

Concept Paper

# The Human Rights of Sex Trafficking Survivors: Trends and Challenges in American Vacatur Laws

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**Abstract:** For years, survivors of sex trafficking, people compelled by force or circumstance to engage in sex acts, were often wrongly convicted of prostitution and many collateral crimes in the United States. These convictions became a permanent part of survivors' criminal records, inhibiting their ability to satisfy necessities for a dignified life—finding work and a place to live, or going to school. Since 2010, forty-five state legislatures across the US have sought to solve this problem by passing vacatur laws. These laws allow the survivors of sex trafficking a means to erase certain charges and convictions from their records. The American movement to support the human rights of sex trafficking victims is part of a larger, global non-criminalization movement to support survivors' human rights. This article surveys the recent and robust diffusion of American vacatur laws, situates them amidst the larger, global non-criminalization movement, and highlights both the strengths and weaknesses of the current US vacatur laws with an eye toward closing the rights gap for sex trafficking survivors. We argue that extant vacatur legislation should be expanded to include *all* crimes traffickers compel victims to commit, should incorporate trauma-informed means for establishing victimhood, and should be passed at the federal level to ensure complete and uniform protection.

**Keywords:** sex trafficking; human rights; vacatur; non-criminalization; prostitution; sex work



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When Sara Kruzan was 11 years old, she was raped and groomed by a trafficker, who used violence and threats to sell her for sex for the next 6 years of her life. In 1995, when she was 17, she killed her trafficker. After a 2-and-a-half-day trial, she was convicted as an adult for first-degree murder, sentenced to life without the possibility of parole, plus four years, and compelled to pay USD 10,000 as restitution to a California Victims' Fund<sup>1</sup>. Because Sara Kruzan was convicted in 1995, a decade before the passage of California's vacatur laws, which provide amnesty to sex trafficking victims for some crimes committed during their enslavement, she was never formally identified as a victim during her trial. Her attorneys could not introduce evidence of her enslavement into the trial and following her conviction, she spent two decades in prison [1]. We use Kruzan's story in this paper to show that even if California's existing vacatur law had existed at the time of Kruzan's conviction, the law would not have provided her with relief.

Kruzan's story highlights the limitations of the American system for identifying and supporting sex trafficking victims. Often misidentified as sex workers, trafficking victims, people compelled by force or circumstance to engage in sex acts, are often wrongly convicted of prostitution and many collateral crimes. In this paper, we examine the rapid diffusion of vacatur laws for sex trafficking victims across the US. Vacatur laws ensure that wrongfully obtained convictions are fully erased from a victim's record. Vacatur laws, unlike record sealing and expungement, are the only way to make sure they are truly erased from the record.

In this paper, we link the American movement to support the human rights of sex trafficking victims to larger, global criminalization narratives about how best to support survivors' human rights. Because this special issue takes up the future of trafficking and

human rights, this article surveys the recent and robust diffusion of American vacatur laws, situates them amidst the larger, global non-criminalization movement, and highlights both the strengths and weaknesses of the current US vacatur laws with an eye toward closing the rights gap for sex trafficking survivors. We argue that extant vacatur legislation should be expanded to include *all* crimes traffickers compel victims to commit, should incorporate trauma-informed means for establishing victimhood, and should be passed at the federal level to ensure complete and uniform protection.

### 1. Human Rights and Criminal Convictions

In the years following the emergence of the 2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (hereafter the Palermo Protocol), governments frequently prioritized the criminal prosecution of traffickers at the expense of victim protection in their efforts to combat human trafficking [2,3]. Considerable data demonstrate that trafficker investigation and prosecution rates grew steadily between 2000 and 2017 following the global adoption of the Palermo Protocol [3,4]. Beginning in 2017, global trafficking prosecution rates remained relatively steady but conviction rates steeply declined, a decline that was exacerbated by the COVID-19 pandemic [5]. Yet the protocol also proscribes the global adoption of victim protection, a recommendation that we show, in other work, the global community has virtually ignored since the establishment of the treaty [6].

Human trafficking as a crime is particularly insidious because of the ways in which it dismantles an individual's humanity and access to rights not only while being trafficked, but often for the rest of their lives. The longest lasting effects are, of course, related to the acts a trafficking victim is forced to commit. The loss of control, identity, and hope are devastating. Compounding these effects for many victims is the revictimization they face from authorities when they are further punished for these acts by the judicial system. In the case of sex trafficking, victims are often forced to commit several other crimes in addition to prostitution, including property theft, weapon- and drug-related offenses, identity theft, assault, and even murder in self-defense as in the case of Sara Kurzan, see [7,8].

If sex trafficking victims are misidentified—and sometimes even when they are identified properly—they not only go through the revictimization of working through the legal system, they also face the long-term consequences of a criminal record if convicted. Criminal records with the kinds of collateral crimes for which trafficking victims are often prosecuted directly impede these victims' ability to rebuild their lives, heal, and move on. Although in most national systems, trafficking victims are entitled to certain social services when identified as victims, possessing a criminal record is often one of many potential disqualifications for receiving these services. In the United States, a criminal record can prevent victims from gaining access to federal benefits like cash and food assistance [9]<sup>2</sup>, securing employment, and receiving protection from housing discrimination or support for education; it can also increase their likelihood of deportation. Victims often have to face all of these obstacles along with the shame and stigma associated with possessing a criminal record. For many victims, being 'saved' from trafficking feels no better than their original exploitation. One such victim in the United States shared that "year after year after year resulted in homelessness and suicide attempts. I feel like, here you're free, nobody wants to know you, talk to you, help you, date you, hire you, or have you living in their home so you might as well be dead" [10] (pp. 8–9).

Victim advocates associated with the global non-criminalization movement, discussed further in the next section, have argued that an important method for centering the human rights of trafficking victims is to provide them with a path to clearing their wrongfully obtained criminal records [11,12]<sup>3</sup>. This is why we argue vacatur relief is critical. There are intermediate options that many legal systems use, including record sealing and expungement. Having one's records sealed means that the criminal record still exists in the system but is hidden and typically should not be available in background checks by employers and other members of the public. Expungement provides more protection than record

sealing by essentially erasing a conviction and rendering it mostly inaccessible in a public records inspection. But there may be circumstances under which an expunged record can still be visible to government agencies and other entities. Vacatur relief is the only option that ensures a conviction is fully erased from the record [13].

## 2. Global Debates

Although our focus here is on the human rights of sex trafficking victims, it is necessary and common to discuss the perils facing both trafficking victims and sex workers together. There are several reasons for this, some more legitimate than others. For our purposes, the most important reason is that, in countries where sex work is to any degree criminalized, sex trafficking victims are often identified as prostitutes and charged with crimes like those outlined above. Our position aligns with global calls to implement non-criminalization approaches, like vacatur laws, that are becoming a more common element of global discussions about protecting the human rights of sex trafficking victims.

Unfortunately, the discussion of non-criminalization is still a relatively minor part of global debates over how best to address the potential violence and exploitation of sex work. The more dominant narrative conflates sex trafficking and sex work under a broad umbrella, equating all sex work as being equal to a degree. Under these perspectives—often termed the criminalization and decriminalization frameworks—the potential solutions for combatting sex trafficking are the same as those for addressing the dangers of sex work. The decriminalization framework advocates for the complete decriminalization of sex work while the alternative is presented as the full or partial criminalization of sex work. Although the two perspectives of this debate are positioned as opposing viewpoints, they are based in many of the same Western, neo-liberal, and neo-colonial mindsets that characterize women, especially minority women, in sexualized ways—either as a victim or as a deviant. Despite, or perhaps because of, these similar foundations, conflicting evidence indicates that neither position provides a clear or efficient approach for addressing either sex trafficking or the perils of sex work. In our estimation, this debate over criminalization has been largely detrimental for trafficking victims who find themselves charged with prostitution in countries in which sex work is currently criminalized. In spite of this, it is helpful to briefly outline the two positions of this global dialogue as context for our analysis of the increasing trend toward non-criminalization, which we argue offers more practical approaches.

### 2.1. Criminalization and Decriminalization

The first position in this debate, to criminalize all sex work, is seen as the ‘traditional’ one, drawing on long histories of patriarchy and religious morality. Supporters of criminalization argue for this position on the basis of one of two assumptions. The first “argues that prostitution is a consequence of deficient moral character” and that all sex work is a consequence of “women’s sinful nature” [14] (pp. 368–369). Under this assumption, criminalizing all sex work is necessary to both save the women involved in such work as well as broader society. The second assumption, based in feminist theories, argues that all sex work is inherently exploitative of women since it is a result of patriarchal views of women’s bodies and the right of men to control them. According to this viewpoint, sex work must be eliminated to end the continued victimization of women through the sex trade.

Whichever assumption supporters subscribe to, they introduce problematic relationships between prostitution and sex trafficking into the criminalization framework. Any women engaged in sex work are viewed as either “deviant criminals who must be punished” or as “victims in need of rescue”, characterizations which have been internalized into both national and international legal frameworks [15] (p. 413). According to the U.S. Department of State, “prostitution is inherently harmful” and it is the position of the United Nations that “no well-informed person would consent to being trafficked for commercial sex activities” [16] (p. 204). Implementing this approach leaves no clear way for law enforcement agencies to clearly distinguish between prostitutes and victims of sex trafficking

since all sex workers are assumed to be caught up in the same exploitative system [15]. Rather than leading to all sex workers being treated as victims, however, the inevitable result is that they are all, including sex trafficking victims, assumed to be prostitutes and judged—socially and legally—as such.

As a counterpoint to the call to criminalize sex work, a number of scholars and practitioners, especially among feminist circles, propose the full or partial decriminalization of all sex work. These neo-abolitionists argue that the criminalization of sex work assumes the victimization of all women, thus ignoring their agency and control over how their own bodies are used. Other supporters of this argument contend that legalization is the lesser of two evils to address “a social practice that seems unfortunate yet inevitable” [15] (p. 420). In either case, this perspective contends that sex work should be regulated by the market as with any other form of labor. Sex work, if undertaken voluntarily, is not inherently harmful to women. Instead, women engaging in sex work are “responding to a market demand for sex” and are exercising their “personal choice to sell sexual access to [their bodies] to men” [14] (p. 370). Beyond recognizing the agency of individual women, bringing sex work under the domain of the market would provide increased safety for sex workers by reducing the stigma associated with sex work, providing legal means for sex workers to seek protection from violence and exploitation, and mandating safety requirements as in other industries [15,17].

It is important to note that the decriminalization framework does not support coercive forms of sex work or ignore their existence. Their disagreement with the criminalization perspective is the assumption that all sex work is coercive and harmful [14]. According to market principles, the supporters of this position argue that as voluntary sex work is legalized and regulated, the incentive for organized criminal networks, pimps, and human traffickers to force women into sex work will diminish. The availability of uncoerced sex workers will make the costs of providing forced sex workers too high to be profitable.

Australia and New Zealand often serve as sources of evidence for both sides of this debate. Australian law allows individual states to make their own laws and policies regarding sex work. As a result, the country includes a genuinely diverse set of approaches, including criminalization and different levels of decriminalization. In 2003, New Zealand passed the Prostitution Reform Act (PRA), decriminalizing sex work conducted by anyone in the country except migrants with temporary visas. Doing so was meant to “safeguard the human rights of sex workers and protect them from exploitation, while simultaneously promoting their welfare and occupational health and safety” [17]. There is large and growing literature comparing such national approaches; we provide only two brief examples here.

Drawing on evidence from Victoria, Queensland, Western Australia, and South Australia, where sex work is either criminalized or requires official licensing, proponents of legalizing sex work point to the devastating effect these levels of criminalization have had on sex workers in these Australian states. For example, Mai et al. (2021) highlight the added dangers of prostitution and deportation experienced by migrant sex workers, especially Asian cis-gendered women, after encounters with law enforcement [17]. Similar women in New South Wales, in contrast, may face fines for unlicensed sex work, but rarely deportation, provided they have a work visa. The dangers are fewer and less long-lasting, they argue, for sex workers operating in the decriminalized parts of Australia than in areas where sex work is illegal. Interestingly, Mai et al. (2021) are also careful to point out the role Australian media plays in portraying migrant, cis-gender, Asian women as particularly vulnerable to being coerced into sex work [17]. They recognize that this helps to perpetuate national stereotypes of these women and their victimization and that this narrative “fuel[s] repressive controls by the authorities on migrant workers” [17] (p. 1613). However, they still maintain that overall, decriminalization makes these women safer because they are “less vulnerable to policing and deportation” [17] (p. 1613). While this may be true, it says nothing about combating their vulnerability to human trafficking, which would seem to be increased by both the national narrative of vulnerability and the inconsistent approaches to how law enforcement across Australia responds to individuals found to be engaged in sex work.

In New Zealand, there does appear to be some positive outcomes from the decriminalization of sex work in 2003, though they are debated. In interviews with sex workers in the country, Mai et al. (2021) found that sex workers who were permanent residents or citizens were both aware of and made use of the provisions of the PRA [17]. Those interviewed felt empowered to refuse clients and to require the clients they did accept to follow safer sex practices than they had before the law was enacted. Similarly, Leonelli (2023) references data that suggest that sex workers are moving toward more independent arrangements where they work for themselves rather than some kind of manager [15]. Private work was reported as being safer by allowing workers to choose clients more selectively. The authors of these analyses did note many of the same pitfalls of the New Zealand approach as were found in Australia—particularly for migrant Asian women. Informants told the researcher that fewer migrant sex workers were attending sexual health clinics and migrant sex workers explained in interviews that while they experienced higher rates of violence than non-migrant sex workers, they would not report those incidents to police for fear of deportation. Notably, Mai et al. claim they found no evidence of trafficking during the time of their project, 2016–2020 [17].

Other researchers do not view the outcomes from New Zealand’s decriminalization approach as positively, however. In her review of several articles on the subject, Farley (2009) pointed to a 2008 governmental review of the New Zealand law [18]. That report found that there was no substantial difference in the violence or sexual abuse suffered by sex workers in the country and 35% of sex workers stated that they had been coerced into prostitution. On the issue of trafficking, several scholars have strongly denied and contested claims that there has been no trafficking in New Zealand since the passage of the PRA, see, e.g., [19,20]. These scholars point to two key elements to counter claims that sex trafficking has decreased in or disappeared from New Zealand. They argue the anti-trafficking elements of laws like the PRA are underutilized, particularly in combating domestic trafficking. There is no official screening process for the identification of victims and, therefore, no possibility of such victims securing access to needed medical, psychological, social, or legal resources. Some of these scholars even argue that the continued discourse about the lack of trafficking in New Zealand means that any disclosures by trafficking victims are likely to be misinterpreted and ignored [19].

These conflicting conclusions should make it clear that, from a purely methodological standpoint, conflating all individuals involved in sex work into a single category is problematic. It seems nearly impossible to tell for whom these policies are or are not working, in what ways, and at what times. These all-or-nothing approaches to legislating sex work not only avoid the critical differences between voluntary and involuntary sex workers, who may or may not be victims of sex trafficking, it also ignores the compounding impacts of migration status, sexual orientation, gender identity, race or ethnicity, and economic status. From a policy perspective, treating all sex work as being equal in establishing rules and regulations leads to muddled and, often, harmful outcomes for the diverse groups of women who fall under this broad and unhelpful category. In particular, the results from Australia and New Zealand illustrate the dangers faced by migrants, women of color, and trafficking victims—regardless of the degree to which they may have consented to engage in sex work. In treating the concerns of sex workers as all coming from the same general challenges, both criminalization and decriminalization increase the vulnerability of more individuals than either seems to protect or support.

## 2.2. Non-Criminalization

The evidence is clear that, at present, arguments for criminalization or decriminalization of sex work do little to assist sex trafficking victims currently caught in national legal systems. As a counterpoint, new dialogues are emerging that focus more intently on the short-term and long-term steps that can be taken to mitigate the legal consequences for sex trafficking victims misidentified and prosecuted for the crimes they committed while traf-

ficked. In particular, they emphasize the need for non-criminalization or non-punishment of those exploited by sex trafficking or the broader sex industry.

One non-criminalization alternative is what is known as the ‘Nordic model.’ This approach differs most substantially from the criminalization and decriminalization systems. The focus in a Nordic system is in criminalizing the purchase of sex rather than the provision of it. It is “premised on the understanding that women’s equity depends on excising structural barriers that preclude women’s full economic, social, and political inclusion” [14]. This approach requires, therefore, a shift in both political and social policy. Individuals who are being exploited within the sex industry are decriminalized and assisted as victims through social assistance programs. Those doing the exploiting, however, through “buying, pimping, and brothel keeping” are subject to criminal charges [14] (p. 396). From this perspective, sex work is considered a social injustice rather than a moral failing, as in the case of many criminalization narratives, or as a regulatable part of the economic market, as in the decriminalization framework. Instead, the exploitation of the sex industry is a result of “structural barriers to women’s full economic, social, and political inclusion” [14] (p. 397). Any solutions to this exploitation, therefore, must work to remove these barriers.

The Nordic model requires a paradigm shift in law, policy, and opinions on sex work. Not all systems are capable of enacting such a change in the immediate term. However, it is possible to begin recognizing the role unequal institutions of power and access have in creating or allowing exploitation in the sex industry and legal systems for individual trafficking victims. That recognition can then open opportunities to begin shifting the power of those institutions in ways that better protect the rights of sex trafficking victims. Recent developments in vacatur laws in the United States are one potential alternative to secure these rights by addressing the unintended consequences of the American criminalization approach to sex work.

### 3. Trends in American Vacatur Laws over Time

As we show above, record-clearing measures allow victims to move on from their ordeal, secure access to federal benefits, obtain a job, be protected from housing discrimination, receive federal grant support for education, and experience a reduction in the shame and stigma associated with a criminal record. In 2010, the New York state legislature became the first US state legislature to provide sex trafficking victims with a path to clearing prostitution and prostitution-related convictions [21]. This legislation was ground-breaking in that it was the first to recognize that sex trafficking victims are often misidentified as sex workers and provided victims with a path to clearing their criminal records. The law permits judges to vacate convictions provided that the victim can demonstrate that their “participation in the offense was a result of having been a victim of sex trafficking” (440.10(1) (i) New York Criminal Procedure Law). To qualify for vacatur relief, victims must have been arrested either for prostitution or for loitering with the purpose of engaging in prostitution [22]. Judges in New York have discretion over which convictions they will vacate, and in practice they have also erased collateral crimes, such as weapons charges or drug possession charges, as a part of the vacatur process<sup>4</sup>. The choice to invoke vacatur relief, rather than record sealing or expungement, in New York meant that victims could erase their record of prostitution convictions and in some instances other, collateral crimes as well<sup>5</sup>.

This early legislation was, however, narrow in scope, providing vacatur relief for the crime of prostitution, pending judicial discretion. And while judges appeared to be inclined to vacate collateral crimes, they were not required to vacate other convictions from a victim’s record. Victim advocates soon realized that the New York legislation did not fully restore justice for victims because many victims were also convicted of collateral crimes, including drug possession, theft, and truancy (for those underage). While the New York law erased prostitution and prostitution-related charges, any collateral crimes could remain on the victim’s record, thereby preventing them from obtaining the full benefits of vacatur relief.

In a survey of trafficking survivors conducted by the National Survivor Network in 2015, of 130 respondents, 90.8% had been arrested at least once while being trafficked and 40% reported being arrested more than nine times [10]. While arrests for prostitution, solicitation, and intent to solicit make up the largest category of crimes for which victims were charged (collectively 100 charges), victims were also often charged with truancy (8 charges), drug possession (30 charges), and drug sales (14 charges). Still, another 60 charges fall into the “other category” for which no additional data are available. Traffickers routinely compel victims to use drugs, making victims both more compliant and dependent on traffickers as drug dealers [7]. Traffickers may also withhold necessities like soap and toothpaste or compel victims to steal these items [8]. Victims often carry weapons for self-protection or under the orders of their trafficker, which can lead to weapons charges if they are arrested. These data illustrate the full breadth of crimes that victims are compelled to commit by traffickers and highlight the limitations of exclusively vacating prostitution-related charges.

Most US states that were early adopters of vacatur laws for sex trafficking victims emulated the New York law, writing their legislation to narrowly address prostitution and prostitution-related convictions. These include Illinois, North Carolina, Oklahoma, Oregon, Rhode Island, Vermont, West Virginia, Wisconsin, and Wyoming, which all passed vacatur laws between 2017 and 2018 [11]. A smaller group of states that passed record-clearing legislation during this early era circumscribed those protections even further—Louisiana, for example, provided expungement, but not vacatur relief, for prostitution only for children under the age of eighteen [21]. Like Louisiana, Georgia, Missouri, and Tennessee only allow for record clearing in the case of minor victims [11]. Tompkins (2022) shows that the 2017 sex trafficking vacatur statute in Washington appears on its face to provide vacatur relief to trafficking victims with prostitution convictions, but that in actuality the law significantly limits who can seek that relief [23]. Victims with other pending charges or convictions following the prostitution-related conviction in any Washington court or other state or federal court are disqualified from seeking relief [23]. Victims are often trafficked between US states to help traffickers evade police scrutiny, leaving a trail of arrests throughout various US states and jurisdictions and rendering vacatur relief in the state of Washington out of reach for many, if not most, victims.

These seemingly progressive laws have other limitations that inhibit their ability to support the restoration of justice for victims, namely the method through which victims demonstrate their status as victims to the court. States have a variety of evidentiary methods through which individuals can demonstrate that their crimes were committed while they were being trafficked. However, some are so complex as to effectively put vacatur relief beyond the reach of most victims. In Wisconsin, the statutory requirements for demonstrating victimhood are so burdensome that critics allege they amount to a form of revictimization by the criminal justice system [11,24] (Mullins 2019; Polaris 2019). In Washington, to qualify for relief, victims must prove each of the following with a preponderance of the evidence using official documentation from local, state, or federal authorities: (1) that the victim fits the federal definition of trafficking; (2) that the trafficker acted knowingly “or in reckless disregard for the act that force, fraud, coercion” was used to compel the victim to engage in a sex act; and (3) that the victim’s conviction resulted from the act [23] (p. 805). Critics have emphasized the particular burden that the second element places on victims—to obtain record-clearing relief, a victim must be able to prove the trafficker’s intent [21]. To address these gaps in protection, some have suggested a new system that shifts the burden to lawyers and judges with additional training on victim identification and the use of artificial intelligence to determine the probability that an individual is a victim of trafficking [23].

While Wisconsin and Washington create relatively high bars for establishing one’s status as a trafficking victim, Nebraska’s 2018 law enables victims to use a broad range of documentation to qualify for record clearing. In addition to the standard language calling for official records from federal, state, local, or other entities to demonstrate one’s status as a victim, Nebraska’s law also permits the following:

“(b) affidavit or sworn testimony from an attorney, member of the clergy, a medical professional, a trained professional staff member of a victim services organization, or other professional from whom the movant has sought legal counsel or other assistance in addressing the trauma associated with being a victim of sex trafficking” (Nebraska Rev. Stat. S 29-3005(2) (2016)).

The ability to use affidavits or sworn testimony from advocates, doctors, and other members of the community, rather than relying exclusively on “official documentation”, gives victims far greater opportunities to prove to the court that they were a victim of trafficking.

In some instances, states that initially wrote their laws to narrowly provide relief for prostitution and prostitution-related crimes have amended their laws to provide greater records relief to victims. For example, California amended its 2015 law in 2017 to include vacatur relief for all non-violent charges associated with trafficking [21,25]. Other US states have followed California’s lead and expanded the range of crimes for which victims may have their records cleared. States that allow victims to clear all non-violent crimes from their records include Idaho, Montana, North Dakota, and Utah [21]. As of December 2023, only Alaska, Maine, Minnesota, Iowa, and South Dakota have yet to pass record-clearing legislation for sex trafficking victims.

At the urging of scholars and advocates, politicians have also introduced federal legislation that would provide vacatur relief to victims [25,26]. Passing federal vacatur relief into law is a critical step in advancing the human rights of trafficking victims because victims often have a long list of charges and convictions that span several states. State legislation varies considerably in the types of relief and the likelihood that victims can obtain record clearing, making it more critical that the federal government pass legislation to provide uniform relief to all victims. The need for federal legislation has catalyzed bipartisan legislation in the House with politicians from both parties sponsoring bills that would provide vacatur relief. Since 2016, The Trafficking Survivors Relief Act has been introduced in the House four times<sup>6</sup>. The most recent iteration of the bill was introduced in 2022. Unfortunately, each time, the bill has gone to the sub-committee on Crime, Terrorism, and Homeland Security and died there without a vote being called<sup>7</sup>. These bipartisan bills and the rapid proliferation of state laws to support trafficking victims in this era of extreme partisan polarization make the absence of federal legislation both troubling and fascinating and worthy of further investigation. Support for victims comes from both ends of the political spectrum and has led to the rapid diffusion of these laws at the state level; the next step to further securing victim support and rights will have to happen at the federal level.

#### 4. A Path Forward

Despite the passage of vacatur laws for sex trafficking victims across 45 US states between 2010 and 2022, none of those laws would have provided Sarah Kruzan with relief. Her story is extraordinary because she was released from prison after being convicted of killing her trafficker. Yet her release was not secured via vacatur relief in California. Even the progressive Californian vacatur law, amended to include non-violent crimes, would not have provided relief to Kruzan, who was convicted of a violent crime. Instead, even if that law had existed when she was imprisoned in 1995, Kruzan was released following a pardon by Governor Gavin Newsom. A pardon does not erase her criminal record, which suggests that when victims enslaved by traffickers engage in acts of self-defense, they could very well end up incarcerated for life or with serious convictions on their records that cannot be erased.

The American movement to support victims has yet more room to develop these laws to provide expansive relief to victims. We recommend focusing on four items. First, states and the federal government should expand vacatur relief to all collateral crimes, including violent crimes. The recent shift in state laws incorporating non-violent collateral crimes is insufficient in ensuring that victims receive the record-clearing relief they deserve. Victims are compelled through fraud, coercion, and force to engage in a range of violent and non-violent crimes, and we argue that a human-rights-centered approach would allow

them to clear all wrongfully obtained convictions from their record. Critically, this would mean that individuals like Sara Kruzan would be empowered with the opportunity to erase all convictions from their records.

Second, vacatur relief, rather than the more limited expungement or record sealing, should be used as the standard. Both record sealing and expungement do not fully erase charges, convictions, and a criminal history from one's record. While these approaches tend to inhibit private parties like potential employers and landlords from seeing these records, they are not ironclad, and it is possible for records that were sealed or expunged to be pulled in background checks. Additionally, record sealing and expungement do not hide these records from the government, meaning that for federal benefits, trafficking victims may still not qualify. For victims to fully heal and move on from their experience, the courts must provide vacatur relief to remove the stigma of wrongfully obtained charges and convictions.

An additional step that we recommend is for courts that receive vacatur petitions to employ trauma-informed approaches. These include not limiting the evidence that can be used to support one's status as a victim to official documentation. Following Nebraska's example, states and the federal government should accept sworn affidavits from community members that can attest to an individual's experience as a victim. Moreover, by shifting the burden of establishing victim status away from the victim and to the criminal justice system, victims may be more likely to take advantage of record-clearing opportunities because they will have less fear of revictimization. At present, revictimization during the process of applying for vacatur relief is a legitimate concern for victims in many American states, forcing victims to retell their traumatic stories many times to obtain benefits.

Finally, federal legislation is desperately needed to ensure uniform support for victims of human trafficking, regardless of the US state in which they were trafficked. Variations in support and the absence of vacatur laws in five US states create legal vacuums, places where traffickers can exploit victims and accurately use the threat of criminal convictions to maintain control over their victims. Even in their current form, these laws are having an impact on the human rights of sex trafficking victims. As of 2019, more than 2500 wrongfully obtained convictions have been cleared from the records of sex trafficking survivors [11]. With greater attention to ensuring federal support and providing vacatur relief and trauma-informed approaches, advocates and legislators can ensure that trafficking victims can move forward in their lives with dignity.

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## Notes

- <sup>1</sup> See Sara J. Kruzan, "A Soulful Being Having a Human Experience" digital art installation, hosted by the University of San Francisco. Available at: <https://www.usfca.edu/thacher-gallery/a-matter-of-liberation/sara-j-kruzan>, accessed on 16 November 2023.
- <sup>2</sup> Since 1996, individuals in the United States with felony drug convictions were banned from receiving SNAP and TANF benefits. That ban was lifted in 2022 [9].
- <sup>3</sup> See the American Bar Association and Commission on Sexual and Domestic Violence [11]; FitzPatrick [12] provides a list of organizations that have signed on to support a federal sex trafficking vacatur law in the US.
- <sup>4</sup> See *People v. G.M.*, 922 N.Y.S.2d and *People v. L.G.*, 972 N.Y.S.2d 418.
- <sup>5</sup> Record sealing means that the criminal record still exists in the system but is hidden, typically not available in background checks by employers and other members of the public. Expungement provides more protection, essentially erasing a conviction, and rendering it mostly inaccessible in a public records inspection. But there may be circumstances under which an expunged record can still be visible to government agencies and other entities. Vacatur relief is the only option for ensuring that the conviction is fully erased from the record. Regarding these differences, see [11] (p. 8).
- <sup>6</sup> This bill was introduced in 2016, 2017, 2019, and 2022.

- <sup>7</sup> For the details on the most recent iteration of this bill see: <https://www.govtrack.us/congress/bills/117/hr8672>, accessed on 30 November 2023.

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