SUFFERING AT THE MARGINS: APPLYING DISABILITY CRITICAL RACE STUDIES TO HUMAN TRAFFICKING IN THE UNITED STATES

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Abstract

Human trafficking is a scourge in which perpetrators victimize the most vulnerable and marginalized members of a population to sell their bodies or sell their labor for profit. This Note explores human trafficking in the United States through Disability Critical Race Studies (DisCrit). First, the Note offers background on trafficking and applicable federal law. Not only does trafficking disable people, but people with preexisting disabilities are especially at risk for trafficking. Next, the Note shows that trafficking law follows a law-and-order framework: a framework that prioritizes prosecuting traffickers and doles out penal remedies. This framework and its intimate ties with the criminal justice system is a dual-edged sword. It helps countless survivors yet retraumatizes some marginalized survivors. Finally, the Note introduces DisCrit, justifies its use for anti-trafficking advocacy, and applies the DisCrit framework. By looking at trafficking law through DisCrit, one sees that trafficking law must work with—not against—survivors to end human suffering.

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* J.D. 2022, Columbia Law School; B.A. 2017, The University of Texas at Austin. Initially, I want to extend my deepest gratitude to my advisor, Professor Mark Barenberg, for his invaluable guidance on this Note and for his expertise in labor law. Next, I want to thank Sarah Bessell, of The Human Trafficking Legal Center, for piquing my interest in the intersection between human trafficking and disability. Then, I want to thank the Columbia Law School Human Rights Student Paper Symposium (2021) for providing me a platform to further develop my Note, as well as academic commenter Professor Kendall Thomas for his constructive criticism. Finally, many thanks to the editorial staff of the Columbia Journal of Gender and Law for their tireless work on my Note and the other pieces composing this journal issue.
INTRODUCTION

Born with a fetal alcohol spectrum disorder, Jane\(^1\) had faced adversity since birth.\(^2\) By the young age of sixteen, Jane had been sexually exploited by nearly thirty men, after a tumultuous early childhood.\(^3\) Yet she failed to fit the public’s notion of a trafficking survivor: a white woman snatched off the street by a stranger, locked in a cage, and sold in a foreign country.\(^5\) Jane, a Black girl living in Tennessee, was mainly trafficked by her boyfriend in Nashville.\(^6\) Instead of locking her in a cage, Jane’s trafficker cajoled and controlled her with cocaine.\(^7\) He sold her to numerous men, who participated in her abuse.\(^8\) Like many survivors, Jane was not “rescued”

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\(^1\)“Jane” is a pseudonym.

\(^2\) See MURDER TO MERCY: THE CYNTOIA BROWN STORY (Daniel H. Birman Productions 2020).

\(^3\) See ME FACING LIFE: CYNTOIA’S STORY (Daniel H. Birman Productions 2011).

\(^4\) Except where it directly quotes another source or cites a specific title, this Note uses the term “survivor,” instead of victim, to describe people with lived experiences of trafficking. “Survivor” emphasizes the resilience and strength of people with lived trafficking experiences, and the term is preferred in survivor communities. But I recognize that “victim” reflects statutory language and is widely used in legal scholarship. For a more thorough discussion of the use of “survivor” and “victim” terminology, see Anne Johnston et al., Framing an Emerging Issue: How U.S. Print and Broadcast News Media Covered Sex Trafficking, 2008–2012, 1 J. HUM. TRAFFICKING 235, 242–43, 250 (2015).


\(^6\) MURDER TO MERCY: THE CYNTOIA BROWN STORY, supra note 2.


\(^8\) MURDER TO MERCY: THE CYNTOIA BROWN STORY, supra note 2.
by law enforcement. Rather, with support from people close to her, she rebuilt her life after escaping not only her trafficker, but also the clutches of the legal system.

Jane’s real name is Cyntoia Brown. In 2006, at sixteen years old, she was sentenced to life in prison for killing one of the men who sexually abused her, out of fear that he planned to kill her. Five years later, a PBS documentary brought her case to a national audience. After more than a decade behind bars, Ms. Brown walked out of prison in 2019, following a social media campaign to free her led by celebrities including Kim Kardashian, Rihanna, and LeBron James. Of her story she said, “There’s nothing special about me.”

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9 See Carrie Baker, An Examination of Some Central Debates on Sex Trafficking in Research and Public Policy in the United States, 1 J. HUM. TRAFFICKING 191, 199 (2015) (describing trafficking discourse’s focus on a hypermasculine idea of rescue); see also Carrie Baker, Moving Beyond “Slaves, Sinners, and Saviors”: An Intersectional Feminist Analysis of US Sex-Trafficking Discourses, Law, and Policy, 4 J. FEMINIST SCHOLARSHIP, 1, 1-23 (2013) (describing trafficking narratives’ focus on female trafficking survivors’ “vulnerability” and “naïvete”). Instead, “Jane” was incarcerated.


11 This pseudonym was used to introduce Ms. Brown’s story without invoking any preconceived notions that may be associated with her well-known case.


14 ME FACING LIFE: CYNTOIA’S STORY, supra note 3.


17 Cho & Cornett, supra note 10.
In many ways, Cyntoia Brown is right; she is far from special. Though the media attention her case spurred was exceptional, Ms. Brown’s trafficking experience up until she confronted one of her abusers is common.\(^{18}\) Ms. Brown’s cognitive disability stemming from her fetal alcohol spectrum disorder made her a target for traffickers.\(^{19}\) Similarly, her Blackness saddled her with severe repercussions from trafficking, including criminalization.\(^{20}\) Prosecutors painted Ms. Brown as a remorseless criminal, saying that she “cruelly” and “mercilessly” “executed” her trafficker.\(^{21}\) In reality, Cyntoia was a child with cognitive, behavioral, and emotional deficits, leaving her unstable, impulsive, and paranoid.\(^{22}\)

Out of the hundreds of thousands of individuals estimated to have been trafficked into the United States over the last two decades,\(^{23}\) many people assume that

\(^{18}\) See generally Cheryl Nelson Butler, The Racial Roots of Human Trafficking, 62 UCLA L. REV. 1464, 1467 (2015) (“[T]he Federal Bureau of Investigation (FBI) indicate[s] that over half of minors arrested on prostitution charges in America are Black.”). Note that under the federal Trafficking Victims Protection Act (inapplicable to Ms. Brown, who was convicted under state law), all minors engaging in prostitution are, by definition, “victims of a severe form of trafficking in persons” for the purposes of eligibility for federal benefits and services. 22 U.S.C. §§ 7105(b)(1)(c)(i)–(II)(i) (2000). The Act defines a minor for the purposes of a “severe form of trafficking in persons” as all people under eighteen years of age. § 7105(b)(1)(c)(II)(i) (2000). Butler thus suggests that Black minors are overrepresented in trafficking survivor populations, that law enforcement disproportionately targets Black child sex trafficking survivors, or both. See generally Butler, supra note 18.

\(^{19}\) See Susan Flynn, Convergent Spaces: Intersectional Analysis of Ethnic Minority Status and Childhood Disability in Irish Safeguarding Work, 25 CHILD & FAM. SOC. WORK 648, 650 (2020) (warning that children with intellectual disability are at increased risk of sex trafficking); see infra Section I.A.2.

\(^{20}\) See infra discussion in Section II.A.

\(^{21}\) See MURDER TO MERCY: THE CYNTOIA BROWN STORY, supra note 2.

\(^{22}\) Brief for Petitioner, supra note 12, at 9, 12.

\(^{23}\) This number represents my estimate based on the limited data available; the methodologies used to collect this information have varied significantly over time, and the covert nature of human trafficking makes establishing concrete statistics difficult. OFF. OF THE ASSISTANT SEC’Y FOR PLAN. & EVALUATION, U.S. DEP’T OF HEALTH & HUM. SERVS., HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES: A REVIEW OF THE LITERATURE 4 (2009), https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//43241/index.pdf [https://perma.cc/BU3K-483Z] (noting the lack of well-established data collection methodologies in the field of human trafficking and describing the adjustments made to official estimates over the years) (“Initial estimates cited in the TVPA suggested that approximately 50,000 individuals were trafficked into the United States each year. This estimate was subsequently reduced to 18,000–20,000 in the U.S.
disabled survivors of color constitute a small cross-section. However, marginalization puts people at higher risk for trafficking. For example, Kisha Roberts-Tabb, Human Trafficking, Gender Responsive, and LBGTQ Specialist at Cook County Juvenile Courts, notes that Black children and women are at higher risk for trafficking at any given time in 2016). The U.S. Department of State has not provided an official estimate for the number of individuals trafficked into the United States in more recent years, therefore this is a rough extrapolation based on the last revised estimate. For a more thorough explanation of the barriers to establishing reliable human trafficking statistics, see Alexis A. Aronowitz, Overcoming the Challenges to Accurately Measuring the Phenomenon of Human Trafficking, 81 REVUE INTERNATIONALE DE DROIT PENAL [RIDP] 493 (2010). But see About Human Trafficking, U.S. DEP’T OF STATE, https://www.state.gov/humantrafficking-about-human-trafficking [https://perma.cc/VW6A-C5FX] (citing INT’L LAB. ORG., GLOBAL ESTIMATES OF MODERN SLAVERY: FORCED LABOUR AND FORCED MARRIAGE (Sept. 19, 2017)) (endorsing a report that estimates 24.9 million people globally were being trafficked at any given time in 2016).

This Note uses “dis/abled,” “disabled,” and “people with disabilities” interchangeably, to represent the broad array of ways that people with lived experiences of disability (myself included) conceptualize their experiences and identity. Different communities of people with lived experiences of disability may prefer person-first language (“people with disabilities”) instead of identity-first language (“disabled person”) and vice versa. See, e.g., OFF. OF DISABILITY RTS., People First Language, DC.GOV (July 2006), https://odr.dc.gov/page/people-first-language [https://perma.cc/SH6X-VRFB] (noting that person-first language prioritizes a person, not their disability); Molly Callahan, ‘Autistic Person’ or ‘Person with Autism’: Is There A Right Way To Identify People?, NEWS@NORTHEASTERN (July 12, 2018), https://news.northeastern.edu/2018/07/12/unpacking-the-debate-over-person-first-vs-identity-first-language-in-the-autism-community/ [https://perma.cc/NAD4-UWQX] (indicating the autistic, blind, and deaf communities’ preference for identity-first language to show pride for their disability and reduce shame); Title V of the Americans with Disabilities Act – MISCELLANEOUS PROVISIONS, MINN. COUNCIL ON DISABILITY (July 7, 2015), https://www.disability.state.mn.us/2015/07/07/ada-title-v/ [https://perma.cc/5XE9-CEKW]. Sharon Wachsler, a self-described “writer with a disability” notes that she is “fine” with either, that both representations have merit, and that “sometimes one or the other works better depending on the situation.” Sharon Wachsler, Language
dis/abled, “dis/abled,” and “people with disabilities” interchangeably, to represent their experiences and identity. Different communities of people with lived experiences of disability may prefer person-first language (“people with disabilities”) instead of identity-first language (“disabled person”) and vice versa. See, e.g., OFF. OF DISABILITY RTS., People First Language, DC.GOV (July 2006), https://odr.dc.gov/page/people-first-language [https://perma.cc/SH6X-VRFB] (noting that person-first language prioritizes a person, not their disability); Molly Callahan, ‘Autistic Person’ or ‘Person with Autism’: Is There A Right Way To Identify People?, NEWS@NORTHEASTERN (July 12, 2018), https://news.northeastern.edu/2018/07/12/unpacking-the-debate-over-person-first-vs-identity-first-language-in-the-autism-community/ [https://perma.cc/NAD4-UWQX] (indicating the autistic, blind, and deaf communities’ preference for identity-first language to show pride for their disability and reduce shame); Title V of the Americans with Disabilities Act – MISCELLANEOUS PROVISIONS, MINN. COUNCIL ON DISABILITY (July 7, 2015), https://www.disability.state.mn.us/2015/07/07/ada-title-v/ [https://perma.cc/5XE9-CEKW]. Sharon Wachsler, a self-described “writer with a disability” notes that she is “fine” with either, that both representations have merit, and that “sometimes one or the other works better depending on the situation.” Sharon Wachsler, Language Disability: Where Do “Ability” and “Dis/Ability” Fit In?, BED, BODY & BEYOND BLOG (July 28, 2012), https://sharonwachsler.blogspot.com/2012/07/languageing-disability-where-do-ability.html [https://perma.cc/ZXN5-P4GX]. “Dis/abled” may emphasize the relationship and/or separation or lack thereof between disability and ability. Id. (cataloguing different disabled people’s uses of “dis/Ability” and “disAbled,” focusing on how people with disabilities are able—“not useless, incompetent, or inadequate”—and including a disability studies professor’s opinion that the slash indicates the inseparability of disability and ability). For a deeper dive into these discussions, as I cannot do them justice in this short work, please see Roger Collier, Part I: Person-First Language: Noble Intent but to What Effect?, 184 CAN. MED. ASS’N J. 1977, 1977–78 (2012).

24 This Note uses “dis/abled,” “disabled,” and “people with disabilities” interchangeably, to represent the broad array of ways that people with lived experiences of disability (myself included) conceptualize their experiences and identity. Different communities of people with lived experiences of disability may prefer person-first language (“people with disabilities”) instead of identity-first language (“disabled person”) and vice versa. See, e.g., OFF. OF DISABILITY RTS., People First Language, DC.GOV (July 2006), https://odr.dc.gov/page/people-first-language [https://perma.cc/SH6X-VRFB] (noting that person-first language prioritizes a person, not their disability); Molly Callahan, ‘Autistic Person’ or ‘Person with Autism’: Is There A Right Way To Identify People?, NEWS@NORTHEASTERN (July 12, 2018), https://news.northeastern.edu/2018/07/12/unpacking-the-debate-over-person-first-vs-identity-first-language-in-the-autism-community/ [https://perma.cc/NAD4-UWQX] (indicating the autistic, blind, and deaf communities’ preference for identity-first language to show pride for their disability and reduce shame); Title V of the Americans with Disabilities Act – MISCELLANEOUS PROVISIONS, MINN. COUNCIL ON DISABILITY (July 7, 2015), https://www.disability.state.mn.us/2015/07/07/ada-title-v/ [https://perma.cc/5XE9-CEKW]. Sharon Wachsler, a self-described “writer with a disability” notes that she is “fine” with either, that both representations have merit, and that “sometimes one or the other works better depending on the situation.” Sharon Wachsler, Language Disability: Where Do “Ability” and “Dis/Ability” Fit In?, BED, BODY & BEYOND BLOG (July 28, 2012), https://sharonwachsler.blogspot.com/2012/07/languageing-disability-where-do-ability.html [https://perma.cc/ZXN5-P4GX]. “Dis/abled” may emphasize the relationship and/or separation or lack thereof between disability and ability. Id. (cataloguing different disabled people’s uses of “dis/Ability” and “disAbled,” focusing on how people with disabilities are able—“not useless, incompetent, or inadequate”—and including a disability studies professor’s opinion that the slash indicates the inseparability of disability and ability). For a deeper dive into these discussions, as I cannot do them justice in this short work, please see Roger Collier, Part I: Person-First Language: Noble Intent but to What Effect?, 184 CAN. MED. ASS’N J. 1977, 1977–78 (2012).

risk for trafficking because of vulnerabilities from systemic racism including familial or community instability, the U.S. “school-to-prison pipeline,” homelessness, or involvement in the foster care system. Survivors of color may also be less likely to report their trafficking experiences because of fear of facing racial bias. For example, Black and Latino male victims often fear homophobia, and are often seen as “troublemakers” or criminals instead of as victims of a crime. Because of the vulnerability that marginalization causes, most trafficking survivors in the United States are people of color (POC). People with disabilities are similarly


28 CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2008–2010, BUREAU OF JUST. STATS. 6 (Apr. 28, 2011), https://www.bjs.gov/content/pub/press/cshti0810pr.cfm [https://perma.cc/P82R-7KFS] (“[C]onfirmed [domestic] labor trafficking victims were more likely to be identified as Hispanic (63% of victims with known race) or Asian (17%) compared to sex trafficking victims, who were more likely to be white (26%) or black (40%).”). Data from the 2018 National Human Trafficking Hotline, which has handled over 50,000 calls since 2007, indicates that in 2018 the top three reported races and ethnicities for potential trafficking survivors were Latino, Asian, and Black. 2018 Statistics from the National Human Trafficking Hotline, HUM. TRAFFICKING HOTLINE (2018), https://humantraffickinghotline.org/sites/default/files/Polaris_National_Hotline_2018_Statistics_Fact_Sheet.pdf [https://perma.cc/NCL5-D8JN]; Amanda Robert, *States Help Trafficking Survivors Overcome Criminal Records*, ABA J. (Feb. 1, 2020, 1:05 AM), https://www.abajournal.com/magazine/article/states-help-trafficking-survivors-overcome-criminal-records [https://perma.cc/NWH4-UAMB]. By 2020 (the most recent year for which there is published National Human Trafficking Hotline data), the number had shifted to indicate that a majority of reported identities were Latino. Asian, then white callers followed, with Black survivors holding a close fourth-highest percentage for reported racial or ethnic identity. POLARIS PROJECT, POLARIS ANALYSIS OF 2020 DATA FROM THE NATIONAL HUMAN TRAFFICKING HOTLINE 3 (2020), https://polarisproject.org/wp-content/uploads/2022/01/Polaris-Analysis-of-2020-Data-from-the-National-Human-Trafficking-Hotline.pdf [https://perma.cc/L56J-SNWE]. “The National Trafficking Hotline provides the largest known data set on sex and labor trafficking in the United States.” Thalita Brionez, *Reported Cases of Human Trafficking on the Rise During a Pandemic*, 25 NEWS KXXV (Mar. 26, 2021, 11:27 AM), https://www.kxsv.com/hometown/texas/reported-cases-of-human-trafficking-on-the-rise-during-a-pandemic [https://perma.cc/PX6L-8NF5]. In Orange County, California, the majority of trafficking survivors identified by the county’s human trafficking task force between 2016 and 2020 were Black and Latino. Ben Brazil, *Majority of Sex and Human Trafficking Victims in Orange Country Are Black and Latino*, Report Says, L.A. TIMES (Apr. 7, 2021, 3:06 PM),
overrepresented in survivor populations. Unfortunately, racism and ableism have long pervaded anti-trafficking movements. And laws ignore the unique plight of disabled survivors of color, offering them few provisions. In a cruel twist, the criminal justice system sometimes even labels marginalized survivors as criminals themselves. This labeling revictimizes survivors.

Because trafficking disproportionately harms people of color and people with disabilities, it is imperative that trafficking solutions include their voices. Anti-trafficking efforts predominantly operate under a law-and-order framework. Under this framework, anti-trafficking resources are largely directed to law enforcement to increase police monitoring, arrests, and prosecutions of traffickers. This framework


29 Christopher Carey & Sarahfina Peterson, Trafficking People with Disabilities: A Legal Analysis, 26 CARDOZO J. EQUAL RTS. & SOC. JUST. 471, 472 (2020).


31 Tina Frundt & Cherice Hopkins, Opinion: Girls of Color, Native Girls Have Been Sex Trafficked Since Colonization, Slavery, JUV. JUST. INFO. EXCH. (Feb. 1, 2021), https://jjie.org/2021/02/01/girls-of-color-native-girls-have-been-sex-trafficked-since-colonization-slavery/ [https://perma.cc/L5XE-YFK9] ("[T]he collateral consequences of legal system involvement can cause girls of color to experience further marginalization. This includes increased difficulty accessing protective factors such as housing, educational attainment and gainful employment — without which they can remain vulnerable to continued exploitation.").


33 Id.

34 See Abigail Swenstein & Kate Mogulescu, Resisting the Carceral: The Need to Align Anti-Trafficking Efforts with Movements for Criminal Justice Reform, 6 ANTI-TAFFICKING REV. 118 (2016).

35 Id.
leaves out marginalized voices. Instead, it often stereotypes and criminalizes survivors. And other proposed frameworks, like Feminist Legal Theory (FLT), Disability Legal Studies (DLS), and Critical Race Theory (CRT), miss many of the ways different forms of discrimination interact to oppress survivors. Although these frameworks discuss intersectionality, they primarily focus on singular identities: women, people with disabilities, and Black and Indigenous people of color.

Recently, Critical Race Theory offshoots like Critical Race Feminism (CRF) have started to offer a more intersectional approach. However, these frameworks still neglect to analyze how racism and ableism interact against trafficking survivors. Enter Disability Critical Race Studies (DisCrit). DisCrit is a framework that education scholars developed to support disabled students of color in the special

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38 E.g., Carey & Peterson, supra note 29, at 471.

39 E.g., Butler, supra note 18, at 1464.


education system in the United States. Its founders advocate for “removing the policing and enforcement of normality” and “dissolving barriers that actively dis/able people[].” The founders implore readers to listen to the “special voice” of people who have experienced discrimination. The unique contribution of this Note is the application of DisCrit to human trafficking in the United States.

This Note argues that Disability Critical Race Studies can help trafficking survivors achieve justice. Part I initially provides background on trafficking in the United States. Then, it explains trafficking’s disabling effects on survivors and the vulnerabilities of people with preexisting disabilities to trafficking. Part I describes the legal landscape that disabled survivors of color must navigate, concluding with the law-and-order framework that current anti-trafficking responses follow. Part II initially delves into how this framework fails survivors by criminalizing many of them. Then, it explains how other proposed frameworks fail to tell the full, intersectional story of survivorship. Part III introduces DisCrit and Section III.A lays out its seven core tenets. Next, it justifies the application of a DisCrit framework to trafficking, domestic trafficking law, and the anti-trafficking movement in the United States. Lastly, Part III applies DisCrit’s tenets to anti-trafficking work in the United States by presenting a “real utopia”: a world that includes realizable goals for anti-trafficking advocates to move toward. Part III urges advocates to adopt a system where survivors will no longer be systematically disadvantaged by accidents of birth or chance.

I. Trafficking and the Legal Landscape in the United States

“He would explain to me that some people were born whores, and that I was one, and I was a slut, and nobody’d want me but him, and the best thing I could do was just learn to be a good whore.”

– Survivor Cyntoia Brown

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43 Id. at 18.

44 Id.

45 Hodal, *supra* note 7 (describing the coercive psychological abuse she suffered by her trafficker).
This Part establishes the conceptual and legal definitions of trafficking. Then, it explains trafficking’s relationship with disability: trafficking directly causes disability, and survivors with pre-existing disabilities are especially vulnerable to trafficking. This Part then sets out the laws that implicate trafficking survivors, before showing how anti-trafficking responses follow a law-and-order framework. This framework centers the criminal justice and carceral systems, instead of providing other necessary relief for survivors.

Conceptually, trafficking occurs when a person coercively, deceptively, or forcefully induces another person to provide them labor or sex. Cyntoia Brown, for example, was sold as a child for sex. Her trafficker, “Kut Throat,” used force, fraud, and coercion to keep her captive. He beat her, lured her in with promises of romance, terrorized her with guns, and told her she was nothing but a “whore.” Under some definitions of trafficking, no violence, trickery, or threats were necessary for Kut Throat’s actions to constitute sex trafficking of Ms. Brown; because Ms. Brown was only sixteen years old, she was legally a minor and could

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not consent to commercial sex. Kut Throat need only have bought or sold her for sex to commit this crime.

Some sources subdivide trafficking into narrower categories, including commercial sexual exploitation, debt bondage, religious trafficking, and forced labor, to name a few. But what these categories all have in common is that a trafficker compels or induces another person to provide at least one of two commodities to be exploited: labor or sex.

A. Trafficking’s Dark Relationship with Disability

Trafficking and disability are deeply connected. First, trafficking causes trauma that often leads to disability. Second, traffickers often target people with preexisting disabilities because of their potential vulnerabilities. Disability is more than a random additional fact of oppression in trafficking.

49 See, e.g., Trafficking Victims Protection Act, 22 U.S.C. § 7102(11)(A) (2019) (requiring no force, fraud, or coercion for trafficking cases involving a minor, defined as someone who is not yet eighteen years old).

50 See id.


52 Even labor and sex can intersect. See Ricchio v. McLean, 853 F.3d 553 (1st Cir. 2017) (finding that a person can be trafficked for sexual labor or services). See also Bistline v. Parker, 918 F.3d 849, 872 (10th Cir. 2019) (quoting Ricchio v. McLean, 853 F.3d 553, 556 (1st Cir. 2017), citing United States v. Kaufman, 546 F.3d 1242, 1261–63 (10th Cir. 2008)) (internal quotation marks omitted); (“[N]otably, ‘[l]abor or services in 18 U.S.C. § 1589 [the federal criminal forced labor anti-trafficking statute] is not limited to work in an economic sense and extends to forced sexual acts.’”). In sexual servitude, for example, the labor the survivor provides is in the form of forced sexual services. See United States v. Yannai, 791 F.3d 226 (2d Cir. 2015) (convicting a trafficker of forced labor under 18 U.S.C. § 1589, for inducing sex acts, amongst other forms of labor).
1. Trafficking’s Disabling Effects on Survivors

“I was only able to see [health care providers] on [a] dire emergency basis. I’ve had 85 broken bones that were documented, many more that were never documented because I couldn’t go.”

– anonymous trafficking survivor

Human trafficking causes physical and psychological trauma. Sex trafficking survivors’ brutal sexual encounters can cause sexually transmitted infections including HIV and AIDS, as well as pelvic inflammatory disease. Poor nutrition stunts growth and development in child survivors. For some survivors, dirty and crowded lodging induces the spread of communicable diseases like scabies and tuberculosis. One set of survivors in Iowa, after living in dark, dank conditions in a now-condemned, boarded-up building full of cockroaches, mildew, grease, and mice droppings, developed a host of health conditions. They had diabetes, high blood pressure, malnutrition, as well as “festering fungal infections” and “severe dental problems[].” Overall, trafficking survivors commonly suffer from physical disabilities.


54 U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 31 (2020) [hereinafter 2020 TIP REPORT].


56 Id.

57 Id.


59 Id.

Psychological trauma from trafficking can likewise take many forms. Deprivation and trauma can cause survivors to develop neurological and psychological disabilities. For example, after many survivors overcome their traffickers’ threats, verbal and sexual abuse, and withdrawal of food, money, and sleep, they are left suicidal and depressed. They may face psychosis, exhaustion, and aggression. Because of their traumatic experiences, survivors have high rates of post-traumatic stress disorder (PTSD) and substance abuse.

In fact, many traffickers introduce or force survivors into drug use, initiating or manipulating survivors’ subsequent addictions. The Americans with Disabilities Act (ADA) recognizes addiction as a disability for ADA coverage, at least when people with addictions maintain sobriety. But trafficking survivors with substance abuse disorders are often deep in their disorders during their trafficking.

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63 Hopper & Hidalgo, supra note 61, at 191–92.

64 Anthony et al., supra note 53, at 132.


66 Greer & Dyle, supra note 60, at 392.

67 2020 TIP Report, supra note 54, at 32; see also Mark Sherry, Sex Trafficking, Activism and Disability, in Global Perspectives on Disability Activism & Advocacy 161, 169 (Karen Soldatic & Kelley Johnson eds., 1st ed. 2019). (“[Pediatricians] at the Hasbro Children’s Hospital in Rhode Island reported 92 percent of children who reported being the victims of sex trafficking also had a substance abuse disorder[].”)


69 See 42 U.S.C. § 12114(b)(1); see, e.g., Shafer v. Preston Mem’l Hosp. Corp., 107 F.3d 274 (4th Cir. 1997) (holding that a current illegal drug user was not covered under the ADA).
experiences. For example, at only fifteen years old, Audrey Morrissey began to “work on the streets” to earn money for the romantic future her trafficker had promised her. But then her trafficker introduced her to heroin. She says that her trafficker used her addiction to control her, to intimidate her, and to make her believe “that there was no way out.” Likewise, survivor Shandra recounts how her traffickers “made me take drugs at gunpoint” and how the drugs may have “helped make it all bearable.” The drugs kept her submissive, dependent, and numb. They also compounded her emotional trauma. The 2020 Trafficking in Persons Report warns that the mix of traumatic stress and addiction sometimes seen in survivors like Shandra is an especially thorny one, because both disorders cause “biochemical changes” to the brain.

Such significant and lasting physical and psychological wounds can socially and functionally disable survivors. For example, substance abuse and PTSD can keep

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70 See, e.g., Phillip Martin & Jenifer B. McKim, Unseen, Part 5: Sex Traffickers Prey on Drug-Addicted Young Men, GBH NEWS (Dec. 13, 2021), https://www.wgbh.org/news/national-news/2021/12/13/unseen-part-5-sex-traffickers-prey-on-drug-addicted-young-men [https://perma.cc/BPE6-QQSU] (describing how one trafficker, Robert King, took vulnerable clients from group and sober houses, the street, and in one case, a psychiatric hospital, to traffic them, supplying them with a “steady stream of drugs and alcohol[,]” feeding the addictions many suffered from) (“Most of [the trafficking survivors in the King case] . . . had problems with substance abuse prior. Some had recovered, and King destroyed that[,]”). See infra Section II.B.1 for a discussion of the ramifications of survivors’ current addictions for ADA coverage or potential lack thereof.


72 ANTHONY ET AL., supra note 53, at 120.

73 Id.

74 Meshelemiah et al., supra note 68, at 2.

75 Id.

76 Id.

77 2020 TIP REPORT, supra note 54, at 32.

78 Greer & Dyle, supra note 60, at 392.
survivors isolated and stuck in cycles that leave them vulnerable to more victimization unless they get support.\(^{79}\) Likewise, the trauma child survivors endure may spur dramatic changes in brain development that lead to impulsivity.\(^{80}\) And if survivors lack appropriate resources and accommodations, lasting physical impairments can prevent survivors from engaging with their communities.\(^{81}\) At bottom, survivors rarely escape unscathed: if they were not already disabled before they were trafficked, they likely are by the time they escape their trafficking situation.\(^{82}\)

### 2. Survivors with Preexisting Disabilities

“*With tears in my eyes I told him, ‘You shouldn’t go because you don’t know this man.’ But when they’re young, boys don’t always know what they’re doing[.]*”

– Juana Ofelia Garcia, mother of suspected trafficking survivor Ismael Santiago Garcia\(^{83}\)

Survivors with preexisting disabilities are particularly vulnerable to trafficking.\(^{84}\) Multiple factors put them at risk.\(^{85}\) The U.S. Department of Justice


\(^{81}\) See 2016 TIP REPORT, supra note 25, at 20.

\(^{82}\) See Sherry, supra note 67, at 169.


\(^{84}\) Carey & Peterson, supra note 29, at 472–73.

\(^{85}\) Human Trafficking Task Force E-Guide: Comprehensive Victim Services – Victims with Physical, Cognitive, or Emotional Disabilities, OFF. FOR VICTIMS OF CRIME,
Office for Victims of Crime indicates that people with disabilities often rely on caregivers.\textsuperscript{86} This reliance creates an unequal power dynamic that gives caregivers an opportunity to traffic their clients.\textsuperscript{87} Alternatively, traffickers may capitalize on the loneliness or isolation that some people with disabilities feel, to persuade them to perform sexual acts for friendship or money.\textsuperscript{88} People with disabilities may also become desensitized to touch as a result of being handled while being cared for and from their medical procedures, and they may be unsure about whether they have the right to stop and report unwanted physical abuse.\textsuperscript{89}

Traffickers similarly target people with substance addictions, another form of disability.\textsuperscript{90} In fact, some traffickers recruit directly from detox and treatment centers, entrapping survivors in sex trafficking and forced labor.\textsuperscript{91} The 2020 Trafficking in Persons Report notes two recent court cases involving survivors trafficked from substance abuse treatment: In the first, the owner of a chain of sober living houses was convicted of sex trafficking residents in his houses.\textsuperscript{92} Next, in a civil case, traffickers allegedly singled out people who had been court-ordered to spend time in substance use recovery facilities.\textsuperscript{93} The traffickers made the people in recovery work in dangerous industries like chicken processing and sheet metal manufacturing.\textsuperscript{94}

\url{https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/45-victim-populations/victims-with-physical-cognitive-or-emotional-disabilities[https://perma.cc/6U63-3TER]}.

86 Id.

87 Id.

88 Id. It is important to note that loneliness and isolation are not part and parcel with disability. Many people with disabilities are connected and engaged with their communities.

89 Id.

90 2020 TIP REPORT, supra note 54, at 32.

91 Id.

92 Id.

93 Id.

94 Id.
Traffickers exploit preexisting disabilities to keep survivors under their thumb.\textsuperscript{95} For example, some traffickers may seek out people with disabilities who cannot speak clearly or who require communication aids or an interpreter, because the survivor cannot ask for help.\textsuperscript{96} Or, traffickers may target people with developmental delays or mental illness, who may be easily manipulated. In the federal criminal case \textit{U.S. v. Kaufman}, a federal court convicted Arlan and Linda Kaufman for trafficking residents at an unlicensed care facility for people with mental and cognitive disabilities.\textsuperscript{97} The Kaufmans ran their residential care facility for approximately two decades.\textsuperscript{98} The government presented evidence that the Kaufmans forced their residents to work naked on a farm and to film pornographic films that the Kaufmans watched.\textsuperscript{99} The Kaufmans even claimed that the trafficking was legitimate therapy, and they billed the survivors’ families for the abuse.\textsuperscript{100} They were sentenced to fifteen years in federal prison.\textsuperscript{101}

Similarly, in \textit{EEOC v. Henry’s Turkey Service}, a civil case brought by the U.S. Equal Employment Commission (EEOC) under the Americans with Disabilities Act, traffickers tricked intellectually disabled adult men into enduring inhumane conditions while working at a turkey evisceration plant, under the guise of providing


\textsuperscript{96} \textsc{Off. for Victims of Crime, supra} note 85.


\textsuperscript{98} \textsc{Anthony et al., supra} note 53, at 113.

\textsuperscript{99} \textit{Id.}

\textsuperscript{100} \textit{Id.}

them with services and a community. Because of their impairments and isolation from family, the men failed to understand their rights “as workers and human beings.” Susan Seehase, director of the support center that took in most of the men after their ordeal, says the abuse went “on and on” because the men “knew nothing better . . . .” A jury issued a $240 million judgement against Henry’s Turkey Service in connection with the abuse.

Ismael Santiago Garcia’s narrative highlights the plight of survivors of color with preexisting disabilities. Barely in his twenties, Ismael, who is deaf-mute, abandoned his life as a traveling salesman in Mexico and embarked to America after a man he knew as “Señor Paoletti” offered him a job. In Mexico, young members of the deaf-mute population are either put into regular classes with non deaf-mute children or stop schooling after junior high. Often their own kin shun them. Ismael suffered from this strong stigma against deaf-mute people and made mere pennies for his work, so he was swayed by the promise of a better life.

Unfortunately, life in the United States was likely no better for Ismael. Investigations later revealed that the Paolettis had trafficked dozens of deaf-mute Mexicans to whom they had promised job opportunities in the United States. Discovered by police in Queens, New York, the survivors had been forced to peddle


103 ANTHONY ET AL., supra note 53, at 113.

104 Noguchi, supra note 58.

105 Press Release, EEOC, supra note 95.


107 Id. at 2181 (“[Deaf-mute people in Mexico] are denied special education after junior high school.”).

108 Id.

109 Id.

110 Id.
trinkets in subway cars for “eighteen hours a day, seven days a week.” 111 The survivors stayed because they had “nowhere else to go,” as many had been smuggled, undocumented, across the border. 112 Even worse, the Paolettis had confiscated the workers’ government documents before subjecting the workers to unfathomable physical, mental, and sexual abuse. 113 Here, the survivors’ deafness and muteness, undocumented immigration status, and Latina/o ethnicity intersected to make them especially vulnerable to the Paoletti family’s trafficking scheme.

B. Trafficking in United States Law

Sections I.B.1 and I.B.2 provide an overview of some of the United States statutes that marginalized trafficking survivors may encounter. While by no means exhaustive, these Sections show what sort of relief trafficking survivors can expect. Then, Section I.B.3 explains that trafficking is largely considered a problem for the criminal justice system.

1. The Americans with Disabilities Act

This Section provides a brief background in federal disability law and its relation to trafficking survivors. The Americans with Disabilities Act (ADA) defines “disability” as “a physical or mental impairment that substantially limits one or more of the major life activities of [the] individual.” 114 Survivors’ social and functional disabilities are legally recognizable when they substantially limit the survivors’ abilities to live their lives.

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111 Id.
112 Id.
113 See id.
The ADA prohibits discrimination against people with disabilities, as well as disability-based harassment. The EEOC notes that Title I forbids discrimination based on disability in employment and wages. Title V similarly forbids coercion, threats, and intimidation in work. The ADA also provides for civil penalties and remedies to trafficking survivors.

The 2013 landmark disability discrimination case EEOC v. Henry’s Turkey Service showcases how the ADA can protect trafficking survivors. Brought by the EEOC under the ADA, this civil case starkly illuminates the abuse and discrimination that disabled survivors can suffer based on their disabilities. Decades earlier, Henry’s Turkey Service transported dozens of intellectually disabled men from Texas to Iowa under the promise of employment opportunities. To make the opportunities fair, Henry’s should have paid the workers approximately $1,800 per month, based on a forty-hour work week, which was the average non-overtime wage typically earned by workers without intellectual disabilities who performed the same or similar work. When the disabled men arrived at Henry’s turkey processing plant, however, the owners and staffers paid the men about $65 a month, or less than 4% of what they should have earned. Henry’s refused to pay


116 Press Release, EEOC, supra note 95.

117 See Carey & Peterson, supra note 29, at 477.

118 Press Release, EEOC, supra note 95.

119 Carey & Peterson, supra note 29, at 477.

120 See id.

121 See ANTHONY ET AL., supra note 53, at 112.

122 Id.

123 See Press Release, EEOC, supra note 95 (revealing that Henry’s should have paid the workers $11 to $12 per hour).

the disabled men for working overtime, even when they worked excessive hours.\(^{125}\) Harassing the men for their disabilities, the traffickers called them “retarded[,]” “dumb ass[es][,]” and “stupid.”\(^ {126}\) Many of the men suffered in silence under these conditions for most of their adult lives.\(^ {127}\)

Though the EEOC could not make up for lost time, the federal agency sought to compensate the men with money damages. The EEOC filed two lawsuits against Henry’s Turkey Service on behalf of the abus\(\text{ed}\) workers: the first for wage discrimination, and the second for disability-based harassment and discrimination.\(^ {128}\) In 2012, the workers were awarded $1.37 million in lost wages.\(^ {129}\) These damages pale in comparison to the $240 million jury verdict awarded two years later in favor of the workers, for “disability discrimination and severe abuse.”\(^ {130}\) This was the largest award in the federal agency’s history.\(^ {131}\) The damages highlight the magnitude of abuse that trafficking survivors with disabilities may suffer. It also shows the importance of laws that provide proportional relief.

Despite enabling victories for some survivors, the ADA fails others, including those in “active” addiction before recovery. Addiction is federally recognized as a disability under the ADA, but only when people with addictions maintain sobriety.\(^ {132}\) The ADA can protect former drug addicts because in some circumstances addictions

\(^{125}\) See id.

\(^{126}\) Press Release, EEOC, supra note 95.

\(^{127}\) ANTHONY ET AL., supra note 53, at 113.

\(^{128}\) Press Release, EEOC, supra note 95.


\(^{130}\) Press Release, EEOC, supra note 95.

\(^{131}\) Id.

\(^{132}\) See, e.g., Shafer v. Preston Mem’l Hosp. Corp., 107 F.3d 274 (4th Cir. 1997) (holding that a current illegal drug user was not covered under the ADA); 42 U.S.C. § 12114(b).
are considered a “substantially limiting impairment.” Qualified individuals under the ADA include former addicts who have been successfully rehabilitated, for example, through successful completion of a supervised drug rehabilitation program with maintenance of sobriety. The ADA also protects those who are currently participating in a supervised rehabilitation program and are no longer engaged in drug use.

Like in *EEOC v. Henry’s Turkey Service*, the EEOC can bring disability discrimination cases on behalf of disabled trafficking survivors, but the ADA’s definition of disability excludes presently-addicted labor trafficking survivors trapped at the will of a controlling employer. If an employer forces survivor workers into addiction or perpetuates their addictions, survivors are unlikely to be “successfully rehabilitated”—and thus disabled under the ADA—during their trafficking experiences. Only after their trafficking experiences are long over are these survivors likely to recover. Moreover, disability discrimination only occurs when an employer treats an employee unfavorably because that employee has a disability or a history of a disability at the time of employment. Under this standard, a trafficking survivor who is only considered disabled under the ADA after they leave their trafficking situation (here, their employment) will not qualify for relief for the discriminatory actions of their trafficker during employment.

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135 § 12114(b)(2).


137 See generally Samantha A. Hill, The ADA’s Failure to Protect Drug Addicted Employees Who Want to Seek Help and Rehabilitation, 9 U. Pa. J. Bus. L. 973 (2007) (describing how the ADA fails to protect currently-using drug addicts who want to seek help and rehabilitation). I could not find examples of failed claims for disability discrimination on the basis of labor trafficking survivors’ addictions. This suggests that survivors, or the EEOC on their behalf, are not bringing these claims.
Consider a hypothetical situation in which Sam at Housecleaners Inc. hires Sue, a woman of color seeking a second job to support her family. Housecleaners is a small business, employing two other housecleaners besides Sue: Sam’s two sons. Sam treats his other two housecleaners, his sons, well. Sam realizes he can coerce Sue to work for little to no pay—much less than agreed upon—by threatening her with violence. To keep Sue compliant Sam plies Sue with drugs, and Sue becomes addicted. Sam then uses Sue’s addiction against her. He threatens to tell the police that Sue uses illegal drugs when Sue tries to leave Housecleaners. In addition, Sam gives Sue drugs for free, then withholds them when Sue is in withdrawal to make Sue feel dependent on him but also fear him.

Under the ADA’s current definition of addiction as a disability, Sue would likely not qualify for relief in a federal disability discrimination case if she were to seek help through civil litigation to try to save herself from her situation. This is because Sue was actively addicted to drugs when Happy Housecleaners discriminated against her. She was not rehabilitated nor continuously sober during her trafficking, and rehabilitation and maintained sobriety are required for relief under the ADA. The ADA’s lack of protection is an especially egregious failure here, as Sue needs help the most during her period of active addiction, when her trafficker controls her. This is an unthinkable reality that some survivors could face given traffickers’ propensity to exploit survivors suffering from addiction.

2. Federal Anti-Trafficking Statutes

Trafficking survivors may receive civil, criminal, and immigration relief under federal law. State penalties vary widely, and therefore are outside the scope of this Note. The Trafficking Victims Protection Act of 2000 (TVPA), a bipartisan act

138 See NOEL BRIDGET BUSCH-ARMENDARIZ ET AL., HUMAN TRAFFICKING APPLYING RESEARCH, THEORY, AND CASE STUDIES 1, 14 (2018) (discussing the TVPA, which provides a civil remedy, promotes criminal prosecution of traffickers, and protects survivors from removal or deportation in immigration proceedings).

139 All fifty states have criminal anti-trafficking statutes. Human Trafficking State Laws, NAT’L CONF. STATE LEGISLATURES, https://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws.aspx [https://perma.cc/T79R-3CQL]. State penalties vary widely: Alaska, for example, penalizes anyone who benefits from trafficking as being guilty of second-degree trafficking, while Alabama, Georgia, and Mississippi allow, if certain requirements are met, businesses to be found guilty of trafficking offenses. Id. Given the variety of state law approaches to trafficking, this section centers discussion around federal statutes to provide a nationwide snapshot of laws especially relevant to trafficking survivors.
signed into law by then-President Bill Clinton, marked the moment that the United States committed to fighting trafficking alongside numerous other countries. The TVPA’s scope is broad. It is the “cornerstone” for the U.S. counter-trafficking effort, containing most of the authorizations for U.S. anti-trafficking policies and programs. The TVPA’s purpose is to “combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.” To do so, the TVPA expanded survivor protections, anti-trafficking programs, and criminal statutes against trafficking. This strategy is known as the three P’s: prevention, protection, and prosecution. The TVPA is now in its seventh iteration after six reauthorizations by Congress.

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142 Id.

143 22 U.S.C. § 7101(a). The TVPA’s provisions for children sometimes differ depending on whether the child is under eighteen years old (see, e.g., 18 U.S.C. § 1591(a)(2)), under fourteen years old (18 U.S.C. § 1591(b)(1)), or between fourteen and eighteen years old (18 U.S.C. § 1591(b)(2)). Depending on the provision, these different ages may warrant harsher or lesser punishments. See § 1591. For the purposes of this Note, the exact age of minor survivors is not relevant, though it is worth noting that the younger the survivor, the more vulnerable they may be.

144 PRESIDENT’S INTERAGENCY TASK FORCE TO MONITOR & COMBAT TRAFFICKING IN PERSS., FEDERAL STRATEGIC ACTION PLAN ON SERVICES FOR VICTIMS OF HUMAN TRAFFICKING IN THE UNITED STATES 2013–2017, at 5 (2014).

145 Id. Secretary of State Hillary Clinton introduced a fourth P in the tenth edition of the Trafficking in Persons Report in 2010: “partnership.” U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 2 (2010). This “p” “serve[d] as a pathway to progress in the effort against modern-day slavery.” ALL. TO END SLAVERY & TRAFFICKING, supra note 140.

The TVPA defines “severe forms of trafficking in persons” as:

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

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.147

147 Trafficking Victims Protection Act, 22 U.S.C. § 7102(11) (2000) (amended 2021). Other relevant definitions include a “commercial sex act,” meaning “any sex act on account of which anything of value is given to or received by any person[,]” and “sex trafficking” which means “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” §§ 7102(4), 7102(12). Additionally, “coercion” means:

(A) threats of serious harm to or physical restraint against any person;

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

(C) the abuse or threatened abuse of the legal process.

§ 7102(3).

“[D]ebt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

§ 7102(7).

“[I]nvoluntary servitude” includes a condition of servitude induced by means of—
The Office on Trafficking in Persons in the Department of Health and Human Services (HHS) explains that force may involve physical violence like beatings.\textsuperscript{148} Fraud may include false promises regarding love, marriage, or a better life.\textsuperscript{149} Coercion may consist of psychological manipulation or threats of serious harm.\textsuperscript{150}

Survivors have multiple remedies under the TVPA and its subsequent reauthorizations.\textsuperscript{151} First, survivors have criminal remedies intended to strengthen prosecution and punishment of traffickers.\textsuperscript{152} For its criminal remedies, the TVPA amended and added several existing criminal statutes that penalize traffickers.\textsuperscript{153}

\begin{enumerate}
\item\textsuperscript{(A)} any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or
\item\textsuperscript{(B)} the abuse or threatened abuse of the legal process.
\end{enumerate}

§ 7102(8).


\textsuperscript{149} \textit{Id.}

\textsuperscript{150} \textit{Id.}

\textsuperscript{151} For a comprehensive analysis of the TVPA’s reauthorizations, see \textit{All. to End Slavery \& Trafficking}, supra note 140 (cataloguing the new provisions in each TVPRA—Trafficking Victims Protection Reauthorization Act—prior to the 2019 reauthorization).


\textsuperscript{153} 22 U.S.C. § 7109(a) (2000) (amending 18 U.S.C. §§ 1581(a), 1583, and 1584, and adding 1589 (“forced labor”), 1590 (“[t]rafficking with respect to peonage, slavery, involuntary servitude, or forced labor”), 1591 (“[s]ex trafficking of children or by force, fraud or coercion”), 1592 (“[u]nfalwful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor”), 1593 (“[m]andatory restitution”), and 1594 (“[g]eneral provisions” including amendments to the federal Sentencing Guidelines to account for the “heinous nature” of trafficking offenses).
These criminal statutes penalize traffickers for a variety of offenses.\textsuperscript{154} To avoid an exhaustive list, this Note will provide a brief overview instead.

Federal criminal statutes that address trafficking include those in 18 U.S.C. Chapter 77, covering “peonage, slavery, and trafficking in persons[.]”\textsuperscript{155} These statutes include trafficking children, forcing people into servitude, enticing someone into slavery, and sex trafficking a person across state lines.\textsuperscript{156} Federal immigration offenses like fraud and misuse of visas may implicate traffickers when they traffic foreign-born survivors.\textsuperscript{157} Such statutes and others provide harsh penalties to traffickers. Under some of these provisions, traffickers may even face life in prison.\textsuperscript{158}

Notably, adult “mentally incompetent” or psychologically-coerced survivors with disabilities are currently protected under these criminal statutes like their non-disabled counterparts. The statutes override the Supreme Court’s earlier decision in United States v. Kozinski, in which the Court had held that the Thirteenth Amendment did not cover psychological coercion in a case involving intellectually disabled farmers held in servitude.\textsuperscript{159} Now, prosecutors can use the statutes to punish traffickers who use psychological coercion against survivors. The recent impact of these federal criminal statutes is that in Fiscal Year 2020, the Department of Justice (DOJ) opened 663 federal human trafficking investigations, initiated 210 federal human trafficking prosecutions, and secured convictions against 309 traffickers.\textsuperscript{160}

\textsuperscript{154} Id.


\textsuperscript{160} U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 585–86 (2021) [hereinafter 2021 TIP Report].
In addition to criminal remedies, survivors have immigration and civil remedies. For example, in 2000, the TVPA established trafficking visas (T-visas), with which some immigrant survivors can stay in the United States if they satisfy certain requirements.\textsuperscript{161} Three years later, in its first reauthorization, the TVPA (now, the TVPRA 2003) created a civil right of action under which survivors could sue their traffickers in federal district court.\textsuperscript{162} Under this remedy, survivors may now recover damages and reasonable attorney’s fees.\textsuperscript{163}

The TVPRA 2005 provided grant money to state and local law enforcement to aid in the prosecution of traffickers.\textsuperscript{164} The 2005 reauthorization also expanded services for survivors, creating rehabilitation and “comprehensive service facilities[.].”\textsuperscript{165} The TVPRA 2008 expanded the crime of forced labor, established new crimes imposing penalties on people who obstruct trafficking investigations, and created a penalty for people who benefit from trafficking, among other efforts.\textsuperscript{166} The TVPRA 2013 expanded holistic services for survivors, added a criminal penalty for confiscation of identity documents (a form of coercion traffickers use on victims), and extended jurisdiction for law enforcement in prosecuting child sex tourism cases.\textsuperscript{167} The TVPRA 2017 “contains the Frederick Douglass Trafficking Prevention Act of 2017, which authorizes grant funding to train School Resource Officers to recognize and respond to signs of human trafficking . . . .”\textsuperscript{168}

\textsuperscript{161} Tiefenbrun, supra note 158, at 331; see infra Section I.B.3 for more discussion on survivors and T-visas.

\textsuperscript{162} Carey & Peterson, supra note 29, at 475; All. to End Slavery & Trafficking, supra note 140.

\textsuperscript{163} 18 U.S.C. § 1595(a).

\textsuperscript{164} All. to End Slavery & Trafficking, supra note 140.

\textsuperscript{165} Id.

\textsuperscript{166} Id.

\textsuperscript{167} Id.

The most recent 2019 reauthorization extended grant programs for survivors and recommended trainings for federal law enforcement officers and prosecutors. On its face, the TVPA offers varied provisions to fight trafficking. In 2020, a total of nearly $85 million was awarded in federal civil trafficking cases. More survivors are filing more federal civil cases in more jurisdictions. Survivors are now seeking relief under diverse statutory TVPRA provisions.

3. Trafficking Is Considered a Law-and-Order Problem

In the pursuit of prevention, protection, and prosecution, anti-trafficking responses are dominated by a law-and-order framework. A law-and-order framework at times prioritizes crime control and public safety—or prosecution—over survivors’ rights. The current law-and-order approach cuts both ways: it punishes criminals for human trafficking, and it sometimes punishes survivors for crimes they were forced to commit while being trafficked.

In 2004, the U.N. Special Rapporteur on trafficking in persons emphasized that the international community still saw trafficking as a law-and-order problem,

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170 See infra Section I.B.3 for a discussion on how prosecution dominates anti-trafficking responses and how the criminal justice system pervades the anti-trafficking conversation.


172 Id. at 19.

173 Id.


175 See Iveta Cherneva, Human Trafficking for Begging, 17 BUFFALO HUM. RTS. L. REV. 25, 53 (2011) (indicating that international efforts to fight trafficking focus on crime control and punishment of traffickers, over the human rights of survivors).
without regard for international human rights. As of 2018, prioritization of prosecution had not lessened in the past seventeen years: a study that year of eighty trafficking survivors and one hundred human trafficking stakeholders across the country found that “the criminal justice system remains the primary mechanism for identifying, classifying, and responding to human trafficking in the [United States].”177 This past year, in 2021, federal government investigations increased, though convictions decreased because of “pandemic-related court closures” and the suspension of grand jury proceedings due to the COVID-19 pandemic.178 Federal prosecutions decreased for the third year in a row, though it is unclear whether the pandemic also contributed to the decrease in 2020 and 2021.179

There are few, if any, plans to reduce the role of the criminal justice system in trafficking. So far, in 2021, the DOJ, in coordination with the Department of Homeland Security and the Department of Labor, have continued to support large-scale human trafficking investigations and prosecutions.180 This is a great development to the extent that the justice system apprehends more human traffickers and deters potential traffickers. In its 2019 reauthorization, the TVPA augmented criminal penalties for trafficking and mandated that domestic airlines report suspected trafficking to a national trafficking hotline or to law enforcement.181 However, the system needs to stop punishing the survivors of trafficking. Only this past year, in the introduction to the 2021 Trafficking in Persons Report (“TIP Report”) disseminated during the editing of this Note, has the federal government explicitly recognized the systemic discrimination and racism that trafficking survivors face in the criminal justice system.182 The government indicated that

176 Id.
177 LOVE ET AL., supra note 36, at 1–2.
179 See id.
180 See id.
181 Carey & Peterson, supra note 29, at 477.
182 See 2021 TIP Report, supra note 160, at iii. I read the introductory messages of all published TIP reports, from their inception in 2001 through present day, and found no mentions of racism as explicit as in the 2021 TIP Report’s introductory remarks. See infra Section II.A for an expanded discussion of marginalized survivors’ relationship with the criminal justice system.
advocates have called for more trainings across all criminal justice sectors, including “law enforcement, prosecutors, and judges,” to correct misconceptions about the elements of a human trafficking crime.\textsuperscript{183}

It remains to be seen whether this governmental recognition of how the criminal justice system penalizes survivors will expand to recognizing how the system penalizes even more vulnerable survivors, like disabled survivors of color. It also remains to be seen whether the government will call for reduced prosecutions of survivors who commit crimes during their trafficking experiences in the wake of this new recognition.

Trafficking law’s focus on law-and-order is evident in the TVPA’s provision of T-visas, where immigrant survivors of a “severe form of trafficking in persons” who lack residency but wish to stay in the United States must cooperate with law enforcement to investigate or prosecute their perpetrators.\textsuperscript{184} Survivors may be eligible for T nonimmigrant status, or in other words, receive a T-visa, if they:

- Are or were a victim of a severe form of trafficking in persons as defined above [defined in the same way as in the TVPA;]
- Are physically present in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry due to trafficking;
- Have complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking (unless [the survivor] w[as] under the age of 18 at the time [that] at least one of the acts of trafficking occurred or [the survivor] [is] unable to cooperate due to physical or psychological trauma; if either case applies, [the survivor] may not need to show that [the survivor] complied with reasonable requests from law enforcement);

\textsuperscript{183} 2021 TIP Report, supra note 160, at 587.

\textsuperscript{184} See Cherneva, supra note 175, at 62. The standard requires survivors to comply with “any reasonable request in investigations.” Id.
Demonstrate that [the survivor] would suffer extreme hardship involving unusual and severe harm if [the survivor] was removed from the United States; and

Are admissible to the United States (If [the survivor] is not admissible, [the survivor] may be eligible for a waiver of certain grounds of inadmissibility. . . .)\textsuperscript{185}

If law enforcement requests help in investigating or prosecuting a trafficker and the survivors refuse to cooperate with law enforcement, the survivors will not receive immigration relief under a T-visa, unless they fit one of the listed exceptions.\textsuperscript{186} If the survivors cooperate, they are permitted to stay in the United States “at least through the duration of their captors’ prosecution . . . .”\textsuperscript{187} But they are not guaranteed a longer stay.\textsuperscript{188}

For example, in the Matter of T-B-B-, an Applicant was denied a T-visa because the Applicant “had not demonstrated that she had complied with any reasonable requests for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons.”\textsuperscript{189} After an agency recruited her for a job teaching math in the United States, the Applicant found herself living in an overcrowded house with


\textsuperscript{186} Tiefenbrun, supra note 158, at 331–33. The TVPA does provide for a few exceptions to its requirement for law enforcement cooperation, notably, for minors and for physical or psychological trauma. See U.S. CITIZENSHIP & IMMIGR. SERVS., supra note 185. Certain eligible family members may also apply. Id. (“Regardless of your age, you may apply for the following family members if they are in present danger of retaliation as a result of your escape from trafficking or cooperation with law enforcement: Your parents; [y]our unmarried siblings under 18 years of age; and [t]he children of any age or marital status of your qualifying family members who have been granted derivative T nonimmigrant status.”) (noting additionally that those whose family members are not in present danger of retaliation may apply for their spouses and unmarried children under the age of twenty-one, and applicants under the age of twenty-one may additionally apply for their parents and unmarried siblings under the age of eighteen).

\textsuperscript{187} Tiefenbrun, supra note 158, at 331–33.

\textsuperscript{188} See id.

\textsuperscript{189} Matter of T-B-B-, ID# 488216 (AAO Oct. 23, 2017), at 1.
ten other teachers. She was “intimidated and scared[,]” and the agency pressured her into paying the agency over 10% of her pay after her first year of teaching. She thought that the agency could fire her from the teaching position or, worse, deport her. Though she and over three hundred other Filipino teachers recruited by the same agency finally banded together and filed complaints against the agency, her participation in the class action failed to satisfy the T-visa law enforcement cooperation requirement. The T-visa thus shows how domestic trafficking law centers around criminal justice, often at the expense of survivors.

Even responses that aim to divert trafficking survivors away from the legal system often end up operating within a law-and-order framework. New York State, for example, created Human Trafficking Intervention Courts, in which courts mandate services for people charged with prostitution offenses, some of whom are trafficking survivors. In return, courts dismiss their charges and seal their criminal records. The courts “handle all cases involving prostitution-related offenses that continue past arraignment,” according to then-Chief Judge Lippman of the New York Court of Appeals, New York’s highest state court. In each court, the judge, defense lawyer, and prosecutor will all evaluate the case. If they agree, the court will connect defendants with services like “drug treatment, shelter, immigration

190 Id. at 2–3.
191 Id. at 3.
192 Id.
193 Id. at 4.
195 Goldbaum, supra note 194.
197 Id.
assistance and health care, as well as education and job training,” to try to keep them from returning to prostitution.198 But if defendants cannot or decide not to comply with the mandates, their arrests may stand and they may be subject to criminal prosecution and conviction.199 For trafficking survivors arrested on prostitution charges, a court that forces treatment at threat of criminal conviction may seem to use coercion similar to other problematic law-and-order mechanisms, like T-visas.200

What about all the responses to trafficking outside of the legal system, like the efforts of non-governmental organizations? Non-governmental organizations that respond to trafficking outside of the criminal justice system certainly exist.201 Many focus on providing survivors with relief and helping them to gain the skills and resources they need to succeed outside of a life of trafficking.202 Less directly, movements that respond to addiction, poverty, mass incarceration, and other issues with public health or social work remedies make trafficking less likely, as they help

198 Id.


200 Becca Kendis, Human Trafficking and Prostitution Courts: Problem Solving or Problematic?, 69 CASE W. RESV. L. REV. 805, 828–29 (2019); see infra Section I.B.3 for discussion of the T-visa status’s coercion of survivors to aid law enforcement efforts, and their lack of support for survivors if survivors fail to cooperate with and/or aid law enforcement in prosecution of their trafficker(s).


202 See, e.g., THE SALVATION ARMY, supra note 201; Stop-It, FACEBOOK, https://www.facebook.com/SAStopIt/ [https://perma.cc/H86C-83ZA] (offering food, temporary shelter, and clothing to survivors); ON EAGLES’ WINGS, supra note 201 (providing survivors with mandatory weekly therapy); COVENANT HOUSE, supra note 201 (giving personal care kits, trauma-informed care, and mental health care to survivors).
to reduce vulnerabilities of individuals and communities to trafficking.\textsuperscript{203} However, the scale of these efforts pales in comparison to law-and-order measures.\textsuperscript{204} And these efforts are largely in response to the damage that the law-and-order approach to trafficking leaves in its wake. They help survivors free themselves from criminal records obtained from their trafficking experiences.\textsuperscript{205} They support survivors in securing housing and employment.\textsuperscript{206} That way, such survivors do not have to navigate the system alone. They help survivors file civil claims against their traffickers so survivors may feel some semblance of justice.\textsuperscript{207} They help survivors process their trauma from trafficking, trauma that the criminal justice system often compounds, rather than mitigates.\textsuperscript{208}

II. Current and Proposed Frameworks Fail Survivors

“Katya from the Ukraine [is] seen as a real victim and provided with services and support, but Keshia from the Bronx [is] seen as a ‘willing participant,’ someone who’s out there because she ‘likes it’ and who is criminalized and thrown in detention or jail.”

– survivor-leader Rachel Lloyd\textsuperscript{209}

\textsuperscript{203}\textit{Preventing Child Trafficking at the School Level}, Nat’l Ctr. on Safe Supporting Learning Env’ts, https://safesupportivelearning.ed.gov/human-trafficking-americas-schools/preventing-child-trafficking-at-school-level [https://perma.cc/BG7M-5HDL] (“By identifying and addressing the “upstream” determinants of human trafficking, such as domestic violence, substance use, and poverty, communities can help reduce the number of students who will face it.”).

\textsuperscript{204}\textit{See} Swenstein & Mogulescu, supra note 34.

\textsuperscript{205}\textit{See}, e.g., Our Programs, Free to Thrive (2020), https://www.freetothrive.org/our-programs [https://perma.cc/GLS5-FPX9].

\textsuperscript{206}\textit{See}, e.g., What We Do, RESTORE, https://restorenyc.org/our-work/what-we-do/ [https://perma.cc/U4QF-J8AE].

\textsuperscript{207}\textit{See} Free to Thrive, supra note 205.

\textsuperscript{208}\textit{See}, e.g., Restoring Choice to Survivors and Victims, Salvation Army, https://centralusa.salvationarmy.org/stopit/ [https://perma.cc/JJ46-EBPY] (providing survivors with counseling by social workers, and with other direct services).

The law-and-order framework’s focus on criminal justice ignores survivors’ justice. Section II.A describes how the law-and-order framework retraumatizes and ignores marginalized survivors. Then, Section II.B identifies how other proposed frameworks for trafficking law fall short of analyzing the many ways survivors’ intersecting identities affect their experiences amid active exploitation and during survivors’ recovery afterwards.

A. The Law-and-Order Framework Criminalizes Marginalized Survivors

Though the law-and-order framework that underpins anti-trafficking responses has led to more arrests and convictions of traffickers, the framework also criminalizes marginalized survivors and fails to connect them with resources like education, employment, or support groups.

Trafficking laws distinguish between “deserving” and “undeserving” survivors, or “perfect” and “imperfect” ones, incarcerating and discounting the human rights of the latter groups. Prosecutors perpetuate this injustice by using stereotypes about “appropriate” survivor responses to their situations to decide whether a survivor’s account of their trafficking experience is credible. And

(statement of Rachel Lloyd, Executive Director, Founder, Girls Education and Mentoring Services) (noting how society deems trafficking survivors “acceptable” or “unacceptable”).

210 See Tiefenbrun, supra note 158, at 324.

211 See Sabrina Balgamwalla, Trafficking Rescue Initiatives as State Violence, 122 Penn State L. Rev. 171 (2017) (finding that the criminal justice system often treats trafficking survivors as “victim-offenders’ who may be punished rather than protected”); The Human Trafficking Legal Center, Racism & The Anti-Trafficking Movement, YouTube (June 15, 2021), https://www.youtube.com/watch?v=bNRe0Ufay-8 [https://perma.cc/Y9B3-ZAMQ] (presenting survivor responses to a survey on racism in the anti-trafficking movement) (raw study data on file with author); Swenstein & Mogulescu, supra note 34, at 118 (saying that criminal justice responses to trafficking do not help trafficking survivors get access to needed resources and services).


213 See Love et al., supra note 36, at 4–5, 7–8.

because prosecutors “focus on securing successful convictions, prosecutors . . . evaluate evidence based on how they believe information will be received by judges and juries regardless of their personal opinions about the facts of the case.”\(^{215}\)

Because of this “downstream orientation” prosecutors may refrain from taking cases in which survivors engage in behavior perceived as “risky” or in which survivors engage in illegal acts like unlawful border crossings or prostitution.\(^{216}\) In doing so, prosecutors send the following message to survivors who did what they had to in order to survive: \textit{You are not deserving or worthy of protection.}

Young women who fail to fit the “perfect victim” narrative, like ones who engage in risky behavior such as consuming drugs or engaging in other criminal activities, are framed as traffickers themselves or harshly punished for self-defense.\(^{217}\) Sex trafficking survivors are sometimes charged with prostitution “in the hope that they would receive the help needed to disclose their victimization.”\(^{218}\) One survivor arrested for prostitution says, “There was . . . a lot of pressure for me to talk. The D.A. was there and they were asking me questions and [told me] if you give us information, then the D.A. is more likely to give you a good deal and you’ll get out . . . .”\(^{219}\) According to one report, arrest was the \textit{main mechanism} police used to compel sex trafficking survivors to disclose information for their cases in the South.\(^{220}\) In a cruel twist, after being charged with prostitution to compel their

\(^{215}\) Id.

\(^{216}\) Id.


\(^{220}\) Cipriano, \textit{supra} note 218.
testimony, survivors might have to register as sex offenders for the rest of their lives, compounding their difficulties.\textsuperscript{221}

Trafficking victims of color are vulnerable to discrimination throughout the entire process, from the legal system itself, through to the police forces.\textsuperscript{222} U.S. Secretary of State Antony Blinken acknowledged this discrimination when he introduced the 2021 U.S. Trafficking in Persons Report, explaining that “deeply held racial biases and stereotypes” influence outcomes for trafficking victims in the criminal justice system because they “lead to racially disparate assumptions about who is identified as a trafficker and who is identified as a victim . . . a somber, unacceptable reality.”\textsuperscript{223} The TIP Report further noted that “marginalized communities” were overrepresented in the data available on trafficking victims.\textsuperscript{224}

When survivors try to achieve justice, they face a burdensome process.\textsuperscript{225} At best, according to Heather Clawson and Nicole Dutch in a study of U.S. Health and Human Services programs serving survivors of human trafficking, survivors often have complex legal needs that can be challenging to meet.\textsuperscript{226} At worst, police, prosecutors, and courts may retraumatize survivors, especially marginalized survivors.\textsuperscript{227} For example, though some police departments proceed without survivor

\textsuperscript{221} Kate Mogulescu & Leih Goodmark, Surveillance and Entanglement: How Mandatory Sex Offender Registration Impacts Criminalised Survivors of Human Trafficking, 14 ANTI-TRAFFICKING REV. 125, 125–30 (2020) (explaining that survivors convicted of prostitution must sometimes register as sex offenders, further marginalizing them).


\textsuperscript{223} 2021 TIP Report, supra note 160, at iii.

\textsuperscript{224} Id. at 584.

\textsuperscript{225} Sarah Warpinski, Know Your Victim: A Key to Prosecuting Human Trafficking Offenses 21–23 (Spring 2013) (King Scholar Program, Michigan State University College of Law), https://www.law.msu.edu/king/2012-2013/Warpinski.pdf [https://perma.cc/YQD3-L4G5].


testimony, some courts still use material witness warrants to force survivors to identify themselves as survivors and to testify against their traffickers in court. Arresting these survivors to compel their testimony replicates the trauma they have already experienced: the trauma of “being locked up and being forced to do things they didn’t want to do[].” And marginalized survivors are at risk of the most harm: they may lose custody of their children, jobs, or access to “services they need for recovery[].” Survivors who are more privileged, on the other hand, are more likely to be able to afford childcare while they are detained or to support themselves if they lose their job.

Some survivors of human trafficking, especially those of color, already distrust the police and may be loath to reach out for help. They often have personal experience with abuse or coercion by police. One survivor of color interviewed describes how a police officer used his authority to manipulate her into revealing her genitals. Survivors of color may also fear stereotyping. Lali, a Hispanic survivor, describes how police willfully ignore missing Black and Brown survivors who are addicted to drugs, justifying their inaction by saying that these survivors “like to party” and “[will] be back in a few days.” Survivors may expect to be met

trfn/holding-trafficking-victims-to-testify-makes-lives-worse-u-s-group-idUSKCN21Y0HB [https://perma.cc/LWK6-NM95].


229 Leviates, supra note 227.

230 Id.

231 See id.


234 ECPAT-USA: SURVIVOR PERSPECTIVES, supra note 232.

235 Id.
with bias. Black survivor-leader Lyresh Magee says she only realized the extent of racial injustice against Black survivors, especially those with criminal records, when she decided to escape her own trafficker.

Here is a closer look at why one survivor did not ask the police for help: Emma, a young woman of color with a crippling drug addiction, feared discrimination by the police based on negative experiences with law enforcement that her friends had shared with her. Instead, she attempted to recover from her drug addiction, leave her trafficker, and improve her situation, all without help from the police. Emma’s trafficker continued to cajole her with drugs to have sex with other men for money. He controlled how much cash she could keep and even how often Emma talked to her family. Left with mental health issues from her trafficker’s abuse, she believed she had no one to turn to for help.

Sadly, trafficking survivors’ fears and suspicions are largely justified. The U.S. State Department identified multiple ways that systemic racism and bias pervade anti-trafficking efforts. For example, racial stereotypes can impact the specific


237 Id.

238 I met “Emma” (name changed to protect anonymity) in Texas while mentoring survivors of abuse. See Laura Santhanam, Two-Thirds of Black Americans Don’t Trust the Police to Treat Them Equally: Most White Americans Do., PBS NEWSOUR (June 5, 2020, 12:00 PM), https://www.pbs.org/newshour/politics/two-thirds-of-black-americans-dont-trust-the-police-to-treat-them-equally-most-white-americans-do [perma.cc/99MR-S3NW] (“Nearly half of black Americans have very little or no confidence that police officers in their community treat people with different skin colors the same . . . [b]ut overall, only 18 percent of Americans take that view — an illustration in itself that people of different races are living different realities in the United States.”).

communities police focus on for anti-trafficking operations.\textsuperscript{240} Next, prosecutors are more likely to charge marginalized child trafficking survivors as adults.\textsuperscript{241} While white youths commit crimes at the same rate as Black youths, prosecutors are more likely to charge similarly-situated white girls as minors and Black girls as adults.\textsuperscript{242} Even when all the factors prosecutors take into consideration in charging—including “educational and familial background, economic status, type and severity of the crime, any past criminal history, [and] likelihood to re-offend”—are similar, significant disparities in charging white girls versus Black girls remain.\textsuperscript{243} Laura Cohen, Director of the Criminal and Youth Justice Clinic at Rutgers Law School, says that these disparities can only be explained by race.\textsuperscript{244} Finally, these predetermined biases can impact the credibility of survivor-witnesses when they testify before a judge or jury.\textsuperscript{245}

According to survivor-leader Fainess Lipenga, the criminal justice system’s weaknesses are exposed in the instances where trafficking survivors are arrested and prosecuted for their trafficker’s crimes.\textsuperscript{246} Bridgette Carr, founding director of the University of Michigan Law School’s Human Trafficking Clinic, explains: “We know that Black victims . . . are pushed more into being criminals and not being offered services[.].”\textsuperscript{247} For example, in the 2021 U.S. Trafficking in Persons Report, one non-governmental organization revealed that 89% of its current trafficking survivor clients who reported an arrest or conviction of a crime were

\textsuperscript{240} OFF. TO MONITOR & COMBAT TRAFFICKING IN PERSS., supra note 239.

\textsuperscript{241} Page, supra note 222, at 114–20.

\textsuperscript{242} Id. at 120–21.

\textsuperscript{243} Id. at 121–22.

\textsuperscript{244} Id. at 114, 122, 122 n.56.

\textsuperscript{245} OFF. TO MONITOR & COMBAT TRAFFICKING IN PERSS., supra note 239.

\textsuperscript{246} 2021 TIP Report, supra note 160, at 39.

“Black, [I]ndigenous, or people of color.” That organization indicated that survivors of color were more likely to be charged for crimes their traffickers forced them to commit and more likely to be coerced through threats by police into cooperation.

A similar fate befell survivor Keosha Jones in United States v. Jones, a federal criminal case in which prosecutors charged Ms. Jones for a crime she committed while being trafficked herself. Ms. Jones pled guilty along with her co-conspirator Derrick Hayes to trafficking two fourteen-year-old girls. But Mr. Hayes had forced Ms. Jones into commercial sex when she was only fifteen years old, beating and drugging her to gain her compliance. Prosecutors appeared to ignore Ms. Jones’s own history of victimization when they decided to charge her with trafficking despite her trauma. The judge, however, noted Ms. Jones’s history of victimization, and while Ms. Jones received supervised release, Mr. Hayes received a thirty-year sentence.

Ms. Jones was a “bottom girl,” or a trafficker’s right hand woman. Survivor Shamere McKenzie, a former “bottom girl” herself, has called for prosecutors to understand the victimization a “bottom girl” faces. She explains that survivors who face “constant threats[,]” witness “cruelty done to other girls[,]” and suffer

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249 Id.


251 Id.

252 Id.

253 Id.

254 Id.

255 See U.S. v. Pipkins, 378 F.3d 1281 (11th Cir. 2004) (describing a “bottom girl’s” duties as managing her “pimp’s” affairs” when needed).

256 Levy, supra note 250, at 132.
“severe beatings and rapes” become compliant with their traffickers.\textsuperscript{257} She says that traffickers manipulate these girls through trauma bonds and fear, corrupting their free will.\textsuperscript{258}

Lack of access to services and opportunities is another harm that survivors identify.\textsuperscript{259} In one 2021 survivor-leader-led survey, respondents noted that victims of color needed more support finding job opportunities and more support groups geared to women of color.\textsuperscript{260} The data also points to policies that prevent migrant victims from accessing services at all.\textsuperscript{261} Scholars Abigail Swenstein and Kate Mogulescu explain that lack of employment, education, and affordable housing lead to survivors struggling, even survivors participating in prosecutions.\textsuperscript{262} For example, when one survivor’s trafficker petitioned for custody of the child they had together, she sought help from the police.\textsuperscript{263} Despite her trafficker’s arrest, she still struggles without a high school education and without much family support.\textsuperscript{264} She has limited time and resources to heal or to raise her child, keeping her from achieving greater stability.\textsuperscript{265}

Black survivors, who do not fit the idea of a “perfect victim,” are especially at risk of arrest.\textsuperscript{266} Black survivor Chrystul Kizer knows first-hand what happens when

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\textsuperscript{258} Id.

\textsuperscript{259} The Human Trafficking Legal Center, supra note 211 (raw survey data on file with author).

\textsuperscript{260} Id.

\textsuperscript{261} Id.

\textsuperscript{262} Swenstein & Mogulescu, supra note 34, at 118.

\textsuperscript{263} Id.

\textsuperscript{264} Id.

\textsuperscript{265} Id.

\textsuperscript{266} Murray, supra note 247.
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survivors defend themselves against their traffickers. In 2018, when she was only seventeen years old, Ms. Kizer killed the man who allegedly purchased sex from her when she was a child—the man who allegedly sex trafficked her. Like Cyntoia Brown, instead of receiving support, Ms. Kizer was charged with murder. Like Cyntoia Brown, instead of receiving support, Ms. Kizer was charged with murder. The prosecutors charged her even though Chrystul’s alleged trafficker was already under police investigation for sex crimes at the time of his death. Both prosecutors and police had evidence that the man, who is white, abused Ms. Kizer and other Black girls. In the summer of 2020, Ms. Kizer was finally released from a Wisconsin jail on bail, but only after activists banded together to pay the $400,000 sum. Though she is out on bond, she is still fighting her case in court and may face life in prison.

When courts and prosecutors punish trafficking survivors, they replicate the power that traffickers lord over survivors. The replication of a punitive relationship “compounds and prolongs victims’ experience of ongoing trauma and abuse.”

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267 See Ryan Brooks, Chrystul Kizer, a 19-Year-Old Sex Trafficking Victim Who Killed Her Abuser, Has Been Released from Jail, BUZZFEED NEWS (June 23, 2020, 6:31 PM), https://www.buzzfeednews.com/article/ryancbrooks/chrystul-kizer-released-bail [https://perma.cc/C53C-7X5B].


269 Id.

270 Id.


274 Kaba & Schulte, supra note 217.
And even when police do not arrest survivors, the legal system still ignores survivors’ stated goals. As one survivor explained, “Nobody asks [survivors] what their dreams are.” Survivors sometimes want restorative, instead of punitive justice, or reparations. As another survivor said, “I think that restitution the perpetrator has to pay should also be paying for therapy. Because part of human sex trafficking is a . . . lot of verbal, mental, and physical abuse. We need help with that.” Procedural justice is equally important. The outcome of a case may matter less to a survivor than “neutrality, lack of bias, honesty, efforts to be fair, politeness, and respect for citizens’ rights.”

Even legal interventions like New York’s Human Trafficking Intervention Courts, meant to help survivors, sometimes also criminalize them. Because the Human Trafficking Courts rely on police bringing in people charged with prostitution, the potential human trafficking survivors who appear before the courts reflect police and the courts’ gender bias and racial prejudice. In the Brooklyn Human Trafficking Court, for example, Black defendants “accounted for 69 percent of all of the charges brought forth in the court[.]” Black women faced a horrific 94% of all “loitering for the purpose of engaging in prostitution” criminal charges. When aggressive programs, including human trafficking intervention courts, threaten survivors with prosecution if they do not cooperate with law enforcement, these programs prioritize criminal justice goals over making sure that survivors


276 *Yu et al.*, supra note 219, at 10.

277 *See id.* at 2.


280 *Id.*

281 *Id.*
receive the support they need and deserve. The first independent assessment of the Human Trafficking Intervention Courts Program by the Yale Global Health Justice Partnership bolstered those critiques. The study found that when the courts mandated social services, defendants before the court saw the courts “as an extension of law enforcement[].” These people had often been introduced to police through “frightening arrests.” In conclusion, consideration of all survivors—especially marginalized survivors—and their conceptions of justice is imperative. Otherwise, programs meant to help survivors of trafficking risk punishing them by recreating traumatic experiences.

B. Proposed Frameworks That Reimagine Trafficking Law Fall Short

Even proposed frameworks that recognize the human rights of trafficking survivors miss many of the ways that different forms of discrimination combine to hurt survivors. Leading scholar Kimberlé Crenshaw, who developed the theory of intersectionality, explains that intersectionality—or looking at how dimensions of people’s identities intersect—is critical, because the oppressions that many people face are often shaped by “other dimensions of their identities[].” Because people with intersectional identities, like women of color, undocumented immigrants of color, and disabled people in poverty, are already at increased risk for trafficking, a successful framework will tell their stories.


283 Goldbaum, supra note 194. The Yale Global Health Justice Partnership is a Yale University research initiative. Id.

284 Id.

285 Id.


287 Id.

288 See Todres, supra note 5, at 621 (“[T]here are a] number of factors [that] increase an individual’s risk of exploitation. These include, but are not limited to: poverty, race, ethnicity, sex, immigration status, class, caste, and age.”).
Proposed frameworks for anti-trafficking law, like International Human Rights, Feminist Legal Theory, Disability Legal Studies, and Critical Race Theory fail to revise and reimagine trafficking law in a way that supports all survivors. For example, an International Human Rights Framework, which views trafficking as a “human rights abuse” and not a problem of “[organized] crime, migration, and/or prostitution,” proposes affording immigrant survivors the same rights as refugees. This would be a positive first step, but the Office of Refugee Resettlement within the Department of Health and Human Services (HHS) already treats certified survivors of human trafficking as refugees. Moreover, theoretically

289 E.g., Ann D. Jordan, Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings, GENDER & DEV., Mar. 2002, at 28; Cherneva, supra note 175, at 62 (“Traditional asylum law might be an alternative to the T-visa, and also according to international asylum law when a human rights framework is applied to it.”).


291 E.g., Carey & Peterson, supra note 29, at 471.

292 E.g., Butler, supra note 18, at 1464.

293 Jordan, supra note 289, at 29.

294 Cherneva, supra note 175, at 62.

295 Benefits and Responsibilities of Asylees, U.S. CITIZENSHIP & IMMIGR. SERVS. (Mar. 8, 2018), https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/benefits-and-responsibilities-of-asylees [https://perma.cc/BX7M-HEEN]; Off. of Refugee Resettlement, Anti-Trafficking in Persons Programs, U.S. DEP’T OF HEALTH & HUM. SERVS. (Apr. 23, 2019), https://www.acf.hhs.gov/orr/programs/anti-trafficking/about [https://perma.cc/SBD5-G87N]. As noted in its description of anti-trafficking programs in 2019, HHS is the sole Federal agency authorized to certify adult foreign victims of human trafficking. Similarly, it is the sole Federal agency authorized to provide Eligibility Letters to minor foreign victims of human trafficking. The Office of Refugee Resettlement (ORR) within HHS issues all Certifications and Eligibility Letters. Certification grants adult foreign victims of human trafficking access to Federal benefits and services to the same extent as refugees. Likewise, Eligibility Letters grant minor foreign victims of trafficking access to Federal benefits and services to the same extent as refugees, including placement in the Unaccompanied Refugee Minors program, which provides specialized, culturally appropriate foster care or other licensed care settings, according to children’s individual needs. Trafficking
granting survivors access to federal benefits does not help survivors navigate the complex system to first become certified and then to receive benefits.\textsuperscript{296}

First, we must ask: How easy is it for survivors to become certified under the current system?\textsuperscript{297} HHS requires adult trafficking survivors to be a “victim of a severe form of trafficking in persons” under federal law and be willing to assist law enforcement in “every reasonable way” in investigating and prosecuting severe forms of trafficking unless they meet an exception for physical or psychological trauma.\textsuperscript{298} The U.S. Department of Homeland Security must also have granted the survivors Continued Presence to assist in prosecuting traffickers, or the survivors must have applied for a T-visa without denial of that application.\textsuperscript{299} Any one of those steps may prove difficult for survivors. Second, even if survivors successfully become certified, they may find the process of applying for benefits to be confusing and burdensome, especially if survivor-facing government workers do not come from or understand the survivors’ native cultures, customs, or languages.\textsuperscript{300}

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victims who are U.S. citizens or Lawful Permanent Residents (LPR) do not need Certification or Letters of Eligibility to be eligible for similar benefits and services.
\textit{Id.}
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\textsuperscript{298} \textit{Id.}

\textsuperscript{299} \textit{Id.}

\textsuperscript{300} See Balaban, supra note 296.
Latina/o Critical Race Theory (LatCrit)\textsuperscript{301} honors immigrant survivors’ homelands by analyzing the intersection of colonialism, immigration status, and Latina/o identity. A LatCrit analysis would likely take a closer look at deaf-mute Mexican survivor Ismael and study how his undocumented immigration status made him especially vulnerable to trafficking. However, Latina/o Critical Race Theory might miss the intersection of Ismael’s ethnicity and his disability status: namely, how deaf-mute people are maligned in Mexico.\textsuperscript{302}

Similarly, Disability Legal Studies\textsuperscript{303} and Feminist Legal Theory view human trafficking narrowly, through a disability or gender lens.\textsuperscript{304} Exploitation of a survivor may be shaped by more than the survivor’s gender or disability: race, class, and other identities may impact the survivor’s experience.\textsuperscript{305} For example, without accounting for intersectionality, a white female trafficking survivor receives the same support and services as a Black female survivor. But though both likely share gendered trauma, white female survivors do not have to cope with the individual and systemic ramifications of racism when exiting their trafficking situations. They are more likely to be confident that law enforcement will view their trafficking situation sympathetically and help them escape, unlike their Black counterparts. Black female survivors could benefit from racially sensitive care, a need that Feminist Legal Theory has historically ignored.\textsuperscript{306}

Critical Race Feminism and Critical Race Theory look at how race and racism connect to other risk factors for trafficking,\textsuperscript{307} but both still let down disabled survivors. Disability scholars have pointed to a tendency in the field of Critical Race

\textsuperscript{301} E.g., Marisa Silenzi Cianciarulo, Modern-Day Slavery and Cultural Bias: Proposals for Reforming the U.S. Visa System for Victims of International Human Trafficking, 7 NEV. L.J. 826, 826–40 (2007).

\textsuperscript{302} Developments in the Law: Jobs and Borders, supra note 83, at 2180.

\textsuperscript{303} Arlene Kanter, The Law: What’s Disability Studies Got to Do with It or an Introduction to Disability Legal Studies, 42 COLUM. HUM. RTS. L. REV. 403, 477 (2011).

\textsuperscript{304} E.g., Carey & Peterson, supra note 29, at 471; Pourmokhtari, supra note 37, at 159–60.

\textsuperscript{305} Crenshaw, supra note 286, at 1242.

\textsuperscript{306} See Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 STAN. L. REV. 581 (1990).

\textsuperscript{307} BUSCH-ARMENDARIZ ET AL., supra note 138, at 103–04; Butler, supra note 18, at 1464, 1467.
Theory to classify race as social and political, while classifying disability “as an immutable and pathological abnormality rooted in the ‘medical language of symptoms and diagnostic categories[,]’”\(^{308}\) So, trafficking survivors are doomed to be “abnormal,” and they are not given the chance to overcome or celebrate their disabilities if they wish to do so.

Thus, though the issues and experiences of survivors with multiple identities do not often occur on “mutually exclusive terrains[,]”\(^{309}\) proposed frameworks still treat survivors’ experiences independently. In providing “either/or” propositions, these frameworks hide the stories of disabled survivors of color.\(^{310}\) Part III of this Note offers an opportunity to bring these stories to light.

## III. Towards a Real Utopia: Disability Critical Race Studies Strengthens Anti-Trafficking Efforts

To center marginalized survivors’ stories, Part III presents a “real utopia,” an ideal yet realizable set of goals for anti-trafficking advocacy to move toward providing survivors with a better world.\(^{311}\) A “real utopia,” first coined by sociologist Erik Olin Wright, is a “proposal for social transformation” that provides a “clear-headed, rigorous, and viable alternative[] to existing social institutions . . . .”\(^{312}\) Real utopias must embody people’s “deepest aspirations for human flourishing” yet “take seriously the problem of practical design.”\(^{313}\) They are simplified dreams, but they “remain attentive to what it takes to bring those aspirations to life.”\(^{314}\) They include strategizing how to develop “empirically and theoretically sound arguments” about

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\(^{309}\) See Crenshaw, *supra* note 286, at 1242.

\(^{310}\) See *id.*


\(^{312}\) *Id.*

\(^{313}\) *Id.*

\(^{314}\) *Id.*
what is possible. In a real utopia, disabled survivors of color could more easily access affirming resources, investigators and prosecutors would avoid criminalizing survivors when possible, and courts would help connect trafficking survivors with services. The sections that follow introduce, justify, and apply DisCrit to move the needle closer to this goal.

A. Disability Critical Race Studies (DisCrit)

This Note contends that Disability Critical Race Studies, or DisCrit, is a useful framework through which to analyze trafficking and trafficking law in the United States. DisCrit is the combination of Disability Studies and Critical Race Theory. The brainchild of special education scholars Subini Ancy Annamma, David Connor, and Beth Ferri, DisCrit studies the intersection of race and dis/ability, and racism and ableism, to support disabled students of color in special education in the United States.

Annamma, Connor, and Ferri propose seven tenets for DisCrit:

(1) DisCrit focuses on ways that the forces of racism and ableism circulate interdependently, often in neutralized and invisible ways, to uphold notions of normalcy.

(2) DisCrit values multidimensional identities and troubles singular notions of identity such as race or dis/ability or class or gender or sexuality, and so on.

(3) DisCrit emphasizes the social constructions of race and ability and yet recognizes the material and psychological impacts of being labeled as raced or dis/abled, which sets one outside of the western cultural norms.

(4) DisCrit privileges voices of marginalized populations, traditionally not acknowledged within research.

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315 Id.

316 Annamma et al., supra note 42, at 1.

317 See id. at 2, 9–11.
(5) DisCrit considers legal and historical aspects of dis/ability and race and how both have been used separately and together to deny the rights of some citizens.

(6) DisCrit recognizes whiteness and Ability as Property and that gains for people labeled with dis/abilities have largely been made as the result of interest convergence of white, middle-class citizens.

(7) DisCrit requires activism and supports all forms of resistance.\textsuperscript{318}

Though these seven tenets were developed in the context of special education, DisCrit’s creators intend and hope for the framework’s interdisciplinary use.\textsuperscript{319} They endeavor to use DisCrit to study how society constructs ability and disability both “in and out” of schools.\textsuperscript{320} DisCrit’s tenets have already been applied far and wide to topics spanning from welfare management\textsuperscript{321} to mass incarceration.\textsuperscript{322} To honor Annamma, Connor, and Ferri’s wish that DisCrit be used to “partake in related difficult discussions linking race and dis/ability to . . . laws, civil rights, [and] human rights, in the quest for a more socially just society[,]”\textsuperscript{323} Section III.B justifies the use of DisCrit in the anti-trafficking field.

\textsuperscript{318} Id. at 11.


\textsuperscript{320} Annamma et al., \textit{supra} note 42, at 23.


\textsuperscript{322} Annamma et al., \textit{supra} note 319, at 54.

\textsuperscript{323} Annamma et al., \textit{supra} note 42, at 23.
B. Justification of DisCrit

Reducing discrimination is critical to end trafficking. DisCrit fights discrimination by paying attention to survivors’ intersecting lived experiences, identities, and oppressions so that communities can respond accordingly. DisCrit helps elucidate the experience of trafficking and the anti-trafficking movement, and the racism and ableism that pervades them. Accurately identifying problems in the anti-trafficking movement is the first step to mitigating these problems and removing the barriers between survivors and their own success.

DisCrit encourages society to “become more encompassing of [all] diversity and perceived difference.” It also calls for critical study beyond disability and race, asking people to “question the very norms that create difference.” Annamma, Connor, and Ferri advocate for “removing the policing and enforcement of normality” and “dissolving barriers that actively dis/able people[.]” They implore readers to listen to the “special voice” of people who have experienced discrimination. DisCrit thus provides an anti-trafficking approach that listens to the voices of marginalized survivors.

Next, while DisCrit elevates all intersectional identities, DisCrit also offers specific provisions to support disabled survivors of color. In doing so, DisCrit amplifies the voices of these vulnerable survivors who are typically singled out and stigmatized by trafficking law’s law-and-order framework. For example, DisCrit illuminates how “racism and ableism, intersecting with additional oppressions, often have serious and sometimes deadly implications.” DisCrit scholars tell the story of Bresha Meadows, a fourteen-year-old disabled Black girl who killed her father.

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325 Annamma et al., supra note 42, at 18.

326 Id.

327 Id.

328 Id.

329 Annamma et al., supra note 319, at 47.
after enduring years of his physical abuse against her and her entire family.\textsuperscript{330} Though the average pretrial length of detention is twenty-two days, Bresha was incarcerated for over thirteen times that amount: almost three hundred days.\textsuperscript{331} She had PTSD, depression, and anxiety, and had a history of self-harm.\textsuperscript{332} DisCrit shows how Bresha was treated like a dangerous criminal, instead of given the compassion she was due for being a “marginalized disabled Black girl in distress.”\textsuperscript{333} And in this story alone, DisCrit includes many topics “inconsistently” or “only recently recognized” in disability scholarship, like mood disorders, domestic violence, and brutality by the criminal justice system, providing a truly intersectional approach.\textsuperscript{334}

One could argue that DisCrit is yet another framework in a field already saturated with critical analysis. That may be so. This Note’s response is two-fold: First, contributions to legal scholarship need not be revolutionary. DisCrit supports efforts in the anti-trafficking sphere—similar to the ways in which LatCrit, AsianCrit, and TribalCrit have added to discourse in the educational leadership field\textsuperscript{335} or how Critical Race Feminism has provided helpful insights into the plight of Black female sex trafficking survivors.\textsuperscript{336} Second, DisCrit is distinguishable from other frameworks by its focus on a group that needs special attention from anti-trafficking law on account of trafficking’s disabling effects: disabled survivors. And by studying disabled survivors of color and the systems that oppress them, DisCrit ensures that the goals for the anti-trafficking movement align with what will help the most

\begin{thebibliography}{99}
\bibitem{330} Id. at 46.
\bibitem{331} Melissa Jeltsen, \textit{Bresha Meadows Thought You’d Understand}, HUFFPOST (Mar. 29, 2021), https://www.huffpost.com/entry/bresha-meadows-thought-you’d-understand_n_5da48081e4b087efdbb23973 [https://perma.cc/GNG8-VL9J] (indicating 299 days of incarceration until a plea deal was secured).
\bibitem{332} Annamma et al., \textit{supra} note 319, at 46–47.
\bibitem{333} Id. at 47.
\bibitem{335} See Colleen Capper, \textit{LatCrit, Tribal Crit, and Asian Crit Theories}, in ORGANIZATION THEORY FOR DIVERSITY AND EQUITY (1st ed. 2018).
\bibitem{336} Butler, \textit{supra} note 41, at 132.
\end{thebibliography}
marginalized survivors. Therefore, DisCrit is necessary, or at the very least, helpful, because it supports survivors suffering at the margins.

C. Applying DisCrit to Protect Marginalized Survivors of Trafficking

To move toward strengths-based and affirming care for survivors, DisCrit can be applied to trafficking and the movements, systems, and laws that respond to trafficking in the United States.337

1. “DisCrit focuses on ways that the forces of racism and ableism circulate interdependently, often in neutralized and invisible ways, to uphold notions of normalcy.”338

Racism and ableism interact to harm survivors.339 In education, Black students are more likely to be placed in special education, removed from school on “grounds of dangerousness[,]” and more likely to be arrested in school.340 This is their “normal”: one of unfair “adultification” and criminalization.341 Both Black disabled students and disabled survivors of color are segregated and criminalized instead of helped. Disabled survivors of color who act out because of their trauma are

337 Because this Note has already used the tenets of DisCrit throughout the text, this application is a short summary.

338 Anamma et al., supra note 42, at 11.

339 See supra Sections I.A, I.B.3, II.A.

340 Anamma et al., supra note 42, at 7.

categorized as criminals and dangerous, unlike white, able-bodied survivors portrayed as “perfect victims.”

What can DisCrit do about this injustice? Initially, law enforcement officers can attend trainings to recognize the signs of human trafficking so they do not mistake coercion for consent, a common mistake officers make when learning about survivors’ situations. That way, police will stop assuming that Black and Brown survivors addicted to drugs are willingly disappearing “to party” and will soon return. Survivors addicted to drugs, another example of “imperfect” survivors, are just as worthy of receiving care and help from the legal system as the fictionalized ideal of a “perfect victim.”

Following these trainings, when police encounter potential survivors who appear to be engaging in prostitution, they may look more closely for signs of human trafficking. Correctly identifying human trafficking can mean the difference between a human trafficking survivor being labeled a criminal and handed a jail sentence for prostitution or being validated as a survivor and connected with restorative resources. Correct identification also ensures that law enforcement will be able to locate the real perpetrators: the traffickers.

Similarly, prosecutors may use their judgment when choosing whether to charge a human trafficking survivor with a crime that the survivor was forced to commit during their trafficking experience. Cyntoia Brown and Chrystul Kizer’s cases come to mind as instances where prosecutors may have been able to exercise more discretion in their charging decisions and where racism and ableism may have influenced both survivors’ experiences in the legal system. For example, in Cyntoia

342 See OFF. ON VIOLENCE AGAINST WOMEN, U.S. DEP’T OF JUST., THE IMPACT OF INCARCERATION AND MANDATORY MINIMUMS ON SURVIVORS: EXPLORING THE IMPACT OF CRIMINALIZING POLICIES ON AFRICAN AMERICAN WOMEN AND GIRLS 5 (2017) (finding rates of incarceration to be twice as high for Black women as compared to white women; many of the prisoners are also survivors of interpersonal violence, and some of trafficking).

343 See supra Section II.A.

344 See LOVE ET AL., supra note 36, at 10 (“Law enforcement officers . . . often . . . felt that survivors could voluntarily leave their situations.”).

Brown’s case, prosecutors elected to charge Ms. Brown as an adult. How different could Ms. Brown’s experience in the legal system have been if prosecutors had chosen instead to charge her as a child, like they often do with white children?

Granted, if a prosecutor believes that all elements of a crime are met, they are more likely to charge a survivor-defendant (a survivor who is alleged to have committed a crime or crimes during or because of their trafficking experience) for their crimes. Similarly, a prosecutor may feel compelled to charge a survivor who protected themselves against their trafficker using violence, depending on the seriousness of the offense and the prospective success of affirmative defenses, such as duress or self-defense. However, prosecutors who are trained to recognize the signs of human trafficking may notice a potential missed case, and may be able to bring additional charges against the survivor’s trafficker to keep a criminal from walking free. Both police and prosecutors can provide a bulwark against unjust outcomes; training these public servants to recognize the signs of trafficking can help them better protect the public.

2. “DisCrit values multidimensional identities and troubles singular notions of identity such as race or dis/ability or class or gender or sexuality, and so on.”

A disabled survivor of color is not “just” disabled nor “just” a person of color. The narratives of Cyntoia Brown, Audrey Morrissey, and Ismael Santiago Garcia, among others, show how intersecting identities impact marginalized survivors. In a real utopia, systems will value survivors’ multi-faceted identities to provide them affirming, sensitive care. For example, intersectional social worker practices recognize the importance of cultural competency and humility but also its limits. “Anti-oppressive practice” is the “reflective and critical process [in social work] of

346 Page, supra note 222, at 123.
347 Id. at 120–21.
348 Annamma et al., supra note 42, at 11.
349 See supra Section II.B.
actively challenging domination at an interpersonal and structural level." Social workers are people like everyone else, and they can both help and hurt their clients. Anti-oppressive practice helps ensure that social workers acknowledge their own power and roles in perpetuating oppression. Social workers may also emphasize a person-centered approach with clients in trafficking risk assessments, case management, and therapy. In such an approach, social workers will address the survivor’s intersectional identities and experiences.

3. “DisCrit emphasizes the social constructions of race and ability and yet recognizes the material and psychological impacts of being labeled as raced or dis/abled, which sets one outside of the western cultural norms.”

Disability and race are, in part, socially constructed. Part of what it means to be a person of color or a disabled person depends on individual people’s experiences interacting with their environments. Fixed definitions of race or disability fail to account for this nuance. These social constructions impact disabled survivors of color in multiple ways. For example, though trafficking disables survivors through physical and psychological harm, stereotypes about survivors, perpetuated by the legal system, further keep survivors from healing. Initially, disability triggers

351 Id. at 30.
352 Id. at 31.
353 Id. at 33.
354 Id.
355 Annamma et al., supra note 42, at 11.
357 Jones, supra note 356; Ctr. for Health Progress, supra note 356.
stereotypical associations with “weaknesses[.]”359 Disabled people are seen as unhealthy and unable to compete,360 and immigrant survivors may be seen as outsiders, both “imperfect” survivors.

The criminal justice system sometimes labels survivors as criminals, socially disabling them by isolating them from the free and “moral” public. Furthermore, mental health conditions and substance abuse may make a survivor seem unreliable in court if the survivor testifies against their trafficker. The very traumas trafficking causes thus make it harder for survivors to access legal remedies. And all survivors, especially survivors who are isolated, may be unaware of their rights or resources, which could prevent them from accessing helpful legal remedies, like restitution361 or state vacatur.362 These remedies attempt to rectify undue criminalization.363 In addition, the legal system punishes disabled survivors who lack the energy or ability to navigate what is often a complex and exhausting process—if a survivor is unable to show up for court, they may lose their claim against their trafficker. Even legal diversion programs may disable survivors because these programs hold the threat of


360 Id.

361 Martina E. Vandenberg, Palermo’s Promise: Victims’ Rights and Human Trafficking, 6 ANTI-TRAFFICKING REV. 138, 138–39 (2016) (describing some of the ways restitution can benefit survivors, including restoring dignity to a survivor who wants to support her family, providing funds for housing or education, or removing the need for civil litigation).

362 How to Obtain Vacatur for Survivors of Human Trafficking, SUPPORTHTSURVIVORS.ORG, https://www.supporthtsurvivors.org/vacatur [https://perma.cc/8D53-FVLP] (defining vacatur as the vacating of convictions resulting from a survivor’s trafficking experience, explaining the process for obtaining vacatur, elucidating the remedies that can accompany it, and providing additional resources on rights restoration and criminal record relief). See infra Section III.C.5 for a discussion of the lack of a federal vacatur law. Survivors’ Rights, THE HUM. TRAFFICKING LEGAL CTR., https://htlegalcenter.org/our-work/survivors-rights/ [https://perma.cc/S352-TTRJ ] (showing that in most federal criminal human trafficking cases that end in conviction, courts fail to order restitution even though ordering it is mandatory, and that prosecutors often fail to collect restitution even when a court orders it). When victims are less isolated and know their rights and the remedies that they are entitled to, they have a chance at advocating for themselves and for their rights.

363 Vandenberg, supra note 361.
a criminal charge over survivors’ heads to force them to get help, risking re-traumatization.\textsuperscript{364}

What, then, is the future of labeling in a real utopia under DisCrit? There is no simple answer. But the legal system should account for marginalized survivors’ identities and vulnerabilities in ways that help, not hurt, these survivors. At a bare minimum, immigration services and law enforcement should provide survivors of color whose first language is not English with culturally competent care.\textsuperscript{365} This care should include interviews by police and immigration officials who speak the survivor’s first language, so that survivors’ descriptions of their trafficking experiences are not lost upon unknowing officials.\textsuperscript{366} Moreover, survivors with disabilities should be afforded appropriate accommodations to communicate their situation and their needs.

Additionally, the creation of human trafficking intervention courts that suggest, instead of mandate social services, could account for survivors’ marginalization without the looming threat of incarceration. The very vulnerabilities that led survivors to trafficking situations or kept them there may make compliance with social service mandates difficult.\textsuperscript{367} Survivors living in poverty may juggle work


\textsuperscript{366} See Maura Nsonwu, \textit{Human Trafficking of Immigrants and Refugees in North Carolina}, 8 N.C. MED. J. 101, 103 (2019) (noting the need for culturally relevant approaches for foreign-born trafficking survivors, including “skilled interpretation and translation services,” and an understanding of cultural barriers).

hours with counseling groups and may need to skip groups to make enough money to support themselves and their families. Survivors with addictions or mental disabilities may have trouble with treatment compliance due to the nature of their illnesses. Survivors with racial trauma may balk at the revictimization that mandatory diversion programs can cause.

A successful model may suggest treatment instead of mandating it. Survivors who do not participate in treatment will have to cope with an increased risk of returning to their trafficking situations or other situations involving victimization. But these survivors would not face potential jail time for refusing treatment.

4. “DisCrit privileges voices of marginalized populations, traditionally not acknowledged within research.”

To privilege voices of marginalized populations, scholarly works can incorporate their narratives, including those of disabled survivors of color. These counter-narratives challenge master narratives about trafficking that people without lived experiences of trafficking have disseminated. By incorporating survivor narratives directly, scholarship can avoid speaking for survivors, or about them. Marginalized survivors do not need scholars to “give [them] voice,” but rather, to help their voices reach a broader audience.

A response to trafficking that centers survivor voices is one that promotes coalition-building with survivor-led organizations that have disabled survivors of color at the helm. Survivors see themselves as “self-sufficient, self-responsible, and difficulty accessing and receiving services due to the various barriers they may be facing in their lives.”

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368 Id. at 54 (“One service provider acknowledged that some defendants simply ‘don’t have the time or space [to attend mandated sessions[.]]’”).

369 Anamma et al., supra note 42, at 11.

370 This Note includes direct quotes from marginalized survivors whenever possible, to minimize the alteration of their experiences.

371 Anamma et al., supra note 42, at 14.
self-enterprising[.]” Promoting survivor leadership reframes marginalization from a “subordinate position” to a “positive marker of identity and something to be “claimed[.]” For example, My Life My Choice, a survivor-led program based in Boston, connects survivor-mentors with survivor-mentees. Survivors can share their stories to empower the youth they mentor.

Similarly, nonprofit Survivor Alliance provides survivors with leadership opportunities, skills trainings, and chances to connect with other survivor-leaders. Survivor Alliance’s “Membership Manifesto” outlines how the coalition supports survivor-leaders: through intersectional, trauma-informed approaches; recognition of survivors’ individual unique experiences; a collective voice to pressure lawmakers and pool resources when Alliance members agree on particular issues; and a professional and peaceful approach to conflict resolution that avoids “call[ing] out” members.

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373 Annamma et al., supra note 42, at 8.


377 Id.
5. “DisCrit considers legal and historical aspects of dis/ability and race and how both have been used separately and together to deny the rights of some citizens.”

Anti-trafficking law and historical rhetoric have long been intertwined with racism and ableism. Passed in 1910, the Mann Act banned the transportation of people across state lines for criminal sex activities. Legislators intended it to prevent consensual interracial relationships. To do so, the Act framed trafficking survivors as white women and traffickers as people of color. Police often used the Act to arrest immigrants and Black men. More recently, anti-trafficking campaigns across the country, like the White Slavery Campaign, have focused only on the trafficking of white women, while others have used imagery of African slavery to provoke public outrage toward trafficking.

How can the law be used to help disabled survivors of color? Nongovernmental organizations continue to call for using vacatur to erase survivors’ criminal records

378 Annamma et al., supra note 42, at 11.

379 See Sarah L. Steele, ‘Combating the Scourge’: Constructing the Masculine ‘Other’ Through U.S. Government Anti-Trafficking Campaigns, 9 J. HATE STUD. 33, 34 (2011) (“The trafficker . . . in the press and in the government-issued materials . . . repeatedly is described as ‘evil.’ . . . [H]e is diseased, ‘ill,’ and a ‘scourge’ on society. Coupled with images of traffickers that show these men as foreign, the effect is to problematize the ethnic man . . . . As a result, trafficking relegates both trafficked men and traffickers to the status of “Others” who are risky. . . . Current anti-trafficking regimes embody and restate xenophobic reactions directed against illegal migrant men, while often disguising the role domestic actors have in trafficking.”) (citations omitted).


383 See id.


associated with their trafficking experiences. While nearly all states have codified criminal record relief for trafficking survivors, there is no federal vacatur law. Congress can reintroduce and pass the Trafficking Survivors Relief Act, bipartisan legislation introduced by U.S. Senators Rob Portman (R-OH) and Kirsten Gillibrand (D-NY), which would clear the federal criminal records of survivors. The bill previously died without a vote. Advocates should continue to lobby for a federal vacatur law to ensure that marginalized survivors facing some of the harshest penalties, like time in federal prison, stop paying for their traffickers’ crimes.

While this remedy will not stop bias against trafficking survivors before it begins, vacatur will help prevent marginalized survivors from continuing to suffer compounded racial traumas. Vacatur can also help survivors who have criminal records more easily access housing, education, and employment, areas in which they may otherwise struggle. And a federal vacatur law fits within a real utopia: Though some anti-trafficking advocates call for deprioritization of the carceral system,

386 See Alyssa M. Barnard, “The Second Chance They Deserve”: Vacating Convictions of Sex Trafficking Victims, 114 COLUM. L. REV. 1463 (analyzing a state vacatur law, Section 440.10(1)(i) of the New York Criminal Procedure Law, and similar statutes); 2021 TIP REPORT, supra note 160, at 586.


389 Id.


Congress is far more likely to pass a federal vacatur law for survivors than to dismantle prisons.\footnote{392 See, e.g., Swenstein & Mogulescu, supra note 34 (arguing for de-prioritization of the carceral system in trafficking) (“Trying to arrest our way out of a multi-faceted problem has failed before. Even where trafficking efforts may be understood as well-meaning, we will lose the ‘war’ on trafficking if we continue to fight it the same way we fought the war on drugs. Both wars have overwhelmingly relied on the arrests of low-level offenders rather than perpetrators of more serious offences. As with the war against drugs, the collateral damage of anti-trafficking efforts that prioritise prosecution comes in the form of scores of arrests.”); END SLAVERY NOW, supra note 279.}

Additionally, Congress may consider amending the ADA to include current addiction as a “substantially limiting” impairment in addition to prior addiction, at least in situations of suspected labor exploitation.\footnote{393 Cf. Americans with Disabilities Act of 1990, 42 U.S.C. § 12102 (2008).} This would ensure labor trafficking survivors whose employers exploit their addictions are more likely to qualify for federal disability discrimination relief under the ADA. This amendment has the potential to fix the current gap in coverage that trafficker-employers may already knowingly exploit. All survivors with addictions, not just those who have recovered, deserve relief from unequal treatment by opportunistic trafficker employers. Federal civil protections like those provided by the ADA provide an avenue for holding traffickers accountable without subjecting survivors to the traumatizing effects of the criminal justice system. This protects marginalized survivors, like disabled survivors of color, who often lose out in the criminal justice system.

6. “DisCrit recognizes whiteness and Ability as Property and that gains for people labeled with dis/abilities have largely been made as the result of interest convergence of white, middle-class citizens.”\footnote{394 Annamma et al., supra note 42, at 11.}

The interest convergence of white, middle-class citizens\footnote{395 As a white, middle-class scholar, I must explicitly recognize how this very Note exemplifies DisCrit’s sixth tenet. My race and class privilege have afforded me the ability to dedicate the necessary time and energy to write this Note. These axes of privilege insulate me from many effects of exploitation and ableism. Many disabled survivors of color, on the other hand, are busy fighting against the effects of racism and ableism in their trafficking situations as well as in the anti-trafficking community at large.} against trafficking raises interesting questions about the power that privileged advocates can wield in
law and how that power impacts disabled survivors of color. Many legislators have championed the causes of human trafficking and child sexual abuse. Their efforts have been well-intentioned, but in some cases have backfired, harming survivors. For example, in 2017 and 2018, members of Congress used the specter of trafficking to campaign against open online markets like Backpage.396 Advocates who work directly with survivors and sex workers have condemned the campaign against sites advertising sexual services.397 They warn that a lack of online forums robs law enforcement and advocates of an important investigative tool.398 Now, exploitation can leave little trace, making it difficult to track survivors in need of support.399

Powerful people within the legal system can use their professional capital to help survivors. Law enforcement and prosecutors, utilizing knowledge from trainings, can exercise their discretion when presented with trafficking survivors long before a case comes before a judge.

In federal sentencing proceedings, trial judges have a great deal of discretion when sentencing trafficking survivor-defendants.400 The late Judge Jack B. Weinstein, who presided over cases in the Eastern District of New York, called sentencing “perhaps the most difficult task of a trial court judge.”401 When


397 Id.

398 Id.

399 Id.


401 Jack B. Weinstein, Does Religion Have a Role in Criminal Sentencing?, 23 TOURO L. REV. 539, 539 (2007) (“Sentencing, that is to say punishment, is perhaps the most difficult task of a trial court judge.”); see also CHIEF JUSTICE JOHN G. ROBERTS JR., 2016 YEAR-END REPORT ON THE FEDERAL JUDICIARY 5 (2016) (“Most district judges agree that sentencing is their most difficult duty.”).
sentencing, a judge must impose a sentence that is “sufficient, but not greater than necessary,” and consider the need for a sentence in light of the goals of the criminal justice system: broadly, incapacitation, deterrence, rehabilitation, and retribution.\footnote{Doris Layton Mackenzie, Sentencing and Corrections in the 21\textsuperscript{st} Century: Setting the Stage for the Future 1 (2001), https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/ncjrs/189106-2.pdf [https://perma.cc/28C2-ZAF8]; see 18 U.S.C. § 3553 (a)(2) (describing the factors that point to the need for the imposition of specific sentence).} A sentence ought to protect the public, “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.”\footnote{18 U.S.C. §§ 3553 (a)(2)(A), (C).} A judge must consider whether or how much the sentence will deter the specific defendant from committing future crimes, and potential criminals from committing the same crime.\footnote{§ 3553 (a)(2)(B).} The court must also consider whether the sentence imposed will “provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner[.]”\footnote{§ 3553 (a)(2)(D).}

Judges are tasked with interpreting and applying the law, not making law.\footnote{William Blackstone, Commentaries on the Laws of England (1776) (influencing legal scholars and judges in the U.S. legal system throughout the ages, and positing law as a thing to be discovered through logical deduction by judges rather than created by judges).} Judicial activism is frowned upon by many as an impermissible overstep of judicial power into the legislative branch.\footnote{See William J. Haun, The Virtues of Judicial Self-Restraint, Nat’l Affs. (Fall 2018), https://www.nationalaffairs.com/publications/detail/the-virtues-of-judicial-self-restraint [https://perma.cc/K7U3-GSKV]; see also Clint Bolick, The Proper Role of “Judicial Activism”, 42 Harv. J.L. & Pub. Pol’y 1, 6 (2019) (arguing in favor of judicial activism to “polic[e] constitutional boundaries” and to “avoid[] artificial, court-made obstacles to the vindication of individual rights,” yet warning that “judge[s] should never . . . exercise legislative or executive powers[.]”).} While a carceral system still stands, a judge cannot simply dismiss a survivor-defendant’s case, no matter how sympathetic the survivor-defendant may be. Though federal trial judges do not have unlimited sentencing discretion, they are no longer bound to follow federal sentencing
guidelines. In *United States v. Booker*, the Supreme Court held that the U.S. Sentencing Commission’s Federal Sentencing Guidelines, which had previously been mandatory, were now advisory. Today, pursuant to *Booker*, federal district court judges must initially consider the Guidelines when sentencing, but they are ultimately free to sentence above or below the sentencing ranges that the Guidelines provide. Their mandatory consideration of the Guidelines, instead, is now the first part of a multi-factor process. After calculating the recommended sentencing range, judges must then consider multiple factors, set forth in 18 U.S.C. § 3553(a), to make “an individualized assessment based on the facts presented.”

This Note does not go so far to suggest that trial judges should sentence trafficking survivor-defendants to sentences below the Guidelines range in all circumstances, though judges can do so and must never presume that a sentence within the Guidelines range is reasonable. Instead, trainings for judges can play a crucial role in educating judges about the nature of trafficking, including the

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408 U.S. v. Booker, 543 U.S. 220, 245 (2005) (holding that the U.S. Sentencing Commission’s mandatory Federal Sentencing Guidelines, as they had been applied since their inception in 1987, violated the Sixth Amendment right to trial by jury).

409 Id.


411 Gall v. United States, 552 U.S. 38, 50 (2007) (noting that the Guidelines’ sentencing ranges are “the starting point and the initial benchmark” in sentencing); see also *Kimbrough*, 552 U.S. at 90–91.

412 Gall, 552 U.S. at 50; 18 U.S.C. § 3553(a); see infra Section III.C.

413 See Nelson v. United States, 555 U.S. 350, 352 (2009). If a judge were to sentence outside the Guidelines range, they would still be subject to the deferential appellate review standard of abuse of discretion. *Gall*, 552 U.S. at 594–98. Judges will review an outside-the-Guidelines sentencing for abuse of discretion, “whether . . . just outside, or significantly outside the Guidelines range[.]” United States v. Cunningham, 669 F.3d 723, 728 (6th Cir. 2012). But “a major departure should be supported by a more significant justification than a minor one.” *Gall*, 552 U.S. at 597. In the spirit of advocating for a real utopia, this Note must at least note the discretion of judges to sentence outside of the Sentencing Guidelines, if judges have correctly calculated the Guidelines sentencing ranges, considered that range, and considered the requisite additional sentencing factors. To only propose the narrowest solutions would not be in the spirit of imagining the “possible.” See Wright, supra note 311, at 37.
powerful control tactics that traffickers use to keep survivors compliant. That way, when judges must sentence survivor-defendants, they may accurately account for a survivor-defendant’s situation when weighing the § 3553(a) sentencing factors.

The first § 3553(a) factor is the “nature and circumstances of the offense and the history and characteristics of the defendant.” To be able to understand the nature and circumstances of the offense, a judge must understand the effect of the trafficker’s coercion on the survivor, and specifically how it motivated and likely forced the survivor-defendant to commit the crime in question. It can be difficult to understand someone else’s experiences without having lived them oneself, and it can be especially difficult if those experiences are vastly different from one’s own. Therefore, one should not assume that judges understand the complex dynamics of trafficking. Judge Pamila J. Brown, a district administrative judge, advises other judges to be mindful of individual implicit biases, to refrain from categorizing survivors as “good” or “bad[,]” and to understand that though survivors may “often appear nonchalant, nonresponsive, and even disrespectful[,]” they are still survivors.

Those in the anti-trafficking movement should instead mirror the anti-domestic violence movement’s effort to educate judges about domestic violence by mobilizing to educate federal trial judges about human trafficking. For example, the National Judicial Institute on Domestic Violence, a non-governmental organization supported by a federal grant from the DOJ’s Office on Violence Against Women, educates judges and judicial officers in state, local, and tribal courts about domestic violence. Though there is a National Judicial Institute on Domestic Child Sex


416 Id.


418 Id.
Trafficking, the institute educates juvenile and family court judges. There appears to be no training institute that centers around teaching human trafficking topics to federal judges. A training institute for federal judges could teach judges some of the same topics as the National Judicial Institute on Domestic Child Sex Trafficking teaches: who is at risk of trafficking, how to identify survivors, and effective intervention techniques, among other topics.

Similarly, trainings on trafficking could affect judges’ consideration of the second sentencing factor: the need for the sentence imposed. For example, if more judges were aware of a survivor-defendant’s motivation to survive in committing their crimes the judges may reconsider how likely a survivor-defendant is to become a repeat offender, or how necessary it is to “protect the public” from a survivor-defendant. And if more judges understand the depth of physical and psychological trauma that survivor-defendants face, they may think differently about how capable the criminal justice system will be in “provid[ing] the defendant with needed

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421 NAT’L COUNCIL OF JUV. AND FAM. CT. JUDGES, supra note 419.

educational or vocational training, medical care, or other correctional treatment in the most effective manner.[423] Granted, in cases involving serious violence, judges will likely heavily weigh the seriousness of the offense and the need to provide just punishment over other factors. But educating judges about trafficking is an important first step in ensuring that judges have the requisite information to make informed, pragmatic decisions when sentencing federal survivor-defendants.

Alternately, judges should take care to explain in their opinions what they believe appropriate treatment of a survivor-defendant would be, even if after considering aggravating and mitigating factors, a judge must sentence a survivor-defendant to a high sentence.[424] Judges could explain a survivor-defendant’s situation extensively in their opinions and note their policy disagreements with unfair sentences. For example, in U.S. v. Dossie and U.S. v. Diaz, Judge Gleeson of the Eastern District of New York described the unfair treatment of low-level drug trafficking offenders under mandatory minimum sentencing and the calculation of drug trafficking sentences based on drug weight.[425] By using their sentencing memos and opinions as vehicles to voice policy disagreements, judges can help ensure

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423 § 3553 (a)(2)(D).

424 See, for example, this statement of reasons from Judge Gleeson of the Eastern District of New York:

If [the government] hadn’t [chosen to cite the mandatory minimum provision in the indictment], I would have been permitted, indeed obligated, to consider, among others, the facts that (1) Dossie had a very minor role in the offense; (2) the drugs he helped to sell weren’t his, and he got hardly any money for his involvement; (3) Dossie got off to a very rocky start in life – there’s no surer sign of a dysfunctional childhood than a family court judge ordering a 16-year-old out of his home and into a residential drug treatment program; (4) Dossie’s criminal record and unsuccessful drug treatment suggest strongly that his legal problems all arose from a drug problem he developed as a child; (5) Dossie is from a very supportive family – his family made all of his court appearances – which could very well have provided the support he needs to get and remain drugfree; and (6) Dossie is genuinely remorseful. I would have considered all of these factors in sentencing Dossie, and there is no way I would have sentenced him to a prison term within the severe advisory range. I might even have given him the chance to enter our Court’s Pretrial Opportunity Program, which would have given Dossie the chance to both conquer his substance abuse problem and avoid prison altogether.


trafficking survivor-defendants feel heard, even if they sentence survivor-defendants to Guidelines sentences. This would be consistent with how judges have voiced or affirmed policy disagreements with the sentences for other federal crimes.  

Similarly, a trial judge sentencing a survivor-defendant forced by their trafficker to traffic other survivors in order to survive may weigh all the sentencing factors and find that a high sentence is still warranted by the law. But they may indicate the unfairness of the revictimization of the survivor, the fear and control a trafficker instills in a survivor, and other considerations relevant to the survivor’s individual sentencing proceeding.

7. “DisCrit requires activism and supports all forms of resistance.”

A real utopia is what trafficking law would look like if the fruits of activism and resistance are realized. A real utopia welcomes political advocacy, community organization, and legal responsiveness. So, petitioning for federal funding, building coalitions between advocates and between disabled survivor-leaders of color, and encouraging trainings for law enforcement and prosecutors, are all welcome efforts.

On the street, law enforcement needs to make more effort to work directly with at-risk groups and communities plagued by trafficking. For example, police can collaborate with a neighborhood watch, engage in community meetings, and practice restorative justice when applicable. By listening to community voices and building positive relations, police officers can increase accurate detection of

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427 Annamma et al., supra note 42, at 11.


429 Id.
trafficking. Communities may be more likely to trust and cooperate with police forces they have created positive coalitions with, by coming to see them as allies in the fight. For example, one 2019 study indicated that after New Haven police initiated positive nonenforcement interactions with neighborhood residents, there were significant improvements in how the residents perceived the officers, especially among Black residents.\textsuperscript{430} Communities of color are burdened by complex, long-standing traumas from the criminal justice system, and community-building exercises will not erase this trauma. However, community-building efforts can help start to rebuild communities’ trust, which may lead to more positive and inclusive responses to all crime.\textsuperscript{431}

In the criminal justice system, training for law enforcement is a good place to start to tackle racial bias. Law enforcement officers are the first point of contact between some trafficking survivors and the criminal justice system.\textsuperscript{432} As a result, officers have an early opportunity to help trafficking survivors have a more restorative experience in the criminal justice system. Increased trainings on topics like implicit bias, trauma-informed care, and cultural sensitivity are viable options.\textsuperscript{433} Additionally, through local partnerships, the Federal Law Enforcement

\textsuperscript{430} Kyle Peyton et al., \textit{A Field Experiment on Community Policing and Police Legitimacy}, 116 PROC. NAT’L ACAD. SCI. U.S. 19894, 19894 (2019).


\textsuperscript{433} See Nat’l Hum. Trafficking Training & Tech. Assistance Ctr., \textit{Barriers that Prevent Identification}, U.S. DEP’T OF HEALTH & HUM. SERVS., https://nhttac.acf.hhs.gov/soar/eguide/observe/Barriers_to_Screening_and_Responding [https://perma.cc/9QK2-JF4J] (explaining that implicit bias is one barrier that prevents law enforcement from identifying trafficking victims and responding to trafficking); 2021 TIP REPORT, supra note 160, at 32, 585. The 2021 Trafficking in Persons Report states:

Advocates called for increased training across all criminal justice sectors, including law enforcement, prosecutors, and judges, to correct misconceptions about what
Training Centers currently provide a Human Trafficking Awareness Program to raise officer awareness of trafficking and applicable state and federal law nationwide. The program’s curriculum currently includes three sections: the “definition of human trafficking,” “indicators of human trafficking,” and “human trafficking report protocols.” Including a main section on the issue of racial bias and trafficking victims may educate law enforcement on systemic racism. These types of training programs should be standard procedure and reinforced regularly with refreshers or supplementary training on an ongoing basis.

CONCLUSION

By the time Cyntoia Brown was released from her wrongful incarceration, she had two degrees, a husband, and an opportunity for a free, meaningful life. But she says that countless more survivors like her remain incarcerated, some facing more than half a century in prison, without hope. When scholars fail to educate lawyers, judges, and legislators on the unique ways ableism and racism intersect to prevent trafficking survivors from achieving justice, society misses the opportunity to end other forms of violence and discrimination. It is time for academics and advocates to ensure that the legal system supports the most vulnerable survivors of these horrific crimes.

constitutes a human trafficking crime. One NGO called for more training on trauma-informed care during the criminal justice process to avoid retraumatizing victims who choose to testify against their traffickers and called for training on the effect on victims of prosecuting victims for unlawful acts their traffickers compelled them to commit. Advocates called on the government to ensure that law enforcement trainings, including on labor trafficking investigations and cultural sensitivity, are developed in consultation with survivor leaders. Advocates called for training and technical assistance for law enforcement and judges to recognize when individuals with cognitive disabilities are targeted by traffickers.

*Id.* at 586–87.


435 *Id.*


437 *Id.*