

NEXUS OF VULNERABILITY: AN EXPANDED VIEW OF DRUG-BASED COERCION

Ben VanSlyke¹

*[D]rugs are used like weapons—they are used as a tool of mass destruction; as a tool to gain advantage over an already vulnerable victim; and as a tool to disarm a victim due to its power. Drugs are weaponized in the sex trafficking world.*²

In the last two decades, sex trafficking has received increasing attention throughout the United States and the world.³ In roughly the same timeframe, the United States has seen a meteoric rise in the use of opioids and related overdoses.⁴ Independently, illicit drug trafficking is the largest criminal industry in the world, and human trafficking is the second largest.⁵ Each generate billions of dollars of profit per year.⁶ Both of these industries are just that: industries. Like any businessperson, criminals seek new markets to expand into, including other criminal markets. For someone already engaged in one industry, the decision to expand into the other is largely financial; if they have the means to spread out their resources for greater profits, it makes sense to do so. This includes by using one to facilitate the other: for example, forcing trafficking survivors to transport or deliver drugs, or using their access to drugs as a means to control a trafficking survivor through addiction.⁷

For too long, these have been seen as distinct issues. Recently, however, practitioners in various fields have begun to recognize the intrinsically intersectional

¹ Ben VanSlyke is an associate attorney at Weitz & Luxenberg, P.C., and a member of the firm's sex trafficking litigation team. Before pursuing law, he worked in the non-profit sector, where he was tasked with identifying and providing services to trafficking survivors as well as serving on an active anti-trafficking taskforce with law enforcement and social service agencies. He also previously worked with an orphanage in Cambodia, providing employment and life-skills training to survivors of trafficking in order to reduce vulnerability to future trafficking.

² JACQUELYN C.A. MESHELEMIH & RAVEN E. LYNCH, *THE CAUSE AND CONSEQUENCE OF HUMAN TRAFFICKING: HUMAN RIGHTS VIOLATIONS* 130 (2019).

³ See generally Ann Wagner & Rachel Wagley McCann, *Prostitutes or Prey? The Evolution of Congressional Intent in Combating Sex Trafficking*, 54 HARV. J. ON LEGIS. 17, 47–72 (2017) (discussing the evolution of federal sex trafficking legislation from the Trafficking Victims Protection Act of 2000 to the Justice for Victims of Trafficking Act of 2015).

⁴ See, e.g., *Overdose Death Rates*, NAT. INST. ON DRUG ABUSE fig. 3 (Jan. 29, 2021), <https://www.drugabuse.gov/drug-topics/trends-statistics/overdose-death-rates> [<https://perma.cc/TQ66-HGJE>] (showing that opioid overdose deaths increased from fewer than 10,000 in 1999 to nearly 50,000 in 2019).

⁵ *S&T Combatting Human Trafficking Using Social Science*, U.S. DEP'T HOMELAND SEC. (Jan. 30, 2019), <https://www.dhs.gov/science-and-technology/news/2019/01/30/st-combatting-human-trafficking-using-social-science> [<https://perma.cc/JBX4-WA8J>].

⁶ *Id.*

⁷ Jarod Forget, *Violent drug organizations use human trafficking to expand profits*, U.S. Drug Enf't Adm' (Jan. 28, 2021), <https://www.dea.gov/stories/2021/2021-01/2021-01-28/violent-drug-organizations-use-human-trafficking-expand-profits> [<https://perma.cc/6N5E-JY96>].

nature of sex trafficking and the opioid crisis. This article seeks to contribute to this dialogue, expanding upon the extreme nature of the vulnerabilities created when these two issues collide, and supporting the application of the criminal law concept of drug-based coercion to civil litigation so as to increase the availability of remedies to survivors of this vicious form of exploitation.

As a preliminary matter, the author acknowledges that some of the assertions and correlating support contained in this article rely on primarily anecdotal information. By nature of the topic and its relatively recent recognition, quantitative analysis of the intersection between sex trafficking and opioids is limited, and even individually both topics are still not completely understood. By incorporating the author's first-hand experiences working in this arena with corroborating support, qualitative research, information about related topics, and logical inferences, this article seeks to provide a forward-looking analysis of an issue that desperately warrants greater research.

Section I of this article provides relevant background information about the legal theory of drug-based coercion to frame further discussion. Section II identifies risk factors for both addiction and human trafficking and identifies the many ways in which the two coincide. Section III delves deeper into the realities of drug-based coercion and the many horrific forms it can take. In Section IV, the author draws upon his experience litigating civil cases on behalf of trafficking survivors to consider the role of drug-based coercion in the context of civil litigation, as well as to counter foreseeable challenges. Finally, Section V reflects upon the earlier discussions to offer insights and recommendations on this complex topic.

I. BACKGROUND

The legal theory of drug-based coercion is rooted in the statutory language of 18 U.S.C. § 1591(a)(2).⁸ This section provides that “force, threats of force, fraud, coercion . . . or any combination of such means” are sufficient to satisfy the relevant element of a sex trafficking offense.⁹ Section 1591(e)(2) proceeds to define coercion as “threats of serious harm to or physical restraint against any person” or “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.”¹⁰ The operative term here, “serious harm,” is further defined in Section 1591(e)(5) as “any harm, whether physical or nonphysical, . . . 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 continue performing commercial sexual activity in order to avoid incurring that harm.”¹¹

This statutory language has been interpreted to conclude that, under Section 1591, a trafficker withholding an individual's drug supply when that individual

⁸ 18 U.S.C. § 1591(a)(2).

⁹ *Id.*

¹⁰ 18 U.S.C. § 1591(e)(2).

¹¹ 18 U.S.C. § 1591(e)(5).

suffers from drug addiction—medically referred to as substance use disorder (“SUD”)—constitutes serious harm and thereby constitutes coercion.¹² This includes threatening to withhold the supply, even if it is not actually withheld, so long as the threat is intended to cause the individual to believe that noncompliance will lead to the supply being withheld.¹³ In *United States v. Fields*, for example, a district court found that the “threat of withdrawal sickness constitutes ‘psychological’ 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 commercial sexual activity in order to avoid incurring that harm.’”¹⁴

This understanding relies on the concept of special vulnerability. Federal prosecutors have argued in favor of “seeking both an appropriate ‘vulnerability’ jury instruction and sentencing enhancement.”¹⁵ This interpretation is supported by Supreme Court decisions in other contexts.¹⁶ However, to effectively utilize special vulnerability in cases involving sex trafficking, it is important that attorneys understand *why* people suffering from addiction are uniquely vulnerable to being trafficked. On one hand, given the significant overlap between risk factors for addiction and risk factors for falling prey to sex trafficking, many people who develop addictions are at greater risk of trafficking even before substance use plays a role, and the presence of addiction can flag the likely presence of these other risk factors.¹⁷ On the other hand, once an addiction is established, both the immediate effects of the substance use (i.e., the “high”) and the constant fear of withdrawal symptoms produce additional vulnerability unique to addiction, which only exacerbate any preexisting risk factors.¹⁸ As a result, when addiction and trafficking coincide, the victim is often already vulnerable due to other risk factors and rendered doubly vulnerable by the effects of drug use and addiction. Both of these categories of vulnerability fall within the consideration of section 1591(e)(5), as they are certainly background and circumstantial factors that affect the reasonableness of an individual’s actions in response to coercion by a trafficker, including coercion by threat of withholding their drug supply.¹⁹

¹² *United States v. Fields*, No. 8:13-CR-198-T-30TGW, 2013 WL 5278499, at *1 (M.D. Fla. Sept. 18, 2013) (“[F]ear of severe withdrawal symptoms meets the definition of ‘serious harm’ as defined by the Statute.”).

¹³ *Id.*

¹⁴ *Id.* (quoting “serious harm” as defined by 18 U.S.C. § 1591(e)(5)).

¹⁵ Lindsey Roberson & Shan Patel, *Prosecuting Sex Trafficking Cases Using a Drug-Based Theory of Coercion*, 65 U.S. ATT’YS BULL. 175, 183 (2017).

¹⁶ *See, e.g., United States v. Kozminski*, 487 U.S. 931, 952–53 (1988) (holding that an individual who “use[s] or threat[ens] . . . coercion” in an attempt to force another into “involuntary servitude” will face “criminal prosecution”).

¹⁷ *See infra* Part 0.

¹⁸ *See infra* Part 0.

¹⁹ 18 U.S.C. § 1591(e)(2).

In the context of federal criminal trials—as well as federal civil actions²⁰—drug-based coercion is independently established through federal common law.²¹ However, this concept is not new. Some states have codified this interpretation of coercion explicitly,²² and the Uniform Law Commission recommended the adoption of this definition as early as 2013.²³ Further, this model law has been supported by the American Bar Association since 2013.²⁴

II. COMPARATIVE RISK FACTORS OF ADDICTION AND TRAFFICKING

Through decades of study, numerous factors have been identified as indicators that an individual is at a higher than average risk of developing an addiction.²⁵ Though non-exhaustive, some of the relevant factors include:

- Early substance use;
- Early and persistent behavior issues;
- Peer substance use;
- Poor family structures and/or family conflict;
- High availability of substances in the area;
- High crime rates in the area; and
- Low socioeconomic status.²⁶

By and large, these risk factors should be unsurprising; it seems intuitive, for example, that individuals who spend significant amounts of time around friends and family who engage in substance use are more likely to do so themselves. However, the fact that these factors are so well-documented lends support to legal theories that rely on this information to demonstrate a client’s vulnerability.

Additionally, researchers have identified that individuals who are survivors of violence or abuse—particularly when the abuse occurred as a child—are statistically

²⁰ See *infra* Section IV.B.1.

²¹ *Infra* Section IV.B.1.

²² See, e.g., KY. REV. STAT. ANN. § 529.010(6)(c) (LexisNexis 2021) (“Force, fraud, or coercion” includes but is not limited to . . . [f]acilitating, controlling, or threatening to control an individual’s access to a controlled substance”); ARIZ. REV. STAT. § 13-1307(C)(1)(e) (LexisNexis 2021) (“Coercion includes . . . [f]acilitating or controlling another person’s access to a controlled substance.”); DEL. CODE ANN. tit. 11, § 787(a)(2)(d) (2021) (“Coercion” means . . . [c]ontrolling or threatening to control an individual’s access to a controlled substance”).

²³ UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUM. TRAFFICKING § 2(2)(D) (UNIF. L. COMM’N 2013) (“Coercion” means . . . controlling or threatening to control and individual’s access to a controlled substance”).

²⁴ *Human Trafficking Legislation*, A.B.A., https://www.americanbar.org/groups/human_rights/human-trafficking/trafficking-legislation/ [https://perma.cc/2S6F-F776].

²⁵ OFFICE OF THE SURGEON GEN., U.S. DEP’T OF HEALTH & HUM. SERVS., *FACING ADDICTION IN AMERICA: THE SURGEON GENERAL’S REPORT ON ALCOHOL, DRUGS, AND HEALTH* 3-5 to 3-6 tbl.3.1 (2016), <https://addiction.surgeongeneral.gov/sites/default/files/surgeon-generals-report.pdf> [https://perma.cc/9ZSP-LMAK].

²⁶ *Id.*

much more likely to develop addictions.²⁷ “A review of studies on associations between childhood sexual and physical abuse and substance use problems concluded that childhood abuse is a factor in the development of substance use problems but the relationship is likely mediated by psychiatric conditions, such as anxiety and depressive disorders.”²⁸ More generally, “[h]igh rates of trauma exposure have been observed in both male and female substance-using populations.”²⁹ While the exact process by which these traumatic experiences translate into addiction and related problems remains disputed,³⁰ the correlation itself is “well-documented.”³¹

Risk factors for sex trafficking are somewhat less clear. Even specifically in regard to child sex trafficking—often the focus of media and legislative attention on the topic—“very little empirical research has been conducted.”³² Still, there is sufficient information to strongly suggest that many of those most at risk of developing addictions are also at risk of being targeted for sex trafficking.³³ Current information holds that “[t]raffickers disproportionately target at-risk populations including individuals who have experienced or been exposed to other forms of violence (child abuse and maltreatment, interpersonal violence and sexual assault, community and gang violence) and individuals disconnected from stable support networks (runaway and homeless youth, unaccompanied minors, persons displaced during natural disasters).”³⁴ Specifically, “[a]ccording to reports, 70 percent to 90 percent of commercially sexually exploited youth have a history of child sexual

²⁷ Jane Liebschutz et al., *The Relationship Between Sexual and Physical Abuse and Substance Abuse Consequences*, 22 J. SUBSTANCE ABUSE TREATMENT 121, 124 (“[P]ast physical or sexual abuse was significantly associated with more substance abuse consequences When calculated for different types of violence, there were no differences in substance abuse consequences . . . between physical only vs. sexual with or without physical . . . , whereas there were significant differences between physical only vs. none and sexual only vs. none.”) (internal citations omitted).

²⁸ Lil Tonmyr & Margot Shields, *Childhood Sexual Abuse and Substance Abuse: A Gender Paradox?*, 63 CHILD ABUSE & NEGLECT 284, 290 (2017).

²⁹ Priscilla Dass-Brailford & Amie C. Myrick, *Psychological Trauma and Substance Abuse: The Need for an Integrated Approach*, 11 TRAUMA, VIOLENCE, & ABUSE 202, 202 (2010).

³⁰ Tonmyr & Shields, *supra* note 28, at 289 (“Three explanatory models have been proposed for the link between [childhood sexual abuse] and adolescent substance abuse; PTSD models focusing on the trauma-inducing aspects of child maltreatment, self-dysfunction models, and relationship difficulty models.”). These distinctions focus more on the psychological underpinnings of this link, which are beyond the scope of this article and irrelevant to the legal consideration of risk factors and associated vulnerability.

³¹ *Id.* at 284.

³² Lisa Fedina et al., *Risk Factors for Domestic Child Sex Trafficking in the United States*, 34 J. INTERPERSONAL VIOLENCE 2653, 2654 (2019).

³³ See FACING ADDICTION IN AMERICA: THE SURGEON GENERAL’S REPORT ON ALCOHOL, DRUGS, AND HEALTH, *supra* note 25, at 3-5 to 3-6 tbl.3.1 (discussing risk factors for drug abuse); U.S. Dep’t of Health & Hum. Servs., Admin. for Child. & Families, Off. on Trafficking in Persons, Fact Sheet: Human Trafficking 1 (2017),

https://www.acf.hhs.gov/sites/default/files/documents/otip/fact_sheet_human_trafficking_fy18.pdf [<https://perma.cc/E28X-CVCC>] (identifying how at-risk populations are most likely to be trafficked).

³⁴ OFFICE ON TRAFFICKING IN PERSONS, U.S. DEP’T OF HEALTH & HUM. SERVS., OTIP-FS-18-01, FACT SHEET: HUMAN TRAFFICKING (2017).

https://www.acf.hhs.gov/sites/default/files/documents/otip/fact_sheet_human_trafficking_fy18.pdf [<https://perma.cc/2HTQ-S2UE>].

abuse.”³⁵ “In addition, youth who have experienced dating violence and rape are also at higher-risk for trafficking.”³⁶ While additional empirical research on this topic is still needed, these risk factors are corroborated by what many service providers have identified on the ground—including the author’s own experiences working with trafficking survivors.

On balance then, there are many factors which simultaneously indicate that an individual is at risk for developing an addiction and being targeted for trafficking. For the purposes of this article, when an individual is presently experiencing or has previously experienced the following, it will be considered an overlapping risk factor:

- Childhood sexual abuse;
- Child abuse and neglect generally;
- Rape or sexual assault;
- Interpersonal, community, or gang violence;
- Involvement in the foster care system;
- Homelessness or running away from home;
- Family history of addiction;
- Substance use within the individual’s social group;
- And family conflict or instability.³⁷

In addition, as discussed in more detail below, addiction itself will be considered a risk factor for trafficking and vice versa, as both create additional vulnerability to the other.³⁸ To be clear, some of this overlap relies on inferences, but the inferences are independently supported. For example, although family history of addiction has not typically been identified as a risk factor for human trafficking in academic literature on the topic,³⁹ family history of addiction does contribute to rates of

³⁵ ADMIN. FOR CHILD., YOUTH AND FAMILIES, U.S. DEP’T OF HEALTH & HUM. SERVS., GUIDANCE TO STATES AND SERVICES ON ADDRESSING HUMAN TRAFFICKING OF CHILDREN AND YOUTH IN THE UNITED STATES 4 (2013), https://www.acf.hhs.gov/sites/default/files/documents/cb/acyf_human_trafficking_guidance.pdf [<https://perma.cc/575C-UDMD>].

³⁶ *Id.*

³⁷ *Id.* at 3 – 4.

³⁸ *See infra* Part III.

³⁹ *See, e.g., West Virginia Sees Increase in ‘Family’ Sex Trafficking Related to Opioid Epidemic*, W. VA. PUB. BROAD. (Jan. 9, 2018, 4:42 PM), <https://www.wvpublic.org/news/2018-01-09/west-virginia-sees-increase-in-family-sex-trafficking-related-to-opioid-epidemic> [<https://perma.cc/66C2-XLX8>]. However, some information indicates a potential rise in “familial trafficking” of children by family members seeking to sustain their addiction.

involvement in foster care,⁴⁰ which is a well-documented risk factor for human trafficking.⁴¹

III. ANALYSIS OF SPECIAL VULNERABILITY WHERE ADDICTION AND TRAFFICKING INTERSECT

The underpinnings of the drug-based coercion theory are that, in addition to the risk factors for trafficking itself, addiction is essentially a risk factor for trafficking.⁴² In other words, the presence of addiction indicates that someone is distinctly vulnerable to being trafficked, separate from, and in addition to, any other trafficking risk factors the person may have. Likewise, if a victim of trafficking is not already struggling with a drug addiction, they may be additionally vulnerable to developing such an addiction. Attorneys know this; indeed, step-by-step guides have been written about how attorneys can lean on this relationship in order to prosecute traffickers.⁴³ What this section seeks to expand upon is the human experience behind the legal theory: what does this special vulnerability look like?

A. *Traffickers use opioids to effectuate control through both the immediate effects of opioids and their control over the survivor's drug supply, in addition to capitalizing on external factors.*

i. *Immediate vulnerability: symptoms of the high.*

One way in which a trafficker can use drugs to exploit a trafficking survivor is through the effects of the drug itself. In an immediate sense, an individual under the influence of opioids is extremely vulnerable to the coercion or control of others by the very nature of opioid use. Short-term effects of opioids include “extreme relaxation”, “drowsiness and clumsiness”, and “confusion”.⁴⁴ This is aside from their primary medical purpose as analgesics, or pain relievers.⁴⁵ In addition, many users

⁴⁰ See generally Susie Neilson, *More Kids Are Getting Placed In Foster Care Because Of Parents' Drug Use*, NPR (July 15, 2019, 11:27 AM), <https://www.npr.org/sections/health-shots/2019/07/15/741790195/more-kids-are-getting-placed-in-foster-care-because-of-parents-drug-use> [<https://perma.cc/R9CU-CFLJ>] (“The number of cases of children entering the foster care system due to parental drug use has more than doubled since 2000”)

⁴¹ FACING ADDICTION IN AMERICA: THE SURGEON GENERAL'S REPORT ON ALCOHOL, DRUGS, AND HEALTH., *supra* note 25, 3-5 to 3-6 tbl.3.1.

⁴² Office to Monitor and Combat Trafficking in Persons, U.S. Dep't of State, 2020 Trafficking in Persons Report 32 (20th ed. 2020), <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf> [<https://perma.cc/A7WP-FTJY>].

⁴³ See generally Roberson & Patel, *supra* note 15.

⁴⁴ *Opioids*, ALCOHOL & DRUG FOUND. (Nov. 5, 2021), <https://adf.org.au/drug-facts/opioids/#wheel>.

⁴⁵ Kendra Cherry, *Why an Opiate's Impact on the Brain Can Cause Addiction*, VERYWELLMIND (Mar. 23, 2020), <https://www.verywellmind.com/what-are-opiates-2795406> [<https://perma.cc/L7TU-55GE>]; Roberson & Patel, *supra* note 15, at 175–76.

report “an intense rush of pleasure or euphoria” immediately after the opioid takes effect.⁴⁶

For these reasons, drugs can be “used to incapacitate [an individual] so that [she] conforms to the demands of the trafficker.”⁴⁷ One survivor described this, saying that her trafficker “used drugs as a method of trying to keep me controllable and docile[.]”⁴⁸ Although this angle often receives less attention than the fear of withdrawal discussed below, these effects give traffickers significant leverage by which to exploit their victims.

Common sense indicates that an individual who is relaxed, drowsy, or confused, is more susceptible to manipulation, whether through physical force or not. A trafficker or a “John” can take advantage of someone sedated by opioids in ways that the survivor may resist—or resist more effectively—if they were not under the influence of opioids.⁴⁹ Likewise, both the euphoric and analgesic effects of the high can serve as a sort of reprieve in the otherwise bleak situation that survivors are faced with. This incentivizes survivors to take advantage of the drugs available to them, and allows traffickers to frame the drugs they provide as a reward obtained through “compliance.”⁵⁰ All the while, this only intensifies the survivor’s addiction and sets them up for further coercion by the trafficker’s ability to withhold the survivor’s drug supply.

ii. Sustained vulnerability: control over drug supply.

⁴⁶ Camille Renzoni, *Exploring Why Opiates Make You Feel Good*, THE RECOVERY VILLAGE (Aug. 21, 2021), <https://www.therecoveryvillage.com/opiate-addiction/exploring-why-opiates-make-you-feel-good/> [https://perma.cc/K66V-T7QY]. It is worth noting that there has been an increase in literature disputing the prevalence of this sort of positive feeling. *See, e.g.*, Nicoletta Lanese, *Most People Don’t Actually Feel Euphoric When They Take Opioids, Study Finds*, LIVESCIENCE (Oct. 28, 2019), <https://www.livescience.com/opioid-euphoria-mostly-a-myth.html> [https://perma.cc/2VUY-JT53]. However, this is still considered a minority view, and detailed scientific studies have connected opioid use to immediate activity within the pleasure centers of the brain. *See generally* Antoine Bechara et al., *A Neurobehavioral Approach to Addiction: Implications for the Opioid Epidemic and the Psychology of Addiction*, 20 PSYCH. SCI. PUB. INT. 96, 101 (2019).

⁴⁷ MESHELEMAH & LYNCH, *supra* note 2, at 129.

⁴⁸ Heather R. Evans, *From the Voices of Domestic Sex Trafficking Survivors: Experiences of Complex Trauma & Posttraumatic Growth* 102 (May 20, 2019) (Ph.D. dissertation, University of Pennsylvania) (ScholarlyCommons), https://repository.upenn.edu/cgi/viewcontent.cgi?article=1131&context=edissertations_sp2 [https://perma.cc/M67D-67MB].

⁴⁹ *Upper Peninsula Women Drugged, Sex Trafficked in Lower Michigan*, WLUC (Jan. 23, 2020, 5:08 AM), <https://www.uppermichiganssource.com/content/news/Upper-Peninsula-women-drugged-sex-trafficked-in-Lower-Michigan-567225371.html> [https://perma.cc/BSV6-7ANY]. Describing one case of sex trafficking that occurred in Flint, Michigan, the Genesee County Sheriff stated that the traffickers “kept [the survivors] high, so they couldn’t make sound decisions to try to get out.”

⁵⁰ MESHELEMAH & LYNCH, *supra* note 2, at 128 (stating that “drugs are often used as a reward (for compliance”).

Another mechanism of drug-based coercion—arguably the most prevalent⁵¹—is to exploit a survivor’s ongoing addiction to opioids.⁵² The driving force behind this type of coercion is a survivor’s addiction and consequent fear of withdrawal symptoms. These symptoms include, among other things, muscle and bone pain, increased body temperature, nausea and vomiting, diarrhea, anxiety, sweating, and chills.⁵³ These symptoms have been aptly described as “flu-like,” but to an extreme degree, sufficient to cause “tremendous physical and psychological distress to the person suffering” from this process.⁵⁴ These symptoms generally begin approximately eight to ten hours after the last dose of opioids, and peak after approximately one to three days, before gradually decreasing.⁵⁵ From the perspective that traffickers are deliberately subjecting survivors under their control to this excruciating experience by withholding drugs from them, one could appropriately analogize this punishment to torture.⁵⁶

Unsurprisingly, after experiencing these withdrawals one or more times, survivors develop a pervasive fear of having to go through it again. Approximately three to four hours after their last dose, individuals addicted to opioids often become anxious or fearful, experience “cravings,” and engage in “drug-seeking behavior.”⁵⁷ “The physical craving the body develops for opioids is profound and unrelenting,”⁵⁸ which generates a “powerful fear of withdrawal that causes [the addicted individual] to look for the drug at all costs.”⁵⁹ When employed by traffickers as a threatened punishment, the cost is compliance, and trafficking survivors often comply with their

⁵¹ See Hum. Trafficking Inst., 2017 Federal Human Trafficking Report 16 (2017), <https://traffickinginstitute.org/wp-content/uploads/2022/01/2017-Federal-Human-Trafficking-Report-Web-Low-Res.pdf> [<https://perma.cc/6C3W-8E8J>].

⁵² Emma Eastwood-Paticchio, *Addicted to You: Drug Addiction as a Means of Coercion*, TRAFFICKING MATTERS (Jan. 30, 2019), <https://traffickinginstitute.org/addicted-to-you-drug-addiction-as-a-means-of-coercion/> [<https://perma.cc/7SC6-97KV>] (“According to the 2017 Federal Human Trafficking Report, traffickers exploited victims’ substance abuse issues in one third of active criminal sex trafficking cases in 2017, over three times more than traffickers exploited romantic relationships.”); See HUM. TRAFFICKING INST., 2017 FEDERAL HUMAN TRAFFICKING REPORT 16 (2017), <https://traffickinginstitute.org/wp-content/uploads/2022/01/2017-Federal-Human-Trafficking-Report-Web-Low-Res.pdf> [<https://perma.cc/6C3W-8E8J>].

⁵³ Leah K. Walker, *Opioid Withdrawal: Signs, Symptoms & Addiction Treatment*, AM. ADDICTION TREATMENT CTRS. (Jan. 23, 2022), <https://americanaddictioncenters.org/withdrawal-timelines-treatments/opiate> [<https://perma.cc/8KVV-EMMF>].

⁵⁴ Jeffrey Juergens, *What Is Opiate Withdrawal?*, ADDICTION CENTER (Nov. 9, 2021), <https://www.addictioncenter.com/opiates/withdrawal-detox/> [<https://perma.cc/RA6Y-TRT5>].

⁵⁵ *Id.*

⁵⁶ See 18 U.S.C. § 2340 (defining torture as an act “specifically intended to inflict severe physical or mental pain or suffering . . . upon another person within his custody or physical control”).

⁵⁷ Juergens, *supra* note 54.

⁵⁸ Roberson & Patel, *supra* note 15, at 176 (citing Katherine Chon, *Human Trafficking and Opioid Abuse*, ADMIN. FOR CHILD. & FAMILIES: THE FAMILY ROOM BLOG (May 17, 2016), <https://wayback.archive-it.org/8654/20170322021028/https://www.acf.hhs.gov/blog/2016/05/human-trafficking-and-opioid-abuse> [<https://perma.cc/2XAA-2XV6>] (discussing an interview with Dr. Hanni Stoklosa)).

⁵⁹ Lindsey N. Roberson, *She Leads a Lonely Life: When Sex Trafficking and Drug Addiction Collide*, 52 WAKE FOREST L. REV. 359, 376 (2017) (citing *United States v. Guidry*, 817 F.3d 997, 1004 (7th Cir. 2016) (internal quotations omitted)).

traffickers' demands in order to avoid this severe punishment. One survivor described this coercion, saying that "if I didn't make a certain amount of money a day, he would not give me any heroin . . . he pretty much controlled me with the drug because he knew I couldn't function without it. I was dependent on it at that point."⁶⁰

Addiction, and specifically addiction to opioids, is incredibly challenging to overcome, even under ordinary circumstances.⁶¹ It often requires residential (inpatient) rehabilitation, help from professional therapists, and "medication-assisted treatment."⁶² Many people also rely heavily on peer support from other recovering addicts during their recovery.⁶³ Moreover, when an individual has a severe addiction to opioids and does not detox properly (i.e., quitting cold-turkey), opioid withdrawals can be fatal.⁶⁴ Given the level of control and isolation cultivated by traffickers, survivors struggling from opioid addictions do not have the ability to seek out these supports to pursue sobriety, particularly when—as discussed in the previous section—traffickers may go so far as to force the survivor to take opioids in order to sustain the addiction and perpetuate their control.⁶⁵ This is without even taking into account the additional incentive trafficking survivors have to use opioids and other drugs as a means to "numb the pain" of past trauma.⁶⁶ The extent to which a trafficking survivor is trapped—both within the trafficking scenario and within their addiction—makes their path to sobriety markedly more difficult than it already is. The power that this gives to traffickers must not be underestimated.

iii. External vulnerability: criminalization and credibility.

In addition to the control the trafficker exerts directly through a survivor's addiction to opioids and other drugs, they take advantage of external factors to further enhance their control. On one hand, "substance abuse camouflages the crime of sex trafficking under a layer of illegal drug possession and other related criminal activity."⁶⁷ A trafficker may capitalize on a survivor's substance use as a means to "set up the trafficking victim in case she is ever arrested on prostitution and/or prostitution-related charges. If apprehended by law enforcement while under the influence or in possession, drug using victims may lose their credibility or presumed innocence. The trafficker knows that her arrest will distract from her

⁶⁰ Evans, *supra* note 48, at 102.

⁶¹ *Understanding and Overcoming Opioid Abuse*, AM. PSYCH. ASS'N (Jan. 1, 2017), <https://www.apa.org/topics/substance-use-abuse-addiction/opioid-abuse> [<https://perma.cc/NK9D-97E3>].

⁶² *Id.*

⁶³ See generally Kathlene Tracy & Samantha P. Wallace, *Benefits of Peer Support Groups in the Treatment of Addiction*, 7 *SUBSTANCE ABUSE & REHAB.* 143, 152 (2016) (concluding that data regarding the positive effects of peer support groups on addiction recovery is limited but encouraging).

⁶⁴ See generally Shane Darke et al., *Yes, People Can Die from Opiate Withdrawal*, 122 *ADDICTION* 199 (2016) (highlighting several instances of withdrawal-caused deaths across the world's incarcerated population).

⁶⁵ Roberson, *supra* note 59, at 371.

⁶⁶ *Id.* at 370.

⁶⁷ Roberson & Patel, *supra* note 15, at 177.

victimization.”⁶⁸ On the other hand, in the event that law enforcement seeks to prosecute the trafficker, the survivor’s substance use often hinders their ability to contribute to this prosecution as a witness.⁶⁹ Due to the strong anesthetic effects of opioids, “victims often have distorted or insufficient memory of their forced commercial sex acts.”⁷⁰ Victims also “report being warned by their trafficker that, because they have a prostitution record, they will never be able to obtain legal employment, and that if they consider filing a report, no one would believe them because they are merely prostitutes.”⁷¹ The same is almost certainly true regarding addiction and drug-related charges. Traffickers utilize every method of control available to them, turning external stigmas about addictions to their advantage is no exception.

B. Drug-based Coercion Takes Many Forms.

The preceding categories of vulnerability, generated by opioids, illustrate the mechanisms by which traffickers can use these substances to generate control. Out of context, however, these still fail to describe the lived experience of what this looks like. Like any tool, these mechanisms of control can be used in a variety of ways, generating a variety of exploitative relationships. In this section, multiple example scenarios will be described, illustrating how these mechanisms coalesce with the risk factors described above to create powerful forms of coercion.⁷²

These scenarios have been fictionalized and simplified to provide greater clarity. While some elements are based on private client interactions, many of the facts have been pulled from publicly available cases and survivor stories.⁷³ Although these

⁶⁸ MESHELEMIH & LYNCH, *supra* note 2, at 129–30.

⁶⁹ Sabrina Balmgamwalla, *Trafficking in Narratives: Conceptualizing and Recasting Victims, Offenders, and Rescuers in the War on Human Trafficking*, 94 DENV. L. REV. 1, 27 (2016).

⁷⁰ Matthew Myatt, *The “Victim-Perpetrator” Dilemma: The Role of State Safe Harbor Laws in Creating a Presumption of Coercion for Human Trafficking Victims*, 25 WM. & MARY J. RACE GENDER & SOC. JUST. 555, 568 (2019).

⁷¹ Kate Mogulescu, *The Public Defender as Anti-Trafficking Advocate, an Unlikely Role: How Current New York City Arrest and Prosecution Policies Systematically Criminalize Victims of Sex Trafficking*, 15 CUNY L. REV. 471, 482 (2012).

⁷² See *supra* Section 0.

⁷³ See generally *United States v. Fields*, 625 F. App’x 949 (11th Cir. 2015) (per curiam); *United States v. Mack*, 808 F.3d 1074 (6th Cir. 2015); *United States v. Groce*, 891 F.3d 260 (7th Cir. 2018); Caitlin Johnston, *Man Convicted of Human Trafficking Gets 34 Years in Prison*, TAMPA BAY TIMES (Jan. 30, 2014), <https://www.tampabay.com/news/courts/criminal/man-convicted-of-human-trafficking-gets-34-years-in-prison/2163311/> [<https://perma.cc/JA2K-DRXT>]; Lindsay Moore, *Police, Survivors Debunk Human Trafficking Kidnapping Myths*, MLIVE (Jan. 16, 2020, 11:08 AM), <https://www.mlive.com/news/kalamazoo/2020/01/police-survivors-debunk-human-trafficking-kidnapping-myths.html> [<https://perma.cc/W24P-ZRTR>]; Shandra Woworuntu, *Shandra Woworuntu: My Life as a Sex-Trafficking Victim*, BBC NEWS (Mar. 29, 2016), <https://www.bbc.com/news/magazine-35846207> [<https://perma.cc/7Q35-BT3R>]; Lex Talamo, *Victim: I Was 4 When My Dad Started Trafficking Me*, SHREVEPORT TIMES (May 23, 2016), <https://www.shreveporttimes.com/story/news/watchdog/2016/05/23/victims-sex-trafficking-share-their-stories/83538332/> [<https://perma.cc/48MW-FHRZ>]; Esther Honig, *How One Woman Escaped Sex Trafficking and Overcame Her Opioid Addiction*, SIDE EFFECTS PUB. MEDIA (May 23, 2018 4:34 PM), <https://www.sideeffectspublicmedia.org/post/how-one-woman-escaped-sex-trafficking-and-overcame-her-opioid-addiction> [<https://perma.cc/LE5B-9SFV>]; Kristin Detrow, *The Link Between Opioid Abuse*

scenarios do not provide an exhaustive account of the myriad ways in which sex trafficking and opioids can intersect, they do illustrate, in general terms some, of the most common examples.

i. Opioids can be used to sedate someone and create vulnerability.

Ayesha was 16. She had been arguing with her mother—who was raising Ayesha alone—and left the house after it became physical. She called a friend, Bianca, who said that Ayesha could spend a few days with her. Bianca was going to stay with her out-of-town boyfriend for the weekend, and Ayesha tagged along. On the first night, Bianca and her boyfriend smoked heroin, and encouraged Ayesha to try it, with Bianca claiming it helped her when she was stressed. Ayesha tried heroin for the first time, and as promised, she felt very relaxed—a pleasant change, coming from a household full of constant conflict. The next day, Bianca and her boyfriend got in a fight, and the boyfriend made them leave. Not ready to go home, they visited an acquaintance of Bianca's, who had several friends over. The acquaintance offered them heroin, and they accepted. Once Ayesha and Bianca were high on heroin, barely aware of their surroundings, the acquaintance and his friends raped them. Over the next few days, the acquaintance kept Ayesha and Bianca high, while allowing multiple men to visit, pay him, and rape the two girls.

Ayesha was faced with several of the risk factors identified above. She had experienced physical abuse at the hands of her mother, and more generally experienced conflict and instability within her family. She ran away from home and took shelter with a friend and gained access to heroin through her social group. This quickly escalated to a situation in which Ayesha was vulnerable and taken advantage of. In a perfect world, Ayesha and Bianca would soon get away from their trafficker—Bianca's acquaintance—and return home, where their families would ensure they received therapy and other supports. Equally likely, however, they may remain under the control of their trafficker for an extended time or return home to a family that rejects them and leaves them vulnerable to further exploitation in the future.

ii. Opioids can be presented as appealing in order to lure someone into further vulnerability, which can then be exploited.

Clara was placed in foster care at the age of 12, after child protective services discovered that her mother was a severe alcoholic, and her father was sexually abusing her while her mother was unconscious. Over the next two years, Clara was moved between foster homes, and at two of them, she was physically assaulted by

and Sex Trafficking, CRIME REP. (Jan. 17, 2018), <https://thecrimereport.org/2018/01/17/the-link-between-opioid-abuse-and-sex-trafficking/> [<https://perma.cc/Z7JE-VL4P>]; American Addiction Centers Editorial Staff, *Drug Addiction Fuels the Fire of Human Trafficking*, AM. ADDICTION CTRS. (Nov. 4, 2019), <https://www.rehabs.com/blog/drug-addiction-fuels-the-fire-of-human-trafficking/> [<https://perma.cc/G5EJ-THAU>].

older girls in the home. After being threatened by someone at her new home, Clara ran away. She went to a nearby park, where she was approached by a man in his twenties expressing romantic interest in her. He took her to a nearby diner for some food and asked about her story. He seemed to care, and Clara was not used to that. He offered to be her boyfriend and take care of her, and she gladly accepted. They were staying at a hotel, and he offered Clara pills that he said would help her relax. She tried them, without knowing they were prescription opioids. She kept taking them, initially at his suggestion, but as she got used to them, she started to enjoy them. After a week, he told her that he needed her help paying for the hotel, and that he could get her dates to make some money. He said she wouldn't have to do more than kiss the dates, but the first date insisted she have sex. After she told her boyfriend, he said she just needs to figure out how to make it work. The next date did the same thing, and the next, but when she asked to stop her boyfriend grew angry and threatened to hurt her or call the police on her if she didn't go along with it. Eventually, Clara started taking pills before every date to make them easier.

Clara, too, showed several of the identified risk factors. She had a mother who suffered from addiction before her, and endured childhood sexual abuse at the hands of her father. After entering foster care, she was subjected to interpersonal violence by other residents, and eventually ran away. This left Clara vulnerable to exploitation by an older man who showed her a modicum of kindness to lure her in before trafficking her. If Clara managed to get away from the man soon, she may have been able to return to foster care or enter a short-term rehabilitation program. If not, she likely continued on, becoming more severely addicted and more entrapped in a cycle of abuse, and sooner or later being convicted of prostitution or drug possession.

iii. Traffickers can force survivors under their control to develop an addiction to opioids, which the trafficker can then leverage for further control.

Dalayah was a young mother, nineteen with a newborn son. Looking to make money to support herself and her child, she responded to a job posting online. The post advertised for a promotional model, indicating that she would be promoting a product at concerts and other events. Over emails, she discussed pay and travel expenses with the purported manager and disclosed that she was looking for a way to provide for her son. Her mother—who had recovered from her own previous drug addiction and managed to work two jobs and raise Dalayah alone—agreed to take care of her son in the evenings when she was working, so she accepted the job. The day came for her first shift, at a concert in a town a couple of hours away. She met who she thought was her manager, who would be driving her to the event. Instead of a concert venue, however, he took her to a motel in a different city entirely. He told Dalayah that she works for him now, and that if she refuses, he will hurt her son. At gunpoint, Dalayah was forced to take prescription opioids, raped, and trafficked throughout the night and into the early morning. While taking Dalayah home, her trafficker reiterated his threats against her son and told her that she must continue to work for him. Fearing for the safety of her son, not to mention herself, Dalayah complied. Dalayah regularly told her mother that she was going to work, but instead, went with her trafficker and did as she was told.

In Daliyah's case, the only obvious risk factor is that her mother previously struggled with addiction. However, being raised by a single mother working two jobs, Daliyah was likely often left home alone from a relatively young age, thereby suffering from child neglect despite her mother's best efforts to care for her. Coupled with her financial vulnerability as a single teenage mother, the trafficker was able to manipulate her into compliance. If Daliyah had refused to comply and gone to the police, she may have escaped trafficking, although her trafficker may well have followed through on his threats before the police caught up with him. While under the trafficker's control, however, Daliyah likely developed an addiction to the drugs she was forced to take, giving the trafficker even more leverage to control her.

iv. A survivor of trafficking may independently develop an addiction to opioids as a means to escape from the horrific experiences they are forced to endure by their trafficker.

Ella was fifteen. Her mother had died when she was twelve, and she lived with her father. Her father had been distant and irritable since her mother's death, often ignoring Ella or growing angry at her over minor things. Ella started spending a lot of time out of the house, hanging out with friends rather than being at home, and her father never seemed to mind. One day, Ella tagged along with an acquaintance to what she thought was a party. The party turned out to be a house where people sold and used heroin.

Once they arrived, her acquaintance was given heroin seemingly in exchange for bringing Ella along, and the friend retired to a room where he used the heroin and became extremely sedated. Ella attempted to leave, but there was a guard at each door and she was not allowed to. After escalating force was used to prevent her from leaving, Ella was eventually raped by multiple guards in turn. She was kept captive in a room, where various men were allowed to rape her almost every day. With no way to leave and no sign that anyone was coming to help her, Ella started asking the men who came into her room for drugs. If they shared their heroin with her, Ella became quiet and complacent, and this soon became the norm. Once her traffickers caught on, they started keeping her high and selling her even more often. Ella developed a severe addiction to heroin as a means to numb herself to the horrors she was being subjected to.

After the trauma of losing her mother, Ella experienced neglect and verbal abuse from her father. Although not a runaway, Ella actively avoided the constant conflict at home and placed herself in vulnerable situations to avoid it. Moreover, Ella became associated with a heroin addict, who eventually led her into the grasp of her traffickers. Forced to cope with repeated rape and abuse, Ella took advantage of the only accessible way to numb the pain—drugs. In this case, Ella's experience being trafficked was a risk factor that led to her developing an addiction. If the house was eventually raided by police, they likely treated her as simply another addict and charged her with a drug crime. If not, Ella likely remained in this cycle of abuse until she was no longer useful to her traffickers, or until she overdosed.

v. A trafficker may seek out addicts and target them, due to their likely preexisting increased vulnerability to trafficking, as well as their susceptibility to drug-based coercion.

Felicia was a transgender, sixteen year old woman. After coming out to her parents, she was kicked out of the house. Ashamed and not wanting to see her fourteen year old brother at school, Felicia dropped out. Eventually, Felicia was placed in foster care—in a home for boys—where she was made fun of and beaten by the other boys who lived there. Felicia ran away from foster care, seeking to avoid this violence, and took to living on the streets instead, where she eventually developed an addiction.

Some years later, when Felicia was twenty-five, she heard about a homeless shelter that accepted trans-women and helped them obtain their GED or employment training, but the shelter did not allow anyone addicted to drugs into their program. Determined to turn her life around, Felicia signed herself into a public rehabilitation facility, where she got off of drugs and spent thirty days sober. But after completing rehab, Felicia called the shelter and found that they had filled all of their beds and could not offer her a spot until one opened. Unsure where to go, Felicia left the rehab facility and walked to a nearby park. Meanwhile, a man parked in a car across the street from the rehab facility was watching. He followed her to the park, spoke to her, and said that he has a home for trans-women and that Felicia could stay there. Felicia was delighted and took him up on the offer. However, Felicia soon discovered that these women were doing drugs. She decided to stay, since she had nowhere else to go, and try to resist the temptation to relapse. Two days in, the temptation overwhelmed her, and she did drugs with one of the other women, rekindling her old addiction. She asked the woman how to get more drugs, and she told Felicia to ask the owner. When Felicia asked, he told her to go out with the other woman this evening, and if she did a good job, he would give her the drugs she wanted, but if she didn't, she would have to leave. Felicia did go out that night, and the other woman showed her how to “walk the track” and solicit commercial sex. Felicia and the other women brought the proceeds to the owner, who gave them drugs and welcomed Felicia to stay as long as she wanted. No longer eligible for the shelter program, and with nowhere else to go, Felicia remained at the house and continued to walk the streets to earn her drugs.

After family conflict in response to coming out as transgender, and after her experiences with violence in foster care, Felicia became a runaway. She fell in with other homeless people suffering from an addiction, and soon developed one herself. After finally getting sober, she was targeted while leaving the rehab facility, and lured into a scenario that capitalized on her recent addiction and made it difficult for her to stay sober. After Felicia relapsed, she was coerced into trafficking in order to both feed her addiction and secure her a place to live. In this way, Felicia's addiction was a risk factor that led to her being trafficked. If Felicia summoned the willpower to leave this new home and return to rehab—assuming the facility allows people back in—she may have managed to continue her recovery and eventually secure placement in the shelter. If not, Felicia likely continued being trafficked, eventually

being arrested while “walking the track” and charged with drug or prostitution offenses.

IV. CIVIL REMEDIES UNDER 18 U.S.C. § 1595

Each of these scenarios is horrific in its own way, and such conduct is rightly prohibited under the laws of the United States and virtually every other nation. Although sex trafficking is generally thought of as a criminal offense,⁷⁴ Congress has also enacted 18 U.S.C. § 1595, creating a federal civil cause of action through which survivors of trafficking can seek damages against their trafficker *or* “whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in” sex trafficking.⁷⁵ This is the statute upon which much of the civil litigation related to sex trafficking is premised.

A. Civil Remedies Play An Important Role In Meeting The Legislative Objectives Of Protecting Survivors And Fighting Human Trafficking.

“It is estimated that human trafficking generates many billions of dollars of profit per year, second only to drug trafficking as the most profitable form of transnational crime.”⁷⁶ Given the prevalence and complexity of human trafficking, Congress was right to enact broad measures to combat it. As a supplement to the criminal provisions, the civil cause of action established by 18 U.S.C. § 1595 serves at least two important purposes. First, it allows survivors to seek a measure of recompense that would otherwise be completely unavailable to them, potentially opening doors to recovery in the wake of this horrible crime that would otherwise be closed. Second, it allows for indirect measures to inhibit trafficking that have the potential to have greater widespread impact than the criminal prosecution of any individual trafficker could.

i. This civil remedy can play an important part in a survivor’s healing journey after the trafficking has occurred.

Survivors of trafficking experience some of the most complex and all-encompassing barriers of any crime survivors as they try to move on. In an immediate sense, there are crucial supports that these survivors need—from the moment they are free from their trafficker—in order to stabilize and begin to heal.

The basic necessities are many, and include providing: (1) an interpreter or translator to make the survivor feel more comfortable and understood [if there are language barriers]; (2) crisis intervention and safety planning

⁷⁴ See 18 U.S.C. § 1591; see generally 18 U.S.C. §§ 1581–1597.

⁷⁵ 18 U.S.C. § 1595(a).

⁷⁶ The United States Attorney’s Office for the Middle District of Alabama, *Human Trafficking Task Force*, U.S. DEP’T OF JUST. (May 11, 2021), <https://www.justice.gov/usao-mdal/human-trafficking-task-force> [<https://perma.cc/G7FK-SWRG>].

to ensure that the impact of the recent trauma is addressed and there is a plan to keep the survivor safe through the duration of the reintegration period; (3) health care, including immediate medical attention, sexual assault evaluations, substance abuse counseling, and other health care to ensure the survivor is well; . . . and (5) food and clothing.⁷⁷

The legal system is far too slow-moving for any damages recovered under Section 1595 to fulfill these immediate needs. For better or worse, these needs must continue to be satisfied by service providers, government-funded crime victim programs, and charitable organizations.

However, once these immediate stabilization needs are met, survivors still face an incredibly diverse array of issues, such as ongoing health needs (including mental health), criminal records, employment challenges, immigration requirements, and more.⁷⁸ Many trafficking survivors never have these long-term needs met and continue to suffer from the effects of being trafficked for the rest of their lives.⁷⁹

A network of trafficking survivors conducted a survey of its members on the continuing impacts of their criminal histories alone. Below are some of their responses.

- “[A] lot of p[ro]spective employers shut down and do not ask for explanations or do not want to listen. Hard to find employment with a criminal record and with no other options for work this could lead to re-trafficking.”⁸⁰
- “I continue to feel ‘[t]he invisible bars even though I am free[.]’”⁸¹
- “[A]s a result of having to register as a sex offender my children were taken away and I lost these children for life.”⁸²
- “After escaping I found that I could not rent an apartment in my own name because of extensive background checks by property management. I always have a roommate and can’t have my name on mailboxes, report problems, or receive deliveries. Sometimes I have to hide from landlords.”⁸³
- “After having ‘escaped’ from my sex trafficker, I have still been enslaved by the charges. Unable to get employment year

⁷⁷ MEGHAN McCANN, NAT’L CONF. OF STATE LEGISLATURES, HUMAN TRAFFICKING: AN OVERVIEW OF SERVICES AND FUNDING FOR SURVIVORS 3 (2018).

⁷⁸ See generally *id.* at 3–8.

⁷⁹ See generally Evans, *supra* note 48, at 51–59 (Chapter 4 on the “Post-Trafficking Experience”); Kimberly Mehlman-Orozco, *What Happens After a Human Trafficking Victim is ‘Rescued’?*, THE HILL (July 29, 2016 4:28 PM), <https://thehill.com/blogs/congress-blog/judicial/289709-what-happens-after-a-human-trafficking-victim-is-rescued> [<https://perma.cc/R5BW-LSZV>] (conveying the hardships sex trafficking survivors face using one woman’s story as an example).

⁸⁰ NAT’L SURVIVOR NETWORK, NATIONAL SURVIVOR NETWORK MEMBERS SURVEY: IMPACT OF CRIMINAL ARREST AND DETENTION ON SURVIVORS OF HUMAN TRAFFICKING 7 (2016).

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

after year after year resulted in homelessness and suicide attempts.”⁸⁴

- “One of my charges was for a forgery that involved \$28,000 being extracted from a[n account I wrongly believed was dormant]. . . I’ve paid back \$10K but will spend the rest of my life paying off the balance.”⁸⁵

By and large, these are problems that *would* be improved if a survivor succeeds in obtaining damages under Section 1595. Whether the survivor has direct debts to pay off, needs the money for housing or education, or wishes to retain an attorney to pursue expungement or child custody, the financial remedies available through civil litigation can make a life-changing difference.

All of these examples result from the narrow situation of criminal convictions and their consequences, but similar needs arise from other scenarios. For example, instead of debts, survivors may have ongoing medical expenses for mental health care or HIV treatment.⁸⁶ The costs of human trafficking can continue to impact survivors indefinitely, even after they are no longer being trafficked. Although no amount of money can undo the suffering these survivors have endured, remedies under Section 1595 can help defray these costs and open doors to a brighter future that would otherwise be out of reach.

ii. Civil penalties can incentivize action by defendants who have the ability to inhibit human trafficking but escape criminal liability.

The ugly truth is that traffickers themselves are not the only ones responsible for the prevalence of human trafficking; many of our businesses turn a blind eye to the ways they and their apparatuses enable trafficking. Perhaps the clearest illustration of this is the website Backpage, largely the inspiration for, if not the target of, the controversial 2018 FOSTA-SESTA legislation.⁸⁷ The effectiveness of FOSTA-SESTA is hotly contested,⁸⁸ and to a lesser extent the relative culpability of

⁸⁴ *Id.*

⁸⁵ *Id.* at 9.

⁸⁶ MCCANN, *supra* note 77 at 4.

⁸⁷ See Liz Tung, *FOSTA-SESTA was Supposed to Thwart Sex Trafficking. Instead, it’s Sparked a Movement*, PULSE (July 10, 2020), <https://whyy.org/segments/fosta-sesta-was-supposed-to-thwart-sex-trafficking-instead-its-sparked-a-movement/> [<https://perma.cc/RDS9-EV5X>] (“Although Backpage] was actually shut down by federal authorities before FOSTA-SESTA passed, supporters of the legislation still have implied that it paved the way for the seizure.”).

⁸⁸ See, e.g., Daisy Soderberg-Rivkin, *The Lessons of FOSTA-SESTA from a Former Content Moderator*, MEDIUM (Apr. 8, 2020), https://medium.com/@Daisy_Soderberg_Rivkin/the-lessons-of-fosta-sesta-from-a-former-content-moderator-24ab256dc9e5 [<https://perma.cc/VBH5-ZMVQ>] (noting the negative impact had on sex workers); Karol Markowicz, *Congress’ Awful Anti-Sex-Trafficking Law Has Only Put Sex Workers in Danger and Wasted Taxpayer Money*, BUS. INSIDER (July 14, 2019, 8:38 AM), <https://www.businessinsider.com/fosta-sesta-anti-sex-trafficking-law-has-been-failure-opinion-2019-7> [<https://perma.cc/FCU8-BA3W>] (“[T]here’s no evidence that [FOSTA-SESTA] has made any difference whatsoever.”).

Backpage,⁸⁹ but what is clear is that the platform provided by Backpage was widely used by sex traffickers.⁹⁰ Backpage executives plead guilty to conspiracy charges, but Backpage did not engage in sex trafficking directly; rather, it provided an online communications platform which was used by traffickers to post advertisements to recruit customers.⁹¹

One of the most egregious instances of this can be seen in the hospitality industry. “Hotels and motels are a common venue for sex trafficking, due to ease of access for buyers, ability to pay in cash and maintain secrecy through finances, and lack of facility maintenance or upkeep expenses.”⁹² In one survey, 79% of respondents indicated that their exploitation involved hotels or motels.⁹³ Hotels have been aware of their involvement in sex trafficking for years.⁹⁴ Many have even made public commitments to enacting measures to prevent trafficking from occurring at their properties.⁹⁵ Despite these commitments, however, hotels are largely “failing to address the risks of modern slavery in their direct operations and supply chains.”⁹⁶ For example, only 14% of anti-trafficking statements by hotel companies report specific approaches or policies for “dealing with the risk of sexual exploitation in their operations and supply chains.”⁹⁷ “These failures can be explained by a lack of

⁸⁹ See, e.g., Elizabeth Nolan Brown, *Secret Memos Show the Government Has Been Lying About Backpage All Along*, REASON (Aug. 26, 2019, 12:48 PM), <https://reason.com/2019/08/26/secret-memos-show-the-government-has-been-lying-about-backpage/> [<https://perma.cc/8TTC-QEH5>]. Although Backpage did know that its website was used to advertise sex trafficking and refused to remove all adult content from its website, they actively assisted law enforcement in sex trafficking investigations, going above and beyond their legal requirements, taking the initiative to report particularly concerning posts to law enforcement themselves, providing seminars and trainings to law enforcement on how to effectively utilize Backpage data in their investigations and prosecutions, and providing authentication testimony at trials.

⁹⁰ S. Rep. No. 114-214, at 4 (2016).

⁹¹ See Press Release, Off. of Pub. Affs., U.S. Dep’t of Just., Backpage’s Co-Founder and CEO, As Well As Several Backpage-Related Corporate Entities, Enter Guilty Pleas, (Apr. 12, 2018), <https://www.justice.gov/opa/pr/backpage-s-co-founder-and-ceo-well-several-backpage-related-corporate-entities-enter-guilty> [<https://perma.cc/B5JB-WVYR>]. Notably, there is dispute as to how culpable Backpage truly was.

⁹² *Hotel/Motel-Based*, HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/sex-trafficking-venuesindustries/hotelmotel-based> [<https://perma.cc/J3UH-MZUG>].

⁹³ POLARIS, ON-RAMPS, INTERSECTIONS, AND EXIT ROUTES: A ROADMAP FOR SYSTEMS AND INDUSTRIES TO PREVENT AND DISRUPT HUMAN TRAFFICKING 12 fig. 1.6 (2018).

⁹⁴ See generally *Human Trafficking in the Hotel Industry*, POLARIS PROJECT (Feb. 10, 2016), <https://polarisproject.org/blog/2016/02/human-trafficking-in-the-hotel-industry/> [<https://perma.cc/SV4V-CPK8>]; U.S. Dep’t of Homeland Sec., Blue Campaign, Hospitality Toolkit (2016), <https://www.dhs.gov/sites/default/files/publications/blue-campaign/toolkits/hospitality-toolkit-eng.pdf> [<https://perma.cc/S9K4-FRP7>].

⁹⁵ See Press Release, Stephen P. Holmes, Chairman of Wyndham Hotels & Resorts, Inc., Modern Slavery Statement (June 1, 2018), <https://corporate.wyndhamhotels.com/modern-slavery-statement/> [<https://perma.cc/R9AW-KTLF>]; Press Release, Mark S. Hoptamajian, President and Chief Executive Officer of Hyatt Hotels Corporation, Hyatt Hotels Corp. Hum. Rts. Statement (January 2017), <https://about.hyatt.com/content/dam/HyattStories/thrive/Hyatt-Global-Human-Rights-Statement-Modern-Day-Slavery-020117.pdf> [<https://perma.cc/64XT-QTPL>].

⁹⁶ MINDEROO FOUNDATION’S WALK FREE INITIATIVE ET AL., BEYOND COMPLIANCE IN THE HOTEL SECTOR: A REVIEW OF UK MODERN SLAVERY ACT STATEMENTS 2 (2019).

⁹⁷ *Id.* at 4, 14.

commitment by hotel companies to prioritiz[e] the elimination of modern slavery[.]”⁹⁸

This is where civil liability under Section 1595 can make a difference. While it is possible for companies like hotels or Backpage to be subjected to criminal sanctions for their role in trafficking,⁹⁹ it is rare, and it is often quite difficult for the government to demonstrate criminal liability beyond a shadow of a doubt. Civil liability can fill in this gap and incentivize companies to take meaningful steps toward not allowing traffickers to use their apparatuses to facilitate trafficking, and this incentive can have a significant impact. For example in 2011, Marriott International partnered with ECPAT-USA, a non-profit organization aimed at child trafficking prevention, “to co-develop training to help hotel employees recognize the indicators for human trafficking,” but did not commit to making this training mandatory for its employees—as previously recommended by ECPAT and others—until 2017.¹⁰⁰ Notably, this was in the wake of an increase in attention to the possible liability of hotel chains under Section 1595.¹⁰¹

The example of hotels serves to further illustrate once more the interconnectedness of sex trafficking and illicit drugs. Expanding upon the concept that the use of opioids and other drugs is a risk factor for trafficking, and vice-versa, hotels are in a position to see and act on this correlation. If a hotel employee observes signs of drug use on the hotel premises, a red flag should go up and they should wonder whether trafficking is also present. No risk factor is universally present, and questioning the presence of trafficking when drug use is observed will undoubtedly result in false alarms, but it would also lead to the identification of untold numbers of survivors who would otherwise remain invisible. This illustration is not limited to hotels, either. In the same manner, if social media platforms, or the like, isolated patterns that relate to drug sales, these same patterns would almost certainly be utilized by traffickers. Given that both the sex trafficking and the opioid markets are illicit industries, they inherently rely on the same market practices that pervade these industries; the use of these types of business apparatuses is standard procedure in the same way that placing ads on websites is for typical businesses.

⁹⁸ *Id.* at 2.

⁹⁹ *See, e.g.*, Press Release, Off. of Pub. Affs., U.S. Dep’t of Just., Louisiana Motel Owner Pleads Guilty in Sex Trafficking Case, U.S. Dep’t of Just. (July 1, 2015), <https://www.justice.gov/opa/pr/louisiana-motel-owner-pleads-guilty-sex-trafficking-case> [https://perma.cc/J8PP-G2D9]; Press Release, Off. of Pub. Affs., U.S. Dep’t of Just., Backpage’s Co-Founder and CEO, As Well As Several Backpage-Related Corporate Entities, Enter Guilty Pleas, (Apr. 12, 2018), <https://www.justice.gov/opa/pr/backpage-s-co-founder-and-ceo-well-several-backpage-related-corporate-entities-enter-guilty> [https://perma.cc/B5JB-WVYR].

¹⁰⁰ Press Release, ECPAT-USA, ECPAT-USA and Marriott International Announce New Partnership to Protect Children from Trafficking, (Jan. 29, 2018), <https://www.ecpatusa.org/blog/2018/1/29/ecpat-usa-and-marriott-international-announce-new-partnership> [https://perma.cc/ERY5-25KZ].

¹⁰¹ *See generally* SHEA M. RHODES, SEX TRAFFICKING AND THE HOTEL INDUSTRY: CRIMINAL AND CIVIL LIABILITY FOR HOTELS AND THEIR EMPLOYEES (2015), https://cseinstitute.org/wp-content/uploads/2015/06/Hotel_Policy_Paper-1.pdf [https://perma.cc/MU5B-3SWU]; Gallant Fish, *No Rest for the Wicked: Civil Liability Against Hotels in Cases of Sex Trafficking*, 23 BUFF. HUM. RTS. L. REV. 119, 146 (2017); Ricchio v. McLean, 853 F.3d 553, 555 (1st Cir. 2017); Doe #1 v. Red Roof Inns, Inc., 21 F.4th 714, 725-27 (11th Cir. 2021).

B. Drug-based Coercion Is Sufficient To Satisfy 18 U.S.C. § 1595.

Under § 1595(a), one of the elements that survivors must prove is that they are, in fact, survivors of sex trafficking before obtaining recovery in the civil context.¹⁰² One means by which a defendant may escape liability, then, is to successfully argue that the plaintiff was not trafficked. There are at least two methods by which defendants might make such an argument. First, they could argue that drug-based coercion simply does not apply in a civil context. Second, they could argue that, because Section 1595 creates a civil cause of action through the incorporation of the criminal offenses defined in the rest of the relevant Chapter,¹⁰³ a criminal burden of proof should apply to that element of the civil claim—in other words, that the underlying criminal offense must be proven beyond a reasonable doubt, rather than merely by the preponderance of the evidence. However, both of these arguments fail.

i. Drug-based coercion applies in civil cases.

In no uncertain terms, the precedent established by federal criminal cases such as *United States v. Fields*,¹⁰⁴ *United States v. Mack*,¹⁰⁵ *United States v. Groce*,¹⁰⁶ and others since, carries over to civil lawsuits filed under Section 1595. In other contexts, courts have rightly concluded that federal common law applies under Section 1595,¹⁰⁷ and the same is true in this context. These decisions recognizing drug-based coercion as sufficient for a criminal conviction carry the same weight in regard to

¹⁰² 18 U.S.C. § 1595(a) (“An individual *who is a victim* of a violation of this chapter may bring a civil action”) (emphasis added).

¹⁰³ *Id.* (“An individual who is a victim of a violation of this chapter may bring a civil action”) (referring to 18 U.S.C. §§ 1581–1596).

¹⁰⁴ *United States v. Fields*, No. 8:13-CR-198-T-30TGW, 2013 WL 5278499, at *1 (M.D. Fla. Sept. 18, 2013) (stating “fear of severe withdrawal symptoms meets the definition of ‘serious harm’ as defined by the Statute.”).

¹⁰⁵ *U.S. v. Mack*, 808 F.3d 1074, 1081 (6th Cir. 2015) (holding that evidence depicting defendant’s initial cultivation and subsequent exploitation of victims’ drug addictions adequately supported his conviction under Section 1591).

¹⁰⁶ *U.S. v. Groce*, 891 F.3d 260, 267 (7th Cir. 2018) (“[A] victim’s prior sexual conduct is irrelevant to the sex-trafficking *mens rea*: whether the victims had previously worked as prostitutes was irrelevant to the required *mens rea* for the crime.”) (quoting *United States v. Carson*, 870 F.3d 584, 593 (7th Cir. 2017)).

¹⁰⁷ *See, e.g., J.C. v. Choice Hotels Int’l, Inc.*, No. 20-CV-00155-WHO, 2020 WL 3035794, at *1 (N.D. Cal. June 5, 2020) (“[T]he TVPRA is silent on the issue of indirect [or vicarious] liability, which suggests that the federal common law of agency should apply.”). This holding conforms with the widely-held belief that “statutes are presumed not to disturb the common law, ‘unless the language of the statute [is] clear and explicit for this purpose.’” *State Eng’r of Nev. v. S. Fork Band of Te-Moak Tribe of W. Shoshone Indians of Nev.*, 339 F.3d 804, 814 (9th Cir. 2003) (quoting *Norfolk Redevelopment & Hous. Auth. v. Chesapeake & Potomac Tel. Co. of Virginia*, 464 U.S. 30, 35–36 (1983)). However, some courts may still opt to apply state law. *But see K.B. v. Inter-Cont’l Hotels Corp.*, No. 19-CV-1213-AJ, 2020 WL 8674188, at *9 n.7 (D.N.H. Sept. 28, 2020) (“The TVPRA does not address the issue of indirect or vicarious liability. As the parties both cite primarily to New Hampshire law regarding the franchise relationship, the court does so as well.”).

civil cases as they do criminal. Even if that were not the case, the arguments that persuaded the courts to accept the theory of drug-based coercion under Section 1591 are equally applicable and persuasive under Section 1595.¹⁰⁸

In any case, Section 1595 does not create a separate but parallel civil offense of human trafficking; it directly incorporates the criminal offense, thereby incorporating all of the applicable precedent under the offense. Before the question of what satisfies Section 1595 comes the question of what satisfies Section 1591,¹⁰⁹ and that question is settled—drug-based coercion is sufficient to satisfy Section 1591. Logically, then, drug-based coercion *must* be sufficient to satisfy Section 1595.¹¹⁰

ii. If a plaintiff in a civil case relies upon a theory of drug-based coercion, the plaintiff need only prove that the drug-based coercion occurred by a preponderance of the evidence.

Defendants of Section 1595 claims have already tried to import criminal law standards into civil litigation when it suits them.¹¹¹ It is not hard to imagine a defendant making the claim that, because drug-based coercion is a common law doctrine stemming from criminal human trafficking cases, a theory of drug-based coercion should require a heightened burden of proof if applied in a civil case at all. Though it contradicts widely held understandings of the distinction between criminal and civil litigation, such an argument would not be unprecedented.

Section 1595 is one of relatively few civil causes of action that directly incorporate a criminal offense. One of the most common examples of such a structure is the Racketeer Influenced and Corrupt Organizations (RICO) Act, codified as 18 U.S.C. § 1964.¹¹² Though RICO is most often discussed in its criminal context, Congress has also authorized a civil cause of action.¹¹³ In a civil RICO case, the Second Circuit concluded that “in the absence of previous convictions a civil plaintiff

¹⁰⁸ See *supra* Part 0.

¹⁰⁹ 18 U.S.C. § 1595(a). Any violation of a criminal offense outlined in 18 U.S.C 77 will satisfy Section 1595. However, the vast majority of sex trafficking cases—as contemplated by this article—take place under 18 U.S.C. § 1591. For the purposes of this Article, I focus on violations of 18 U.S.C. § 1591.

¹¹⁰ Section 1595 incorporates Section 1591 (among the other Sections of Chapter 77); Section 1591 includes coercion as sufficient to satisfy the relevant element of a sex trafficking offense; Section 1591 includes threats of serious harm as sufficient to constitute coercion; and the decisions cited above, *supra* notes 104–106, concluded that drug-based coercion is sufficient to constitute serious harm. As such, following a logical chain of if-then statements: if drug-based coercion constitutes serious harm, then drug-based coercion constitutes coercion; if drug-based coercion constitutes coercion under Section 1591, then drug-based coercion satisfies Section 1591; and if drug-based coercion satisfies Section 1591, then drug-based coercion satisfies Section 1595. The first logical proposition in that chain is true: drug-based coercion constitutes serious harm as defined in Section 1591. Therefore, the conclusion must also be true: drug-based coercion satisfies Section 1595.

¹¹¹ See *M.A. v. Wyndham Hotels & Resorts, Inc.*, 425 F.Supp.3d 959, 969–70 (S.D. Ohio 2019) (rejecting defendant’s notion that judicial interpretation of the phrase ‘participation in a venture’ done in the criminal context of Section 1591 should apply to the interpretation of the same phrase done in the civil context of Section 1595).

¹¹² 18 U.S.C. § 1964.

¹¹³ 18 U.S.C. § 1964(c).

must carry a burden equal to that in a criminal case in proving that criminal conduct.”¹¹⁴ However, the Supreme Court resoundingly rejected that reasoning:

We are not at all convinced that the predicate acts must be established beyond a reasonable doubt in a proceeding under § 1964(c). In a number of settings, conduct that can be punished as criminal only upon proof beyond a reasonable doubt will support civil sanctions under a preponderance standard. There is no indication that Congress sought to depart from this general principle here. . . . That the offending conduct is described by reference to criminal statutes does not mean that its occurrence must be established by criminal standards or that the consequences of a finding of liability in a private civil action are identical to the consequences of a criminal conviction.¹¹⁵

This statutory configuration closely aligns with the relationship between the civil cause of action authorized by Section 1595 and the criminal offense contained in Section 1591. Following the same reasoning, there is no requirement that the criminal predicate acts described in Section 1591 need to be proved by anything higher than a preponderance of the evidence standard when raised in a civil proceeding under Section 1595. For human trafficking survivors who bring civil lawsuits under Section 1595, given that the other elements are satisfied, proving by a preponderance standard that they were compelled to engage in commercial sex through drug-based coercion is sufficient to succeed on their claim.

V. IMPLICATIONS

Today, we have enough information to conclude that there is an inherent relationship between sex trafficking and the opioid crisis. So, what do we do about it? There are a number of implications that follow this conclusion, and these implications must be incorporated into the measures we take to address both sex trafficking and the opioid crisis.

First and foremost, it is essential that education on this topic is promoted at all levels, and throughout both the public and private sectors. This article is not the first to call for this type of education, but it bears repeating. Educating law enforcement officers, prosecutors, and judges can help to identify trafficking survivors who may be facing criminal charges related to substance abuse or related offenses. Likewise, training provided to hospital staff, rehabilitation centers, and others who work with people suffering from addiction and overdose can allow them to identify survivors in other settings. These trainings should acknowledge that drug use is a risk factor that may indicate the presence of human trafficking. The inverse is also true; if a

¹¹⁴ *Sedima, S.P.R.L. v. Imrex Co.*, 741 F.2d 482, 501-02.

¹¹⁵ *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 491 (1985) (citing the following as examples of other settings where criminal conduct can warrant civil sanctions under a preponderance of the evidence standard: *United States v. One Assortment of 89 Firearms*, 465 U.S. 354 (1984); *One Lot Emerald Cut Stones v. United States*, 409 U.S. 232, 235 (1972); *Helvering v. Mitchell*, 303 U.S. 391, 397 (1938); *United States v. Regan*, 232 U.S. 37, 47-49 (1914)).

survivor of trafficking is identified through other means, those interacting with the survivor should bear in mind that the survivor may be suffering from addiction. These trainings should also discuss the unique needs and challenges of survivors who are suffering from addiction and provide resources to help those receiving training respond effectively, empathetically, and nonjudgmentally.

Second, there is a significant need for further research on the interrelationship of sex trafficking and opioids. As discussed in the introduction to this article, there is no shortage of qualitative information on this topic. Some organizations have conducted limited studies to provide what evidence of this overlap can be obtained through firsthand accounts, and this corroborates the relationship that practitioners have observed on the ground. What is lacking, however, is detailed quantitative research. There are practical challenges to obtaining this sort of information on human trafficking in general, as many cases are misreported or not reported at all, but these challenges can—and must—be worked around. Accurate data on this topic could allow for more targeted and effective strategies to combat these issues, and in a very practical sense, both public and private funds significantly follow hard data. This type of research will draw funders' attention to programs that operate in this nexus and provide services to those affected.

Third, the gradual shift away from law enforcement and toward public health as the lens through which we address the opioid crisis must include the opioid crisis as it intersects with sex trafficking. With the knowledge we now have of the power and pervasiveness of drug-based coercion, there is no conscionable reason that safe harbor provisions should not be expanded. These provisions are designed to protect survivors of trafficking from being prosecuted for the actions they were compelled to undertake at the hands of their trafficker. Various stakeholders have campaigned across the country for states to enact these protections, and have been largely successful, but these campaigns have been too narrow. Given the strong relationship between sex trafficking and opioids, and drugs more generally, state legislatures must expand these provisions. Prostitution is not the only criminal offense survivors are likely to face. Continuing to hold these survivors criminally liable for drug offenses only continues to empower traffickers; this creates an absurd scenario where the *trafficker* can threaten to call the police and have the *survivor* arrested. Moreover, safe harbor provisions are often restricted to minors. While minors are even more vulnerable, they are no more culpable for their coerced actions, and adult survivors should not be denied these protections. Additionally, many adult survivors are merely childhood survivors of trafficking or similar abuse that were never identified before reaching adulthood.¹¹⁶ In any case, viewing survivors' struggles with addiction through a public health lens, criminalizing them will not achieve the desired results. Even more so than non-trafficked individuals, these survivors desperately need resources that allow them to overcome these challenges and heal. As discussed above, these survivors have complex needs that must be met if they are to shed their vulnerabilities and go on to lead whole and healthy lives.

¹¹⁶ See *Impact of Trafficking*, NATIONAL CHILD TRAUMATIC STRESS NETWORK, (May 15, 2022) <https://www.nctsn.org/what-child-trauma/trauma-types/sex-trafficking/effects>.

Fourth, to the extent that the government seeks to use criminal liability in its fight against trafficking or the opioid crisis on a systematic level, it should consider this intersection as a potential route to do so. Federal prosecutions relying on drug-based coercion are one piece of this, but another tool has gone largely unnoticed. Due to the flexibility and anonymity they can provide, hotels and motels in high-crime areas are significantly connected to the worlds of both sex trafficking and illicit drug distribution. While it would be difficult for the government to attach criminal liability to entities such as hotel parent companies, criminal charges have successfully been brought against local hotels and their owners or managers who have turned a blind eye to trafficking on their property. Separately, 18 U.S.C. § 1594 provides for the forfeiture of “any property, real or personal, that was involved in, used, or intended to be used to commit or facilitate” a human trafficking violation.¹¹⁷ In conjunction, the government could hypothetically prosecute the owners of hotels and motels that implicitly allow trafficking to occur on their property and force them to forfeit the hotel or motel itself. This leads to questions of what to do with it then, and whether it can be avoided that another hotel or motel will open up in its place. At minimum though, large-scale pursuit of forfeitures such as this could stem the flow of both sex trafficking and opioids in the short term, and the sale of forfeited property could fund measures intended to address both issues from the public health perspective.

VI. CONCLUSION

Awareness of the intrinsic connectedness of sex trafficking and the opioid crisis is on the rise. Acknowledging this relationship and addressing both issues accordingly is essential to the effectiveness of our efforts to combat them. Although the concept of drug-based coercion is not yet universally accepted, it has gained significant traction in recent years and attorneys engaged in anti-trafficking work should not be shy to employ it. Nonetheless, attorneys too still have room to learn about this relationship and the severe vulnerability it generates.

Indicative of this room to grow, the legal system has yet to capitalize on the full potential of human trafficking laws in the United States. Some attorneys have sought to help trafficking survivors hold accountable those who contributed to their trafficking through civil remedies. However, this line of litigation is still new and delicate. If successful precedent is established, it may someday be applied on a much broader scale, effectuating real and systemic change. The government too has untapped avenues, including deterring this sort of economic ambivalence through the seizure of property, not to mention the expansion of safe harbor protections for survivors.

Across the board, it is imperative that we learn to see through stigmas and provide nonjudgmental, trauma-informed care to both survivors of trafficking and those struggling to overcome opioid addictions. While the two certainly do not always overlap, the frequency with which they do should serve to illustrate that people are

¹¹⁷ 18 U.S.C. § 1594(d)(2). However, the success of such an approach would admittedly be uncertain in relation to the Civil Asset Forfeiture Reform Act of 2000, Pub. L. No. 106-185 (2000).

complex and so are their needs. Someone who escapes trafficking but does not receive treatment for addiction may end up re-trafficked because their trafficker can sustain their addiction; someone arrested for what appears to be simple opioid use may really be in the midst of being trafficked. As a society, and especially as attorneys who often make decisions that affect the lives of people in this nexus of vulnerability, we must educate ourselves about the relationship between sex trafficking and opioids if we are to competently work in either area. We can help to end these cyclical traumas, but to do so, we must learn to see past societal stigmas and meet people where they really are.