ██████████ 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. ██████████ 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 ██████████.⁴²

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.lshmt.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 ██████████ ██████████ from ██████████ (██████████).

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

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

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 HTPVA'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 law⁴³ and the federal TVPA⁴⁴ 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 HTPVA⁴⁵ 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.

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]
[REDACTED]

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