

# ANATOMY OF A SEX TRAFFICKING CASE

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## *I. Introduction*

On July 16, 2006, sex trafficking announced its presence in the quiet capitol city of Tallahassee, Florida.<sup>1</sup> Early that afternoon, a

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<sup>1</sup> Florida has been the context for numerous sex trafficking cases in the past decade, including *United States v. Cadena*, 207 F.3d 663 (11th Cir. 2000), whose notoriety in South Florida led to the passage in 2000 of the Trafficking Victim Protection Act. For a description of the *Cadena* case, see Florida State University Center for the Advancement of Human Rights, *Florida Responds to Human Trafficking* 37-50 (2004) [hereinafter FSU Report]; ANTHONY M. DESTEFANO, *THE WAR ON HUMAN TRAFFICKING: U.S. POLICY ASSESSED* 1-5 (2007); SIDDHARTH KARA, *SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY* 186-188 (2009). The vast majority of previous Florida sex trafficking cases occurred in South or Central Florida, falling within the jurisdiction of the U.S. Attorney’s Office for the Middle District of Florida (Tampa and Fort Myers) or the U.S. Attorney’s Office for the Southern District of Florida (Miami and surrounding counties). *United States v. Melchor*, Case No. 4:07cr14-SMP (N.D. Fla. 2007) (upheld in unpublished decision *United States v. Melchor*, No. 09-10268 (11th Cir. 2010)), examined in this article, was the one of the first human trafficking cases prosecuted federally by the U.S. Attorney’s Office for the Northern District of

woman in a northeastern neighborhood of the city heard frantic knocking on her bedroom window.<sup>2</sup> She opened the backdoor to find two hysterical young women speaking rapid Spanish and very clearly fleeing from someone whom they feared.<sup>3</sup> This “Good Samaritan” homeowner spoke no Spanish, but immediately ushered the two young women into her house.<sup>4</sup> She contacted her son’s high school Spanish teacher and, within minutes, two Tallahassee police officers, including one who spoke native Spanish, had arrived on the scene.<sup>5</sup> So began a human trafficking investigation that would culminate ten months later with multiple convictions in a federal courthouse in Tallahassee.

The case would reveal not only new permutations of sex trafficking operations in the United States but would further reflect the numerous tensions inherent in both the prosecution of modern-day slavers and the care of their 21<sup>st</sup> century victims. In the complexities it revealed, the case likewise challenges the two schools of thought that have evolved in response to the hotly-debated question of whether all prostitution is in fact sex trafficking.<sup>6</sup> The nuances of the Tallahassee case suggest that an extreme “abolitionist” approach (with its insistence that no woman can truly consent to prostitution) is as inaccurate as the opposing view which insists that prostitution can be a form of labor that is neither inherently degrading nor exploitative.

One of the “lessons learned” from the Tallahassee sex trafficking case is that neither of these strongly held – and diametrically opposed – ideologies accurately describes the commercial sex business that is currently evolving in the United States. This article contends that a different conceptual model is needed to describe and analyze contemporary U.S. sex trafficking. The experience of the North Florida sex trafficking victims makes

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Florida (whose jurisdiction covers most of the Florida Panhandle).

<sup>2</sup> See Transcript of Record at 30 (First Day of Trial), *United States v. Melchor*, Case No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>3</sup> See Transcript of Record at 31 (First Day of Trial), *United States v. Melchor*, Case No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>4</sup> *Id.*

<sup>5</sup> See Transcript of Record at 31, 33 (First Day of Trial), *United States v. Melchor*, Case No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>6</sup> See *infra* text accompanying notes 152-59.

clear that neither the semantics nor the underlying ideologies that have dominated the current debate – especially as regards the role of consent in prostitution – are particularly helpful or illuminating. This article proposes a third model entitled “Commercial Sex as a Compromised Choice” that seeks to more accurately delineate the role of consent in prostitution and sex trafficking cases. It also proposes that U.S. law incorporate the provision of the UN Protocol on Trafficking that recognizes that trafficking can occur not merely through force, fraud, or coercion, but also through “an abuse of power or of a position of vulnerability.” Such a change in U.S. law would relieve prosecutors of the inordinately high burden of proof currently required to demonstrate non-consent on the part of a potential trafficking victim. The change would also provide a legal framework that much more accurately depicts the varied circumstances of sex trafficking victims throughout the United States.

## *II. The Conspiracy*

For the two young Spanish-speaking victims, the perilous journey into the underground world of sex trafficking began innocently enough several months before in their native Guatemala.<sup>7</sup> As in numerous other human trafficking cases, the crime began not with the use of force against the victims but rather with fraud. Smugglers – known in Spanish as *coyotes* – approached a number of young women working in bars and restaurants in a small coastal resort town. The smugglers promised the young women that they could earn twice as much doing similar waitressing or housekeeping jobs in the United States.<sup>8</sup> For the two young women who ultimately found their way to Tallahassee, this promise proved a sufficient lure.<sup>9</sup>

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<sup>7</sup> The stories of these survivors are used with their permission, with their names withheld for their protection and privacy. The author conducted victim interviews with these survivors between 2006 and 2009 (on file with author) [hereinafter Interviews with Victims (2006-2009)].

<sup>8</sup> See Transcript of Record at 6 (Second Day of Trial), United States v. Melchor, Case No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>9</sup> Interviews with Victims (2006-2009), *supra* note 7 (noting that the young women – both in their early twenties – had grown up in extreme poverty and had barely survived while working as low-paid waitresses. One woman was a single mother of three, and the other a mother of one child in a common law marriage.

And as in many other trafficking cases, the recruiters won the trust of their female victims through the collaboration of women whom the victims trusted.<sup>10</sup> The initial recruitment of one victim relied upon the reassurances of a long-time woman acquaintance, while a female cousin of the second woman appeared to be complicit in her trafficking.<sup>11</sup> According to the women, neither had worked in the sex trade in her native country.<sup>12</sup>

The criminal conspiracy that began to unfold in the small Guatemalan resort town was far more extensive and organized than either of the two victims could ever have imagined. It bore many of the hallmark features of other human trafficking cases: victims desperate to escape crippling poverty, recruiting that involved fraudulent promises of better-paying jobs in a foreign country, and what appeared to the victims to be a smuggling operation to which they initially fully consented.<sup>13</sup> In another classic indicator of human trafficking, the smugglers in this case also promised their “clients” that the cost of being smuggled into the United States need not be paid before departure, but rather could be deferred until the women secured employment in the destination country.<sup>14</sup> Instructed to bring

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The poverty endemic to their home country, as well as the limits imposed by their grade school educations, greatly contributed to their decisions to migrate to the United States in search of work that could provide a future for their children).

<sup>10</sup> See FSU Report, *supra* note 1, at 38-39 (explaining how the Cadena trafficking conspiracy had likewise been built around the success of female recruiters, who would visit the family homes of very poor young women in the barrios outside of Veracruz, Mexico).

<sup>11</sup> Interviews with Victims (2006-2009), *supra* note 7.

<sup>12</sup> *Id.*

<sup>13</sup> This human trafficking case – *like* many others – demonstrates how difficult it is to distinguish smuggling operations from human trafficking schemes, especially in the initial stages. Victims of trafficking schemes are typically duped into believing that they have entered a simple business arrangement with a smuggler. Only after entering the destination country are the victims subjected to force or psychological coercion that then lead to sexual exploitation or forced labor.

<sup>14</sup> Transcript of Record at 4-5 (Second Day of Trial), *United States v. Melchor*, Case No. 4:07cr14-SMP (N.D. Fla. May 15, 2007) (showing a technique frequently employed by recruiters in human trafficking schemes where, upon the victims’ arrival in the destination country, their situation devolves into one of debt servitude, with the traffickers profiting from their labor or sexual exploitation while the victims struggle to gradually acquit their debt).

only three changes of clothing, the young women departed Guatemala in late June of 2006.<sup>15</sup>

Almost immediately, the smuggling endeavor manifested another hallmark of human trafficking operations: before the women crossed into Mexico from Guatemala, the smugglers confiscated their identification documents.<sup>16</sup> Ostensibly done to “safeguard” the documents for the women, this confiscation instead served to heighten the vulnerability of the victims and reinforce their dependence upon their traffickers/smugglers.<sup>17</sup> As it progressed, the operation involved eight different groups of smugglers, and the two young women travelled with multiple groups of migrants. A curious dynamic played out repeatedly during the course of the women’s travels: at each transfer point, a new smuggler awaited the larger group of migrants but called out the young women by name.<sup>18</sup> Even months later at the trial of their trafficker, the two victims still did not seem to grasp that such transfers by name had been neither random nor merely fortuitous. As the federal prosecutor would point out to the jury, proof of the trafficking conspiracy was discernible at every transfer point in which new smugglers singled out the two young and attractive women by name, separating them from the larger group.<sup>19</sup>

The arduous journey to Florida required almost three weeks of clandestine travel. After crossing illegally from Guatemala into

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<sup>15</sup> See *supra* note 14, at 5.

<sup>16</sup> Transcript of Record at 11 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007); Transcript of Record at 5-6 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>17</sup> See *Confiscation of Travel and Identity Documents: A trafficking Tool*, U.S. DEPT. OF STATE, June 12, 2007, at 5 (stating that this vulnerability is especially acute for victims from Latin American countries who have been issued a national identification card (known as a *cedula* or a *carnet* in Spanish). In many Latin American countries, citizens are required to carry their identification cards with them, and, lacking such documents, have no way to prove their legal identity or nationality. Traffickers routinely exploit this vulnerability, confiscating victims’ documents as a means of coercion).

<sup>18</sup> Transcript of Record at 10, 11 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>19</sup> Transcript of Record at 16, 17 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

Mexico, the two young women travelled in a closed trailer – filled with cowhides and worms – with over a dozen male migrants to Mexico City.<sup>20</sup> The smugglers locked and sealed the group into the darkened trailer, which had a single air vent through which the smugglers passed apples and water.<sup>21</sup> Terrified of what the male migrants might do to them in the dark, the two women huddled together and sweated in this claustrophobic container for over three days.<sup>22</sup> After several more transfers, the women crossed the Rio Grande River into Texas.<sup>23</sup> Once again travelling with a larger group of illegal migrants, they endured seventy-two hours of nocturnal walking through south Texas terrain, sleeping as best they could in the blistering daytime heat.<sup>24</sup>

Arriving exhausted and dehydrated to the outskirts of Houston, the two women found they were to be held in a “safe house” for several days until the next stage of their journey had been organized.<sup>25</sup> It was here that the women had their first premonition that all was perhaps not well. One of the new smugglers – a young man whom the women found trustworthy – asked them if they knew what kind of work awaited them.<sup>26</sup> When they told him they would be working as waitresses, he asked them if they were certain about this.<sup>27</sup> Told by the women that this was the exact work they had been promised, the young man gave them his cell phone number to call in case the work turned out to be something other than waiting on

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<sup>20</sup> Transcript of Record at 8, 9, 14, 15 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>21</sup> Transcript of Record at 9 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 14-15.

<sup>24</sup> *Id.* at 16-17. Given the proliferation of secondary inspection points on border highways in recent years, undocumented immigrants have had no recourse but to walk through ever more remote and dangerous sections of desert in order to evade detention.

<sup>25</sup> *Id.* at 19; Transcript of Record at 22 (First Day of Trial), *United States v. Melchor*, Case No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). Even at this time, the women were unclear of their ultimate destination. They had been told it would be Miami, Tampa, or New York. Interviews with Victims (2006-2009), *supra* note 7.

<sup>26</sup> Transcript of Record at 29 (First Day of Trial), *United States v. Melchor*, Case No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>27</sup> Interviews with Victims (2006-2009), *supra* note 7.

tables.<sup>28</sup> Only later did the women understand that this sympathetic young man very likely knew the fate that awaited them at their destination.<sup>29</sup>

### *III. The Traffickers*

Another man awaited the arrival of the women to Tallahassee early on the morning of July 14, 2006. Colombian-born Jorge Melchor, age 37, was himself an illegal immigrant in the United States.<sup>30</sup> As a federal investigation would later reveal, Melchor was part of a much larger criminal ring that over the course of several years had smuggled scores of young women into the United States from Central and South America for purposes of prostitution.<sup>31</sup> While the criminal operation involved Guatemalan and Mexican smugglers, the principals of the syndicate all appeared to be Colombian nationals.<sup>32</sup> This alone was significant, as it marked a new trend in U.S. sex trafficking cases where the perpetrators were not the same nationality as their victims.<sup>33</sup> From its inception, the

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<sup>28</sup> Transcript of Record at 29 (First Day of Trial), *United States v. Melchor*, Case No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>29</sup> Interviews with Victims (2006-2009), *supra* note 7.

<sup>30</sup> Melchor would later be prosecuted not only for importation of women into the United States for prostitution, but also for illegal re-entry into the United States and for a variety of immigration offenses.

<sup>31</sup> The female victims of this criminal conspiracy ultimately came to include women from Guatemala, El Salvador, Honduras, Puerto Rico, the Dominican Republic, Nicaragua, and Colombia. *See* Transcript of Record at 95 (Second Day of Trial), *United States v. Melchor*, Case No. 4:07cr14-SMP (N.D. Fla. May 15, 2007); Transcript of Record at 156 (Second Day of Trial), *United States v. Melchor*, Case No. 4:07cr14-SMP (N.D. Fla. May 15, 2007); Transcript of Record at 27, 28 (Third Day of Trial), *United States v. Melchor*, Case No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>32</sup> The criminal investigation of the north Florida trafficking case eventually revealed that many of the traffickers had attended high school together in Colombia. *See* Author's Interviews with federal and state law enforcement officials that took place during the years of 2006 through 2009. The interviews with these law enforcement officials are used with their permission, with their names and exact dates being withheld for their protection and privacy (on file with author) [hereinafter Interviews with federal and state law enforcement officials (2006-2009)].

<sup>33</sup> The vast majority of U.S. sex trafficking cases prosecuted to date have involved victims exploited by someone of their same nationality or from their

scheme also bore the unmistakable imprint of organized crime.<sup>34</sup>

Jorge Melchor was a mere lieutenant in this carefully orchestrated criminal operation. Tallahassee, moreover, proved to be neither the hub nor even the prime destination of the trafficking scheme, with brothels established throughout Florida.<sup>35</sup> In each location throughout the state, however, the *modus operandi* of the traffickers was virtually identical. The traffickers advertised their “product” in the local Hispanic community by distributing small business cards that bore the name “Toty” with a telephone number below it.<sup>36</sup> The telephone number on the cards distributed in Tallahassee proved to be a cell phone belonging to Melchor.<sup>37</sup> The criminal operation in each of the Florida locations comprised an outcall prostitution delivery service, in which the traffickers

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homeland. *See, e.g.*, *United States v. Cadena*, 207 F. 3d 663 (11th Cir. 2000) (Florida case involving Mexican perpetrators and Mexican victims); *United States v. Reyes-Rojas*, No. 01-542 (N.D. Ga. 2003) (Mexican perpetrator exploiting Mexican victims in the Atlanta area); *United States v. Kang*, No. 04-87 (E.D.N.Y. 2004) (Korean sex trafficker exploiting Korean women in New York City); *United States v. Babaev*, No. 05-417 (E.D.N.Y. 2005) (Azerbaijani national exploiting Azerbaijani women in New York City); *United States v. Naovasaisri*, 150 Fed. Appx. 170, 2005 WL 2596876 (C.A.3 N.J.) (Thai trafficker exploiting Thai victims in New Jersey); *United States v. Jimenez-Calderon*, 135 Fed. Appx. 561 (3d Cir. 2005) (Mexican nationals exploiting Mexican women in New Jersey); *United States v. Carreto*, No. 04-140 (FB) (E.D.N.Y. 2006) (Mexican nationals sex trafficking Mexican women in New York City).

<sup>34</sup> *Id.* The criminal scheme relied upon multiple actors throughout a number of countries. Moreover, the criminal operation required the commission of numerous illegal acts besides even the prostitution that was the end product—offenses that included alien smuggling, transportation of illegal aliens, harboring of illegal aliens, the manufacture of false passports, and money laundering.

<sup>35</sup> *Id.* The subsequent federal investigation revealed that the criminals had engaged in sex trafficking and prostitution throughout the state, operating brothels not only in the Tallahassee area but also in Jacksonville, Tampa, Orlando, Clearwater, and Miami. *See* Paul Pinkham, *Federal Agents Break Up Sex Ring*, FL. TIMES-UNION, Sept. 26, 2007.

<sup>36</sup> Transcript of Record at 17, 18 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). The preferred venues for distributing these “business cards” to the Hispanic community included local Mexican restaurants, construction sites, Hispanic food stores, convenience stores, auto repair shops, and nightclubs. Author interviews with federal and state law enforcement officials (2006-2009), *supra* note 32.

<sup>37</sup> Transcript of Record at 17 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).



delivered Latin American women to the private residences of Spanish-speaking clients.<sup>38</sup> The business was a “bulk operation”: Melchor charged \$30 for fifteen minutes with a woman, but would not deliver a woman unless at least three clients had gathered at the delivery residence and were ready to pay for sex.<sup>39</sup>

Having been transported from Houston to Tallahassee with another female migrant, the women found Melchor waiting for them early on the morning of July 14.<sup>40</sup> Telling them that his name was Jonathan, he took them to the duplex where he lived.<sup>41</sup> Upon their arrival, Melchor brusquely announced that they owed him \$16,000 in smuggling fees.<sup>42</sup> He then explained that they would pay off this debt by working as prostitutes.<sup>43</sup> Taking the women to a local discount clothing store, he purchased provocative clothes and lingerie for them.<sup>44</sup> That evening, Melchor drove the three women to

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<sup>38</sup> This “prostitution delivery service” was itself an evolution in the ongoing saga of U.S. sex trafficking operations. Unlike previous cases – such as the *Cadena* case in South Florida – the prostitution ring in this instance did not depend upon the existence of stationary brothels (that might prove too easily recognizable to local enforcement). See FSU Report, *supra* note 1, at 38-40 (recounting the sex trafficking scheme built around stationary brothels by the Cadena family in south and central Florida). In contrast, Melchor and his criminal associates utilized a prostitution delivery service in which Melchor served as both the pimp and driver for the women, escorting them to private residences where the sexual transactions took place.

<sup>39</sup> Transcript of Record at 26 (Third Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>40</sup> Transcript of Record at 41 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>41</sup> Transcript of Record at 31-32 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>42</sup> Transcript of Record at 33 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). Later investigations would reveal that the traffickers charged clients of their prostitution ring \$30 per sexual transaction. The traffickers kept \$15 from each transaction, and applied the other \$15 towards the women’s debts. Victims had to use tip money received from their clients to pay for their food, condoms, and other expenses. Jonathan Abel, *Sex Slave Ring Taken Down*, ST. PETERSBURG TIMES, Mar.15, 2009, available at <http://www.theledger.com/article/20090315/NEWS/903151998?p=all&tc=pgall>.

<sup>43</sup> Transcript of Record at 22-23 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>44</sup> Transcript of Record at 24-28 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007); Transcript of Record at 33-

a local trailer park and then to an apartment complex where he required the women to have sex with 10-12 men each.<sup>45</sup> In the future, Melchor advised them, they would be expected to have sex with 20-25 men per night like “the others” did.<sup>46</sup> Allowing them barely six hours to sleep after this initiation into the world of sex trafficking, Melchor awakened the women early the following morning, insisting that they resume work.<sup>47</sup> That day he once more drove the women to local trailer parks and to apartment complexes, reiterating that they must sleep with more men in order to acquit their travel debts.<sup>48</sup>

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35 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>45</sup> Transcript of Record at 31-32 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). Victim testimony at the trial revealed that the clients of the prostitution ring paid their money directly to Melchor, with the women not even certain initially how much each sexual transaction was worth. Citing this as an example of the control exercised by Melchor, the prosecutor would later argue that this seemingly small detail distinguished the business as sex trafficking from what might otherwise have been a prostitution venture based in part on the consenting participation of the women involved. Transcript of Record at 10-14 (Third Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). Federal law – as enacted in The Trafficking Victim Protection Act of 2000 – establishes that consent to an illegal activity (such as prostitution) can be nullified through the exercise of force, fraud, or coercion. *See generally* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified and amended at scattered sections of 8, 20, 22, 27, 28, and 42 U.S.C. (VTVPA)). Division A. of the VTVPA is further identified as the Trafficking Victim Protection Act of 2000 (codified as amended at 22 U.S.C. §§ 7101-7112 (2000) (TVPA)). In the Congressional Findings that introduced the TVPA, legislators explicitly noted that “[v]ictims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked.” TVPA, 22 U.S.C. § 7101(b)(19). Once a person’s consent to an illegal activity has been nullified, that person is treated under U.S. law as a victim rather than a criminal. This remains one of the hallmark legal advances established and pioneered by the TVPA.

<sup>46</sup> Transcript of Record at 54-55 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>47</sup> Transcript of Record at 32 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007); Transcript of Record at 58 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>48</sup> Transcript of Record at 59-61 (First Day of Trial), *United States v.*

The following afternoon – the third day of the women’s captivity – Melchor and the third woman left the house to go shopping.<sup>49</sup> Watching them depart, the two young Guatemalan women resolved to escape.<sup>50</sup> They fled quickly, taking nothing more with them than the clothes in hand.<sup>51</sup> The unexpected return of their trafficker suddenly lent an even greater sense of fear and urgency to their escape.<sup>52</sup> Running from house to house, they frantically knocked on the neighbor’s back door, setting in motion the events that would lead to the dismantling of an international sex trafficking ring.

#### *IV. The Clients*

As the subsequent law investigation would reveal, a key component of this international sex trafficking ring was the existence of a readily identifiable – and discrete – pool of customers. In this instance, the traffickers very deliberately targeted areas in Florida where a large pool of Hispanic males were available to patronize their prostitution service. The vast majority of these “johns” were themselves undocumented immigrants and therefore unlikely to contact law enforcement or federal immigration officials. The trafficking/prostitution operation depended not only on the ready availability of this clientele, but even more so on their repeat

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Melchor, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>49</sup> Transcript of Record at 62 (First Day of Trial), United States v. Melchor, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>50</sup> *Id.*; Transcript of Record at 4 (Second Day of Trial), United States v. Melchor, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>51</sup> Transcript of Record at 62 (First Day of Trial), United States v. Melchor, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>52</sup> Transcript of Record at 62-63 (First Day of Trial), United States v. Melchor, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007); Months later at trial, the sense of fear was still palpable in the victims’ voices as they recounted the details of their escape. One victim testified:

We went first to a place where ... there was no exit, so we turned around and we saw the car [with] Jonathan had returned. So we started running and we were crying and we were knocking on all doors and nobody was opening, until finally a lady opened the door and I fell to my knees and asked her to help me . ... When the lady saw us scared and crying she opened the door for us.

business.<sup>53</sup>

The U.S. Attorney prosecuting the case required a number of the clients of the prostitution ring to testify at the trafficking trial.<sup>54</sup> Their testimony revealed a distinct profile of the type of “johns” who had patronized this criminal endeavor: single, immigrant, Spanish-speaking males, between the ages of 17 and 40, many of whom lived together in trailers or low-cost apartment buildings, and who either worked in Florida’s agricultural sector, in construction, or in the service industry. Almost all were oblivious to the fact that the two women victimized in this case were not willing participants in the prostitution ring. This ignorance on the part of the clients was not entirely without explanation: subsequent investigations would reveal numerous other commercial sexual transactions with immigrant women who appeared to have been fully consenting participants in the illegal activity.<sup>55</sup> Even so, at least one client grasped the coercive nature of the prostitution operation, and offered the victims a calling card should they need it to escape.<sup>56</sup>

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<sup>53</sup> Subsequent testimony at trial by a number of the patrons of the prostitution venture revealed that they had utilized Melchor’s services repeatedly since 2005, some of them ordering women for delivery over 30 times. Transcript of Record at 159 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). One client’s subpoenaed phone records indicated that he had contacted Melchor 67 times in five months. Transcript of Record at 75 (Third Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>54</sup> The testimony of the “johns” at trial occurred as a result of plea bargains they agreed to after they had been charged with criminal immigration violations.

<sup>55</sup> Transcript of Record at 107-111 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). The evidence offered at trial by the government included cell phone photos of numerous alleged prostitutes taken by clients of the prostitution ring over the course of several months. The clients had saved both the photos and the telephone numbers of the alleged prostitutes on their own cell phones. Testimony of the prostitution clients revealed that Melchor had built a thriving business in which he brought women upon request to private trailers and apartment buildings on almost a nightly basis. *Id.* at 106. Transcript of Record at 22-23 (Third Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). On certain occasions, he brought women to parties where as many as ten men might engage in sex acts with a single woman.

<sup>56</sup> Transcript of Record at 58 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). The client noticed that the victim was crying as she underwent the sex act with him. Surprised by this, he asked her

### *V. The Investigation*

The investigation of the *Melchor* case began in a manner that increasingly has characterized U.S. human trafficking cases: it is typically state and local law enforcement officers who initially identify these crimes and their victims.<sup>57</sup> In this instance, it was Tallahassee police who were the first responders to the call and found the two female victims cowering in the neighbor's living room after escaping their trafficker.<sup>58</sup> Terrified of U.S. law enforcement officials, the two victims initially did not want to cooperate in an investigation.<sup>59</sup> The officers took the two women to a local hospital where they received treatment as victims of sexual assault.<sup>60</sup> Upon the victims' release from the hospital, the police placed them in a local domestic violence shelter where they remained for the duration of the investigation.

In the ensuing days and weeks, a scenario played out repeatedly in which the victims reluctantly participated in law enforcement interviews and investigative activities.<sup>61</sup> This phase of a human trafficking case is one of the most difficult times for victims: deeply traumatized by what has been done to them, they are nonetheless expected to fully comply with the demands inherent in a

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"don't you like what you are doing?" When told that she did not, he went on to offer her a pre-paid phone card so she could call the police and escape.

<sup>57</sup> One explanation for this phenomenon is the fact that federal law enforcement officers such as FBI and ICE agents do not have a "beat," a geographic location that they frequent on a daily basis. It is the intimate knowledge of their communities and their role as first responders that make state and local law enforcement officers far more likely to first encounter a trafficking case or victim.

<sup>58</sup> Transcript of Record at 16-18 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>59</sup> When one of the police mentioned the possibility of deportation, the two victims became even more withdrawn and uncooperative. See Interviews with federal and state law enforcement officials (2006-2009), *supra* note 32.

<sup>60</sup> Transcript of Record at 66 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>61</sup> In addition to repeated interviews, some of which lasted three to four hours, the victims also accompanied the officers on several "drive-alongs," – excursions in which the police in unmarked cars sought to confirm both the residence of the pimp and the locations where the women had been exploited as part of the sex trafficking scheme.

law enforcement investigation.<sup>62</sup> This phase of the case is also arguably the most difficult for investigators: their entire case hinges upon the cooperation of the victim-witnesses, who are often the only witnesses to the crime.<sup>63</sup>

From the outset of the *Melchor* investigation, the victims' fear of their traffickers posed one of the most difficult dynamics with which law enforcement and service providers had to contend.<sup>64</sup> Moreover, this fear on the part of the victims was neither irrational nor unwarranted. Their traffickers had not only confiscated the victims' identification documents but also knew exactly where the victims' families and children could be found in Central America.<sup>65</sup> As the investigation progressed, the growing realization on the part of the victims that Colombian organized crime had been involved in their trafficking made the women even more fearful to disclose the names and identities of those who had recruited them in their native countries.<sup>66</sup> When initially given the opportunity to identify Melchor in a photo lineup, one victim did not do so, and later explained that she was too afraid to accuse him.<sup>67</sup>

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<sup>62</sup> In cases that involve immigrant trafficking victims, this trauma is often enhanced even more by cultural dislocation and the sense that they are themselves being detained as if they were criminals.

<sup>63</sup> Donna Hughes, *Combating Sex Trafficking: A Perpetrator-Focused Approach*, 6 U. ST. THOMAS L.J. 28, 37 (2008). Critics of current U.S. trafficking policies note that this places an inordinately high burden on victims. Donna Hughes observes:

Indeed, the prosecution of sex trafficking cases is also victim-centered: the case depends on the cooperation and testimony of the victim. Without victim operation and testimony, there is no trafficking case. If the victim is too frightened of the perpetrators involved, which is not an unusual or unreasonable reaction considering the brutality with which she has been treated and the trafficker's threats against her friends and relatives at home, the prosecutors cannot proceed at trial.

<sup>64</sup> See Interviews with federal and state law enforcement officials (2006-2009), *supra* note 32.

<sup>65</sup> Interviews with Victims (2006-2009), *supra* note 7.

<sup>66</sup> Further complicating victim cooperation was the fact that a relative of one of the women had been involved in her recruitment. For many months, this victim proved reluctant to implicate her relative in the trafficking scheme.

<sup>67</sup> Transcript of Record at 49 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

In another pattern that has been typical of other trafficking cases in the United States, this case began initially as a state investigation and prosecution.<sup>68</sup> Search warrants are more readily available under Florida law than under federal law, and within a day of the women's rescue, a search warrant had been obtained from a state court judge that allowed investigators access to the house in which Melchor had resided.<sup>69</sup> From an investigator's standpoint, this "crime scene" yielded vital evidence of the sex trafficking scheme, and this evidence later proved critical at trial.<sup>70</sup>

Even in the first twenty-four hours of the case, it became clear that this was a human trafficking crime that not only implicated federal law but would also require the deployment of federal resources to combat. By the second day of the investigation, a local Tallahassee Immigration and Custom Enforcement (ICE) agent became part of the law enforcement team pursuing the case.<sup>71</sup> It was

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<sup>68</sup> Transcript of Record at 57-93 (Third Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). From the outset of the case, officers from the Florida Department of Law Enforcement (FDLE) played a crucial role in the investigation. When the case went to trial, it was the phone records and analysis completed by the FDLE crime laboratory that demonstrated not only the perpetrator's ties to Colombian organized crime, but also the interstate dimension of the prostitution scheme.

<sup>69</sup> Transcript of Record at 21-22, *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 16, 2007).

<sup>70</sup> Transcript of Record at 46-47, 49-56 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). Evidence obtained from Melchor's residence included numerous sheets of the business cards advertising the name "Toty" along with Melchor's cell phone number; entire boxes of condoms; calling cards for a number of countries in Central America; Melchor's birth certificate and baptismal certificate, and a sales receipt for the provocative clothing that Melchor had purchased for the victims from the local discount apparel store. A search of Melchor's trash led to the further discovery of female panties and a discarded K-Y lubricant box. Finally, a search of the premises also yielded what would ultimately become a key piece of evidence at trial. In the backyard of Melchor's duplex, investigators discovered an envelope bearing Melchor's name and address, but which on the backside contained a drawing made by one of the victims of her small daughter back home in Guatemala. The drawing included an inscription in Spanish, "my little daughter, I love you so much." In her testimony at trial, the victim explained that she had made this drawing in a moment of despair when she believed she would never see her daughter again.

<sup>71</sup> Transcript of Record at 36-37 (Third Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 17, 2007).

the rapport that he developed with the victims that became critical not only to their participation in the criminal investigation but in also allaying the victims' fears of deportation.<sup>72</sup> Following the escape of the victims, Melchor had fled Tallahassee and became a fugitive.<sup>73</sup> It would be several months before federal law enforcement officers would track him through cell phone records to Norcross, Georgia, a small community north of Atlanta.<sup>74</sup> There, U.S. Marshals apprehended him after a pest control worker verified his presence in a residential home.<sup>75</sup> Held without bond, Melchor would subsequently be extradited to Tallahassee to stand trial.<sup>76</sup>

### *VI. The Trial*

Following an intensive ten-month investigation, the U.S. Attorney Office for North Florida went to trial on May 2007. Throughout his detention, Melchor had steadfastly refused to cooperate with prosecutors or to enter into a plea agreement.<sup>77</sup> He appeared determined to "roll the dice" and take his chances in a jury trial. Having first secured both the convictions and the testimony of the clients of the prostitution ring, federal prosecutors were ready to

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<sup>72</sup> Interviews with Victims (2006-2009), *supra* note 7.

<sup>73</sup> The third Guatemalan woman who had arrived in Tallahassee with the victims fled with Melchor. Given both her flight with Melchor and the testimony of the victims that this woman had seemed eager to engage in prostitution, law enforcement officials surmised that she most likely had been a consenting participant in the prostitution scheme. Law enforcement never subsequently found or identified her.

<sup>74</sup> Transcript of Record at 128-132 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>75</sup> Transcript of Record at 132-38 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>76</sup> Authorities first detained Melchor on charges that he had violated Florida's new state law proscribing human trafficking. Once federal prosecutors exercised jurisdiction over the case, they indicted Melchor for violations of federal law, and the case proceeded as a federal rather than a state criminal matter.

<sup>77</sup> Author interviews with state and federal law enforcement officials (2006-2009). Investigators and prosecutors interpreted Melchor's silence as typical of lower-level actors in organized crime schemes. Whether motivated by fear of the criminal mafia to which they belong, or out of loyalty, low-level criminals who have been indicted often choose to remain silent. Subsequent events would help explain Melchor's reticence: prosecutors months later would discover that his wife had been murdered back in Colombia by unknown perpetrators.



pursue their case against Melchor. The government indicted the defendant on seven counts, including charges of conspiracy, of immigration law violations, and of Mann Act offenses (transporting individuals across state lines for the purpose of prostitution).<sup>78</sup>

From the outset of the trial, Melchor's attorney denied that his client had had any involvement in a human trafficking scheme. The defense theory was a novel one: counsel claimed that Melchor was merely a pimp, who had no connection or knowledge of smuggling or trafficking.<sup>79</sup> Melchor himself declined to testify on his own behalf, attempting instead through counsel to raise reasonable doubt about the Government's case.<sup>80</sup> Given Melchor's decision not to take the witness stand, the testimony of the victims against their trafficker proved even more crucial. As in many other trafficking cases, the success of the prosecution remained greatly dependent upon the willingness and the ability of the victims to testify in open court.<sup>81</sup> "Victim sensibilities" on the part of the prosecutor were to prove crucial in securing the testimony of the victims on the witness stand. This was no easy task, given the fears that the trafficker still clearly inspired in the victims. Together with law enforcement officials and non-governmental victim advocates,

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<sup>78</sup> See *supra* note 77. The Government indictment included charges of conspiracy to harbor aliens for financial gain, of importing female aliens for the purpose of prostitution, and of transporting individuals in interstate and foreign commerce with the intent that they engage in prostitution. See US FED. NEWS, May 17, 2007 (2007 WLNR 9575044). The indictment also included substantive charges of harboring an alien for financial gain, two counts of importing an alien for the purpose of prostitution, and two counts of transporting an alien in interstate and foreign commerce with the intent that the alien engage in prostitution.

<sup>79</sup> Transcript of Record at 26 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). Melchor's claim that he was merely a pimp ultimately elicited very little visible sympathy from the predominantly female jury. It was also a defense that seemed increasingly frail as prosecutors mounted extensive phone record evidence of Melchor's contacts with smugglers and fellow Colombians involved in the sex trafficking scheme.

<sup>80</sup> *Id.* at 25

<sup>81</sup> In addition to victim testimony, the Government also built its case around the testimony of law enforcement officers (Tallahassee police, ICE agents, and U.S. Marshalls), the "john" clients of the prostitution ring, and phone analysts from the Florida Department of Law Enforcement whose work had demonstrated the national and international scope of the prostitution venture and its links to recruiters and smugglers in other countries.

the prosecutor spent several months preparing the victims for the trial.<sup>82</sup>

The strategy of the government at trial was a straightforward one. Beginning with the testimony of the neighbor who had first sheltered the women, the prosecutor then proceeded with direct examination of the victims. Testimony by state and federal law enforcement officials followed, including that of an analyst with the Florida Department of Law Enforcement (FDLE) who had provided crucial intelligence regarding the source and number of telephone calls that had facilitated the smuggling and sex trafficking schemes. Finally, the prosecutor called a number of the male clients (the “johns”) of the prostitution ring to the witness stand to testify about the nature of the criminal operation and their participation in it.

The victim testimony clearly moved the jury. Given the refusal of the defendant to testify, the victims’ own account of their ordeal assumed even greater importance. Evidence of the coercion involved in forcing the women to engage in prostitution – in particular, the confiscation of their identity documents and the abrupt imposition of an exorbitant debt – became central to the prosecution’s theory of the case.<sup>83</sup> Physical evidence also proved critical in ultimately sustaining the immigration and conspiracy charges against the defendant. The introduction into evidence of

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<sup>82</sup> This intensive preparation included introducing the victims to U.S. judicial and courtroom procedures, providing for their security around the clock, rehearsing both direct examination and cross-examination repeatedly in the courtroom itself, and alleviating the victims’ considerable fears of testifying against their traffickers. A significant component of this latter task included allowing nongovernmental advocates to accompany the women throughout the entire trial preparation phase – a practice completely new to the prosecuting attorney but who proved very open to it. The “victim sensibilities” of this prosecutor were ultimately crucial to the success of the trial. They entailed details as small as his standing between the victims and the defendants when he conducted his direct examination so as to minimize possible eye contact between the women and the accused perpetrator.

<sup>83</sup> Transcript of Record at 31-32 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). Probative evidence for the prosecution’s case included establishing the fact that no money had been paid directly to the women in return for the acts of prostitution, and that the women were not even initially aware of the financial value of each sexual transaction. The prosecutor took care to point out that the clients of the prostitution ring had paid their money directly to Melchor.

Guatemalan calling cards purchased by Melchor for the women did much to refute any suggestion that he had been ignorant of the international smuggling conspiracy.<sup>84</sup> The further introduction of Melchor's cell phone records likewise undermined the defense counsel's assertion that Melchor had acted alone as a pimp.<sup>85</sup> Additional physical evidence relied upon by the government included a host of items seized by law enforcement agents at the duplex where Melchor had lived and harbored the victims.<sup>86</sup>

Information provided by the clients of the prostitution scheme shed an even more glaring light on the *modus operandi* of the trafficking operation. Subpoenaed phone records of one client alone demonstrated that he had called the prostitution service over sixty seven times in the course of a five month period in 2006.<sup>87</sup> The prosecution mandated court testimony on the part of four of the "johns" – testimony that was as disturbing as it was revealing for its candid depiction of the mentality of prostitution clients. The clients spoke in matter-of-fact tones about their history of ordering prostitutes delivered to their apartments or trailers on multiple occasions.<sup>88</sup> None disclosed any awareness or concern that the

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<sup>84</sup> Transcript of Record at 41-42 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007) (victim explaining that the victim had called Guatemala using Melchor's cell phone and an international calling card he had purchased).

<sup>85</sup> Transcript of Record at 68-87 (Third Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). Massive phone records indicated that thousands of out-of-state and international calls to and from Melchor had been transacted on his cell phone, including calls to and from Colombia and Guatemala, as well as Texas, California, New Jersey, Georgia, Mississippi, North Carolina, and New York. The government asserted that this inordinate long distance calling record traceable to co-conspirators and known prostitutes was *prima facie* evidence of conspiracy.

<sup>86</sup> Transcript of Record at 57-93 (Third Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>87</sup> Transcript of Record at 75 (Third Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>88</sup> Transcript of Record at 177-78 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). A curious moral code on the part of the clients was discernible from their testimony. One man recounted how he had declined to utilize the services of one of prostitutes the first time he had the opportunity to do so – because his younger brother was visiting at the time from Mexico and was present at the trailer party. The man nevertheless

women engaged in such prostitution might have been doing so against their will. There were instead repeated allusions to parties in which 10-12 men would gather in an apartment or trailer and engage one after another in successive fifteen minutes sexual acts with a woman delivered by the defendant. In the aggregate, testimony by the “johns” depicted a thriving illicit business – one premised on the ready availability of women who could be persuaded to tolerate multiple sex acts, and the corresponding availability of men willing to pay for such “services.”

Testimony by the victims would reveal only one instance in which a “john” noticed that one of the women was crying and asked her if she did not “enjoy” her work.<sup>89</sup> In general, a strange dissonance existed between the testimony of the “johns” and that of the trafficking victims. What the men characterized as matter-of-fact, consenting sexual encounters – which they assumed were even pleasurable for the women – the unwilling female participants experienced instead as multiple acts of rape.<sup>90</sup>

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acknowledged that he made repeated calls to Melchor subsequent to that party to solicit prostitution services.

<sup>89</sup> After the victim told him that she was being forced to work as a prostitute, the man gave her a calling card so she could notify the police. Transcript of Record at 57 (Second Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). The woman never used the card to contact law enforcement, however. Even months after her escape, she refrained from identifying her trafficker in a police lineup due to her fear of him. *Id.* at 49.

<sup>90</sup> See Hughes, *supra* note 61, at 41-42. Given the “demand side” of prostitution and sex trafficking operations, Hughes has called for a “perpetrator-focused” approach to complement the “victim-centered” approach that is at the heart of current U.S. anti-trafficking efforts. Hughes asserts:

The victim-centered approach has had unintended negative consequences for victims and the successful prosecutions of traffickers. The investigation of a sex trafficking case requires extensive interviews with a suspected victim to determine if she is a victim, meaning that either she is a minor or a victim of force, fraud, or coercion. Investigators and service providers say it often takes multiple interviews and sometimes weeks of work with victims before they trust a helper enough to share the truth of their experience. Then the victim must agree to cooperate with law enforcement and usually (but not always) to testify against the trafficker or pimp in a trial. If the victim does not cooperate, it is very difficult for law enforcement to prosecute

This dissonance was also striking in the cross-examination of the female victim-witnesses by defense counsel. His line of questioning evidenced fundamental misconceptions about the nature of the sex trafficking business – in particular, the role that psychological coercion plays in modern sex trafficking.<sup>91</sup> From the outset, the defense counsel sought to portray the women simply as participants in a prostitution scheme to which they had given their full consent. He likewise attempted to dispel any notion that Melchor had been involved in smuggling, stressing that the women had travelled with multiple different groups of illegal migrants and multiple different smugglers throughout their trip to the United States.<sup>92</sup>

The defense counsel went on to suggest that the women were themselves somehow culpable for their ordeal, in that they had knowingly engaged in deception by consenting to be smuggled into the United States.<sup>93</sup> He furthermore suggested that the women's only

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the case or get a conviction for sex trafficking . . . . Without victim cooperation or testimony, there is no trafficking case.

*Id.* at 37-38. Hughes observes that the “unintended negative consequences” of the victim-centered approach extend even to research on sex trafficking:

Research and media reports on sex trafficking focus extensively on the victim and how she was recruited, coerced, controlled, rescued, and restored. There is less description of the motivations, activities, and profits of the perpetrators. To balance the victim-centered approach, a “perpetrator-focused approach” is needed for a more comprehensive effort to combat sex trafficking.

<sup>91</sup> Defense counsel discounted any possibility that the women had been pressured into participating in the prostitution scheme, and labored to establish that the defendant had never explicitly obligated them to do so with physical violence or threats.

<sup>92</sup> Transcript of Record at 75-78 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>93</sup> Transcript of Record at 81-82 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). This contention finds no support in federal law. The Trafficking Victim Protection Act establishes just the opposite: an act of smuggling does not preclude a determination that someone illegally brought into the United States with their consent may subsequently become a victim of trafficking. *See* TVPA, *supra* note 45, 22 U.S.C. § 7101(b)(19) (“Victims of severe forms of trafficking should not be . . . penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working

fear throughout the time period in question was a fear of U.S. law enforcement, owing to their illegal presence in the United States.<sup>94</sup> He also suggested that the women's testimony had been secured by some sort of *quid pro quo* arrangement with the government, whereby their testimony had been given in exchange for benefits.<sup>95</sup> Finally, the defense attorney objected, unsuccessfully, to referring to the two women as "victims" in the jury instructions.<sup>96</sup>

In his closing arguments, counsel for the defense asserted that the government's charge of conspiracy against the defendant – conspiracy to import aliens for the purpose of prostitution – was simply not supported by the evidence.<sup>97</sup> Proving up a conspiracy charge, he explained, required that the government establish the existence of an agreement.<sup>98</sup> The prosecution, he insisted, had failed to do so.<sup>99</sup> The defense counsel claimed that the government had

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without documentation.”).

<sup>94</sup> Transcript of Record at 80-81 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N. D. Fla. May 15, 2007). Defense counsel suggested that the women's reluctance to call the police was attributable not to the fear of what their traffickers might do to their families in Guatemala, but rather to their own fear of deportation. One victim bristled at this suggestion, saying that she would have been happy to have been deported if it meant an end to her sexual exploitation.

<sup>95</sup> Transcript of Record at 83-84 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007). Defense counsel asked the victim witnesses if the government had purchased the clothing and earrings worn by the women the day of their testimony. He also queried why the government had allowed them to remain in the United States if the government knew they were illegal.

<sup>96</sup> Transcript of Record at 13-14 (Third Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>97</sup> Count One charged the defendant with a conspiracy regarding aliens who were 1) transported within the United States and concealed and harbored for financial gain; 2) imported, held, or maintained for the purpose of prostitution; or 3) transported in interstate commerce and foreign commerce to engage in prostitution. Court's Instructions to the Jury at 7, *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007).

<sup>98</sup> Author Notes from Closing Arguments of *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007), *supra* note 98.

<sup>99</sup> Defense counsel asserted “It's separate deals. [Melchor] did not participate in the import of women for prostitution. He did not conceal their alien state. He did not transport women across state lines. It's like connecting a \$20 piece of crack cocaine sold on the street to a cartel in Colombia.” Jennifer Jefferson, *Man*

provided no evidence whatsoever as to what the supposed conspiracy agreement had been.<sup>100</sup> Even more fatal to the conspiracy charge, he alleged, was the government's inability to demonstrate what the defendant's particular agreement had supposedly been with any of the multiple smugglers involved in illegally transporting the women across national and state borders.<sup>101</sup> The defense attorney noted that even the massive phone records introduced by the government demonstrated only that phone calls had been made on a variety of occasions; such evidence, he asserted, provided no information about who had actually made or received the calls, or what conversations may have transpired in the course of such calls.<sup>102</sup> Ultimately, he argued, there was no proof for the charge that Melchor had known that the women were illegal, that he had participated in their smuggling, or that he had forced them to engage in prostitution.<sup>103</sup> The defendant, he concluded, was not a trafficker or a smuggler, but merely a pimp.<sup>104</sup> The Government's evidence, he alleged finally, was little more than circumstantial in nature.<sup>105</sup>

In his own closing arguments, the Assistant U.S. Attorney emphasized that from the outset, the conspiracy in question had consisted of luring young women from Central America to Florida with the promise of non-existent jobs, and then forcing them to pay off an exorbitant smuggling debt through acts of prostitution after their arrival.<sup>106</sup> A conspiracy, he reminded the jury, need not involve every member committing every illegal act. In fact, it was not even required that every conspirator be connected to all the other conspirators. It required only that two or more persons came to an

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*Found Guilty in Sex Case*, TALLAHASSEE DEMOCRAT, May 17, 2007, at 7A.

<sup>100</sup> Author Notes from Closing Arguments of United States v. Melchor, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007), *supra* note 98.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> AP Alert – Florida, Westlaw 5/17/07 APALERTFL 22:11:36 (statement by defense attorney); *see also* Jennifer Jefferson, *Man Found Guilty in Sex Case*, TALLAHASSEE DEMOCRAT, May 17, 2007, at A1 (defense attorney saying of Melchor, “He’s not a smuggler, he’s a pimp.”).

<sup>105</sup> Author Notes from Closing Arguments of United States v. Melchor, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007), *supra* note 98.

<sup>106</sup> *See supra* note 105.

agreement to perform an illegal act.<sup>107</sup> Melchor, the prosecutor insisted, was without question part of this conspiracy. Shared addresses and records of countless phone calls to fellow conspirators were strong evidence of his knowing participation in a larger criminal scheme. So too was his imposition of a \$16,000 “smuggling debt” upon each victim—a clear indicator of his participation in a conspiracy that transcended a straightforward prostitution venture.<sup>108</sup>

The Tallahassee jury of nine women and three men required less than two hours to return a verdict. Melchor, they unanimously decided, was guilty of all seven counts as charged in the case of each woman.<sup>109</sup> Circumstantial though the Government’s evidence may have been, it proved sufficient in the minds of the federal jury.

## *VII. The Saga Continues*

### *A. Toty I and Toty II*

In the months that followed Melchor’s trial, the federal investigation of the prostitution and sex trafficking case continued.<sup>110</sup> Moving up the criminal chain, investigators located and arrested Melchor’s boss, a fellow Colombian national named Carlos Monsalve.<sup>111</sup> A resident of Tampa at the time that federal agents

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<sup>107</sup> See *supra* note 105.

<sup>108</sup> *Id.*

<sup>109</sup> Transcript of Record at 30 (First Day of Trial), *United States v. Melchor*, Case No. 4:07cr14-SMP (N.D. Fla. May 15 2007). The Eleventh Circuit Court of Appeals subsequently upheld Melchor’s conviction on all seven counts. *United States v. Melchor*, No. 09-10268 (11th Cir. 2010).

<sup>110</sup> Following the revelations of the *Melchor* investigation and trial, law enforcement officials followed the evidence to Tampa and Clearwater where the criminal scheme appeared to have had its operational base. See Abel, *supra* note 42. The recently formed Clearwater/Tampa Bay Area Task Force on Human Trafficking played a critical role in this continued investigation of the Colombian sex trafficking ring. *Id.*

<sup>111</sup> See Press Release, U.S. Dep’t of Just., Individuals Charged with Human Trafficking Offenses (Sept. 21, 2007) (on file with author). A legal resident in the United States, Monsalve was a partner in a clothing store in Tampa. See also Abel, *supra* note 42. This business appears to have been a front for his criminal occupation. Much as he had done in Tallahassee, Monsalve advertised his prostitution operation by distributing business cards among the male members of



apprehended him, Monsalve appeared to be the actor responsible for the U.S. end of the prostitution and trafficking scheme.<sup>112</sup> Federal agents apprehended Monsalve after video surveillance showed him and a co-conspirator driving Latin American women to apartment complexes in Jacksonville, Florida for the same type of prostitution delivery services that had occurred in Tallahassee.<sup>113</sup> Monsalve's arrest confirmed what the testimony of the "johns" and their subpoenaed cell phone pictures from the *Melchor* case had first revealed: that Monsalve in fact had been the first "Toty" operating in Tallahassee before passing on this local "franchise" to Melchor.<sup>114</sup> As the prostitution venture became more profitable, Monsalve expanded operations throughout Florida, allowing Melchor to assume not only responsibility for the Tallahassee market but even ownership of the "Toty" moniker.<sup>115</sup> Confronted upon his arrest by much of the same evidence that had led to Melchor's conviction, Monsalve ultimately sought and received a plea bargain.<sup>116</sup> On

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the local Hispanic community. *Id.* The cards advertising his Tampa-Clearwater operation said "Tacos and Gorditas" and featured a cell phone number on the back. *Id.*

<sup>112</sup> See Pinkham, *supra* note 35. Arrested along with Monsalve were four other defendants. They included Fabio Perez (a Colombian national accused of serving as a driver and of directing the criminal operation whenever Monsalve was out of the country); Jorge Enrique Londono (accused of running the Jacksonville prostitution venues); and Luz Karime Ramos Teran (allegedly responsible for housing the women exploited by the prostitution operation in Jacksonville). A fourth defendant whose name was initially withheld acknowledged that he had routinely met Londono and Perez halfway between Jacksonville and Tampa to exchange prostitutes. Each of these defendants eventually pled guilty to one count of a conspiracy whose objects included the transportation and harboring of aliens for financial gain, the importation of women into the United States for the purpose of prostitution, and the employment and harboring of women in a house for the purpose of prostitution. See *Four Members of Alien Smuggling and Prostitution Ring Sentenced to Federal Prison*, U.S. Attorney's Office Northern District of Florida, June 12, 2008, <http://www.usdoj.gov> (last visited Sept. 6, 2009). Londono received a 36 month prison sentence; Perez a 27 month sentence; Ramos Teran a 21 month sentence; and Jean Manuel Barada Rivera a 24 month sentence.

<sup>113</sup> See Pinkham, *supra* note 35.

<sup>114</sup> Transcript of Record at 179 (Second Day of Trial), *United States v. Melchor*, Case No. 4:07cr14-SMP (N.D. Fla. May 15 2007).

<sup>115</sup> See *supra* note 114, at 179-182.

<sup>116</sup> See Plea Agreement, *United States v. Monsalve*, Case No. 4:07cr56-RH (N.D. Fla. May 27, 2008).

September 29, 2008, a federal judge sentenced him to twenty years of incarceration.<sup>117</sup>

*B. Beyond "Iconic Victims"*

Though a part of the same criminal conspiracy, the *Monsalve* case revealed complexities that had not been present in *Melchor*. The two Central American women exploited in *Melchor* embodied what has been termed "iconic victims": they were unaware of what awaited them in the United States and were completely unwilling participants in the acts of prostitution.<sup>118</sup> A different type of victim profile emerged from *Monsalve*. A number of the Latin American women found to be involved in the other prostitution venues throughout Florida had known from the start that they were being brought to the United States to work in the commercial sex business.<sup>119</sup> They knew prior to their arrival that they would "work off" their smuggling fees through prostitution, and by their own

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<sup>117</sup> See Thomas F. Kirwin, Acting United States Attorney, Northern District of Florida, *Human Trafficker Sentenced to 20 Years Imprisonment*, U.S. Dep't of Just. (Oct. 8, 2008).

<sup>118</sup> See Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 187 (2007). Srikantiah describes an iconic human trafficking victim as:

a prototypical victim with several characteristics: (1) the victim is a woman or girl trafficked for sex; (2) law enforcement assesses her to be a good witness; (3) she cooperates fully with law enforcement investigations; and (4) she is rescued instead of escaping from the trafficking enterprise. These attributes, taken together, contemplate a victim of sex trafficking who passively waits for rescue by law enforcement, and upon rescue, presents herself as a good witness who cooperates with all law enforcement requests. This stereotypical notion of a "deserving victim" would not only exclude victims of labor trafficking, but also sex trafficking victims who may have initially consented to prostitution, or who were able to exercise some degree of agency during their period of exploitation.

<sup>119</sup> Interviews with Victims (2006-2009), *supra* note 7; see Interviews with federal and local law enforcement agents (2006-2009), *supra* note 32; see also Transcript of Record at 5-6 (Second Day of Trial), United States v. Melchor, Case No. 4:07cr14-SMP (N.D. Fla. May 15 2007) (prosecutor describing the investigative findings regarding alleged consenting prostitution that was a part of the criminal conspiracy).

admission, they had consented to this arrangement.<sup>120</sup> A number, in fact, did pay off their smuggling debts and then continued working in prostitution, splitting the proceeds equally with their pimps.<sup>121</sup>

The factual differences in the two criminal scenarios posed challenges for law enforcement and prosecutors. They were initially disinclined to recognize that women who appeared to be consenting participants in the prostitution business could be victims of human trafficking.<sup>122</sup> Such women, however, remained key witnesses in the prosecution. ICE agents applied for Continued Presence for all the women, and they did not detain or criminally charge any of them. Notwithstanding certain initial misgivings, the U.S. Attorney Office ultimately agreed to submit law enforcement endorsements for T visas for all the women encountered in the prostitution ring who had participated in the investigation.<sup>123</sup> The U.S. Attorney did so not on the theory that all prostitution is trafficking, but rather because each of the women had at some point had her ability to consent nullified.<sup>124</sup> Even those who initially consented to working off their smuggling debt through prostitution had not known that they would

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<sup>120</sup> Interviews with Victims (2006-2009), *supra* note 7. Of the survivors interviewed between 2006 and 2009, it became clear that even among those who may have initially consented to working in prostitution, they certainly did not “consent” to the brutal exploitation that ensued.

<sup>121</sup> *Id.*

<sup>122</sup> As the *Melchor* and *Monsalve* investigations progressed, federal law enforcement agents acquired a greater understanding of this. They recognized – correctly – that the types of force, fraud, and coercion applied by the defendants could ultimately override any consent originally tendered by the women.

<sup>123</sup> Curiously, the varied circumstances of the survivors still shaped the T visa endorsements ultimately provided by law enforcement authorities. The “iconic victims” received ready endorsements, while the women who had continued in prostitution after paying off their debts received endorsements that were much more ambivalent. The distinctions made by the federal officials were in fact pointless: per the terms of the federal regulations governing T visas, all of the victim witnesses were in the United States on account of trafficking, all had been victims of a severe form of trafficking, and all had complied with reasonable law enforcement requests for assistance. The fact that some among them had continued in prostitution was actually of no legal relevance in determining T visa eligibility.

<sup>124</sup> Author Interview with Prosecutor, United States Attorney Office, in Tallahassee, Fl. (2008).

be required to undergo 25-35 sex transactions nightly.<sup>125</sup> Neither had they known that their identity documents would be confiscated by the pimps, nor that their freedom of movement would be greatly circumscribed.<sup>126</sup> All of these victim witnesses, determined the U.S. Attorney, were present in the U.S. on account of trafficking, and had been victims of force, fraud, or coercion.<sup>127</sup>

### *VIII. Challenges and Lessons Learned*

#### *A. The Complexities of Investigating and Prosecuting Human Trafficking*

Both the *Melchor* and *Monsalve* cases embody the delicate partnerships that are crucial for successful human trafficking prosecutions: without the mutual cooperation of local law enforcement, federal law enforcement, prosecutors, and non-governmental service providers, trafficking cases are prone to failure at numerous junctures.<sup>128</sup> These evolving anti-trafficking partnerships are not without tensions, but the degree to which a trafficking prosecution succeeds is arguably commensurate to the degree to which such tensions are surmounted. As the first international sex trafficking ring prosecuted in North Florida, the *Melchor* and *Monsalve* criminal conspiracies were cases of first impression for local law enforcement and prosecutors. By their own admission, the law enforcement officials allowed non-governmental service providers a role in the investigation and prosecution that the government officials had never deemed appropriate in previous non-trafficking cases. For their part, the service providers found themselves assisting ICE agents and federal prosecutors –also a working partnership not traditionally sought out by immigrant advocates or human rights groups.

A lesson borne out in numerous other trafficking prosecutions

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<sup>125</sup> Interviews with Victims (2006-2009), *supra* note 7.

<sup>126</sup> *Id.*

<sup>127</sup> Author Interview with Prosecutor, *supra* note 124.

<sup>128</sup> Interview with Douglas Malloy, Chief Assistant United States Attorney, Tallahassee, Fl. (2008). Malloy, one federal prosecutor in Florida, has gone as far as to say that no human trafficking convictions are possible without the collaboration of a non-governmental service provider from the outset of the case.

was true also of the *Melchor* and *Monsalve* cases: successful trafficking prosecutions depend almost entirely on the willingness and ability of victim witnesses to testify at trial.<sup>129</sup> Absent such testimony - or at least, a willingness of victims to be available for trial- trafficking cases inevitably devolve into prosecutions for immigration or prostitution violations. Typically, only direct victim testimony will allow a prosecutor to demonstrate that force, fraud, or coercion has been employed to secure a victim's participation in commercial sex or forced labor.<sup>130</sup>

For many reasons, testimony at trial is exactly what many trafficking victims are most reluctant to provide. Research has indicated that concern for their personal safety remains the initial and overwhelming need of survivors of trafficking.<sup>131</sup> The requirement that they confront their traffickers in open court – and submit themselves to often harrowing cross-examination – is for many victims unthinkable. Their fears in such instances concern not only their own personal safety, but also that of their families back in their home country, where traffickers often operate with impunity. These were the precise fears of the victims of the north Florida trafficking cases.<sup>132</sup> Very aware that a Colombian criminal ring was responsible for their trafficking, none of the women were initially inclined to testify in court. Though provided security and constant reassurances

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<sup>129</sup> Mark J. Kappelhoff, *Federal Prosecutions of Human Trafficking Cases: Striking a Blow Against Modern Slavery*, 6 U. ST. THOMAS L.J. 9, 15 (2008) (quoting the Chief of the Criminal Section of the Civil Rights Division within the U.S. Department of Justice regarding the crucial role that victims play in trafficking prosecutions, stating “While many victims are initially intimidated by the criminal justice process . . . [t]hey play a central role in exposing the truth the trafficker told them would never be believed, and in helping to bring the trafficker to justice”).

<sup>130</sup> See Hughes, *supra* note 63, at 41-42. Hughes asserts that this reliance on victim testimony comprises a weakness that should be redressed by the introduction of a more “perpetrator-focused” approach.

<sup>131</sup> See FSU Report, *supra* note 1, at 49 (noting that in interviews conducted with survivors of the *Cadena* sex trafficking case in south Florida, “[t]he overwhelming need that all the women shared following their emancipation from sexual servitude was that of physical security”).

<sup>132</sup> Interviews with Victims (2006-2009), *supra* note 7; see also Abel, *supra* note 42 (noting that the traffickers in this case threatened another Guatemalan victim with harm to her six year old daughter if the woman did not comply with their demands).

of their safety by U.S. law enforcement and service providers, the victims nonetheless lived in great fear of what might occur to their families in Central America. The concern for the well-being and safety of their children persisted as another very acute fear.<sup>133</sup>

The “learning curve” of the law enforcement officials in these north Florida cases consisted of coming to a better understanding of how acute and pervasive victim fears were – and of fully crediting the effect of such fears.<sup>134</sup> From the outset, the local and federal law enforcement officials involved in the cases made great efforts to alleviate the victims’ fears and to provide for their safety.<sup>135</sup> The lesson for future trafficking prosecutions is clear: the government should spare no measures in guaranteeing the security of victim witnesses and their families during trafficking investigations and trials.

No matter how well it is handled by prosecutors, requiring victim testimony raises one of the most problematic aspects of the Trafficking Victim Protection Act. From a victim’s perspective, the expectation that they be willing to testify against their trafficker in open court may always seem inherently coercive. None of the victims in *Melchor* or *Monsalve* wished to testify: the two victims in *Melchor* eventually overcame their reluctance, and Monsalve’s decision to enter into a plea agreement with the prosecutor spared a third key victim witness this ordeal. Nonetheless, an uncomfortable dynamic at times pervaded the victim interviews and trial preparation: the investigators and prosecutors pushed constantly for greater victim disclosure, and the victims witnesses often responded with stubborn resistance.<sup>136</sup>

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<sup>133</sup> Interviews with Victims (2006-2009), *supra* note 7.

<sup>134</sup> *Id.* Following the escape of the first two women in this case, the traffickers told a third victim still under their control that they were going to “hunt down and hurt those bitches’ families” back in Central America. This threat to a third party sufficed to deter the third victim from any escape attempts.

<sup>135</sup> *Id.* These measures included safe housing at a local domestic violence shelter, round the clock access to a Spanish-speaking police officer, and transportation to and from court hearings in a police vehicle.

<sup>136</sup> *Id.* The nondisclosure on the part of one victim was later explained when further investigations revealed that a female cousin had been complicit in her recruiting and trafficking in her home country. Notwithstanding her anger at the cousin, the victim still persisted for many months in concealing her cousin’s

From the prosecutors' perspective, this tension was perhaps unavoidable if reliable testimony and evidence were to be secured for trial. However, a fine line will always remain between vigorous interview techniques and coercing victim testimony. The key to walking this line may ultimately lie in the relationship that undergirds the prosecutor's interaction with the victims. If the prosecutor is perceived as interested in the well-being of the victims – and not simply in securing a conviction at all costs – victim witnesses are far more likely to remain willing participants in the judicial process. This was the situation in the *Melchor* and *Monsalve* cases, as the victims ultimately trusted the prosecutor. Also critical to the success of the north Florida cases were the very positive relationships developed by a local ICE agent and an FBI victim advocate with the trafficking survivors. In what has become almost a truism, trafficking cases are successful only to the degree to which they are victim-centered investigations and prosecutions.

In theory, the federal benefits accorded trafficking victims are not given to them in exchange for their testimony or cooperation with U.S. law enforcement. Hence, federal law and regulations provide that it is not government officials who apply for the T visa benefits for trafficking victims, but rather the victims themselves or private counsel who do so on their behalf.<sup>137</sup> In reality, this is little more than a legal fiction. The initial provisional immigration status granted to trafficking victims by ICE – termed “Continued Presence” – is given only to those deemed important to the investigation and willing to participate.<sup>138</sup> The standard route in subsequently applying for the T visa involves the submission of a supplementary endorsement form completed and signed by a federal law enforcement official.<sup>139</sup> Victims may submit the T visa application without such a law enforcement endorsement, but must then meet added and significantly higher burdens of proof.<sup>140</sup> In practice,

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identity from U.S. investigators.

<sup>137</sup> See Application Procedures for T Status, 8 C.F.R. § 214.11(d) (2005).

<sup>138</sup> 28 C.F.R. § 1100.35 (2005).

<sup>139</sup> 8 C.F.R. § 214.11(f) (1) (2005).

<sup>140</sup> Federal regulations require that in cases where the victim cannot secure a law enforcement endorsement, he or she must submit “[s]econdary evidence of compliance with law enforcement requests.” 8 C.F.R. § 214.11(h)(2) (2005). The regulations explain:

victim witnesses depend very much on the good will of federal law enforcement officials in order to secure T visa status, including the all-important T visa benefit allowing recipients to reunite with immediate family members and children. These legal provisions vest great power in the hands of federal law enforcement officials. The suggestion by the defense counsel in *Melchor* that the victims may have entered into a *quid pro quo* arrangement with the prosecutor may ironically have been shared by the trafficking victims themselves—though experienced not as a bargain of opportunity, but rather as their sole means of regaining control of their lives.<sup>141</sup>

Another important lesson of the *Melchor* and *Monsalve* cases lies in what they reveal about the evolving business of sex trafficking in the United States. No longer is it the sole provenance of “mom and pop” criminal endeavors nor simply the product of opportunistic foreigners exploiting their own fellow nationals for profit. The *Melchor* and *Monsalve* cases bore all the hallmarks of organized crime: varied recruiters, eight successive sets of smugglers, and telecommunications that extended throughout numerous states and

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The secondary evidence must include an original statement by the applicant that indicates the reason that the LEA [law enforcement agency] endorsement does not exist or is unavailable, and whether similar records documenting any assistance provided by the applicant are available. The statement or evidence must show that an LEA that has responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons has information about such trafficking in persons, that the victim has complied with any reasonable request for assistance in the investigation or prosecution of such acts of trafficking, and, if the victim did not report the crime at the time, why the crime was not previously reported. The statement or evidence should demonstrate that good faith attempts were made to obtain the LEA endorsement, including what efforts the applicant undertook to accomplish these attempts . . . . An applicant who never has had contact with an LEA regarding the acts of severe forms of trafficking in persons will not be eligible for T-1 nonimmigrant status.

<sup>141</sup> Transcript of Record at 81-82 (First Day of Trial), *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007) (detailing suggestions by defense attorney that the testimony of the victims had been given in exchange for benefits).



crossed international borders.<sup>142</sup> The profile of the trafficking victims, moreover, was different from previous U.S. cases: the traffickers had not recruited them solely from the home country of the traffickers (Colombia) nor even from one single country, but rather from nations throughout Latin America.<sup>143</sup> There was a multinational character to this illegal enterprise that has not been common to other U.S. sex trafficking cases where the traffickers and victims have more typically hailed from the same country.

Also new was the *modus operandi* of the sex trafficking enterprise itself. As a prostitution scheme, the North Florida criminal operation relied not on the existence of stationary brothels, but rather functioned as a delivery service.<sup>144</sup> Ostensibly, this made the criminal endeavor less vulnerable to law enforcement surveillance.<sup>145</sup> While no websites were ever discovered to have been involved in advertising the prostitution services, cell phones were crucial to the growth and profitability of the scheme. So too was broader access to the North Florida Hispanic community, especially its single male members who comprised the target audience of the prostitution venture. The advertising techniques employed by the traffickers were “low-tech”: they relied upon word of mouth communications and the distribution of generic business cards at local bars, Mexican restaurants, and ethnic food stores. The

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<sup>142</sup> Subsequent investigations would reveal that the traffickers as part of their smuggling network had bribed police and military all the way through Central America. See Jonathan Abel, *Sex Slave Ring Taken Down*, ST. PETERSBURG TIMES, Mar. 15, 2009, available at <http://www.theledger.com/article/20090315/NEWS/903151998?p=all&tc=pgall>.

<sup>143</sup> Abel, *supra* note 42 (discussing how subsequent investigations would reveal that the traffickers as part of their smuggling network had bribed police and military all the way through Central America).

<sup>144</sup> See FSU Report, *supra* note 1, at 38-40. The phenomenon of a “mobile brothel” is an innovation as far as Florida sex trafficking cases are concerned. In the 1996-98 *Cadena* case for example, the sex traffickers relied upon a network of trailers and rundown houses for their prostitution operation.

<sup>145</sup> Interview with federal and state law enforcement officials (2006-2009). Ongoing law enforcement investigations in Florida reveal that the “mobile brothel” scheme continues to be refined by sex traffickers and pimps. Potential “johns” calling to request a sexual transaction are now “screened” by the traffickers, and must explain where they acquired the business card advertising the prostitution service, must provide a password of some kind, or must disclose their home address in order to verify that they are not law enforcement.

North Central Florida Panhandle overall has little official tolerance for sexually oriented businesses, especially in comparison to larger Florida metropolises such as Tampa, Orlando, and Miami.<sup>146</sup> Nonetheless, the Colombians operated a very targeted and tremendously profitable prostitution network in the Panhandle for several years, attracting no attention whatsoever from law enforcement until the two *Melchor* victims escaped their trafficker in July 2006. This business formula is certain to be repeated elsewhere.

What posed an additional challenge to federal investigators was another dynamic not necessarily seen in other U.S. sex trafficking cases. The victimization perpetrated in the *Melchor* and *Monsalve* cases was not in fact designed to be unending. The accounts of the traffickers and the victims coincided on one point: both parties anticipated that the “debt” imposed on the women could actually be paid off at some point in time, brutal though the circumstances of the women were in the interim. Other U.S. trafficking cases have seen debt servitude instead imposed upon victims as a means of securing virtually their permanent exploitation.<sup>147</sup> Interviews with both the traffickers and the victims in the *Melchor* and *Monsalve* cases suggested that many of the victims of this criminal enterprise did in fact pay off their smuggling debts, and that a number of the women even continued their participation in the prostitution venture subsequent to acquitting the debts.<sup>148</sup> The varied circumstances of the female survivors lent additional complexity to the *Melchor* and *Monsalve* prosecutions.

The final very important dimension of the law enforcement learning curve in the North Florida trafficking cases involved the need for developing a greater understanding of how far-reaching and insidious the forms of psychological coercion employed against modern trafficking victims can be.<sup>149</sup> The *Melchor* and *Monsalve*

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<sup>146</sup> See *supra* note 145. Interviewed law enforcement officials state that in contrast to South and Central Florida, massage parlors, strip clubs, and escort services are largely absent throughout most of the Florida Panhandle.

<sup>147</sup> See FSU Report, *supra* note 1, at 56 (describing debt servitude imposed upon migrant farm workers in the *Ramos* case, wherein the debt of the workers continued to escalate rather than decrease with the passage of time).

<sup>148</sup> Interviews with Victims (2006-2008), *supra* note 7; Interviews with state and federal law enforcement officials (2006-2009).

<sup>149</sup> See generally Kathleen Kim, *Psychological Coercion in the Context of*

cases were instructive in this regard: the traffickers almost never employed actual violence against the victims. Instead, they used physical and cultural isolation, document confiscation, debt servitude, and implied threats of violence against the victims or their families in order to secure the victims' compliance. None of these forms of psychological coercion would have been immediately discernible to someone who might have witnessed the parade of young Hispanic women entering and leaving the trailers and apartment complexes where the prostitution/trafficking scheme was effectuated.

*B. The Complexities of Caring for Victims of Human Trafficking*

The challenges posed by the *Melchor* and *Monsalve* cases were not confined to the law enforcement realm. There was also a "learning curve" on the part of the non-governmental service providers involved in caring for the victims of the sex trafficking ring. Over the course of the two cases, there were perhaps inevitable tensions between law enforcement and service providers regarding victim non-disclosure, interviews that at times seemed adversarial, and the question of whether law enforcement officials would ultimately endorse T visa applications (in theory, not a quid pro quo arrangement done in return for victim testimony, but which at times seemed so in the eyes of the victims). None of these tensions proved insurmountable.

Moreover, such tensions are *de rigueur* for modern trafficking cases, especially given the collaborative response model whereby service providers of necessity work closely with law enforcement officials and prosecutors. More surprising about the two North Florida trafficking cases, however, were the rifts that the cases witnessed emerge within the local service provider community itself. The domestic violence shelter that had initially housed the victims ultimately created a very divisive situation when it chose to

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*Modern-Day Involuntary Labor: Revisiting United States v. Kozminski and Understanding Human Trafficking*, 38 U. TOL. L. REV. 941 (2007) (explaining how this challenge is of course not endemic to law enforcement alone but remains an ongoing challenge for non-governmental service providers and for the U.S. judicial system itself).

classify all residents in the shelter who had participated in commercial sex as “prostituted women.” The shelter administrators deemed both immigrant survivors of sexual exploitation and U.S. citizen women who had worked in prostitution to be in this class. They housed the two groups together, and furthermore required them to undergo a common “treatment program” devised by the director and staff of the shelter.<sup>150</sup>

This “treatment program” proved extremely problematic.<sup>151</sup> The program model was interventionist in nature, and founded upon a condemnation of prostitution. It first required all its participants to attend weekly small group meetings in which the women were obligated to explain why they had become prostitutes. This requirement alone provoked tremendous resistance from the immigrant trafficking victims, a number of whom insisted that they had never chosen to be prostitutes. The immigrant sex trafficking survivors came to experience the program’s strict curfews, mandatory drug testing, and obligatory small group meetings as intrusive and laden with value judgments.

Even worse, aspects of the program soon came to approximate the survivors’ ordeal of having been trafficked. With a requirement that they remain in a confined shelter environment behind locked gates, and with many decisions imposed upon them without explanation by the staff, the survivors did not gain any sense of agency or self-empowerment from the program. Quite the opposite occurred: they experienced it as a type of revictimization.<sup>152</sup> The shelter administration seemed unable to differentiate the needs of immigrant sex trafficking victims from those of U.S. women who were leaving behind experiences of prostitution. The “one size fits all” approach adopted by the shelter proved singularly inappropriate

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<sup>150</sup> See *infra* notes 163-174 (stating how both the semantics and the orientation of the “treatment program” devised by the shelter strongly reflected the influence of the “abolitionist” school of thought which equates all prostitution with sex trafficking).

<sup>151</sup> *Id.* Despite the requests of other service providers, the shelter declined to share the theory underlying the program, and likewise refused to disclose the training or the credentials of the shelter staff assigned to administer it.

<sup>152</sup> Interviews with Victims (2006-2009), *supra* note 7.

for meeting the needs of the immigrant sex trafficking survivors.<sup>153</sup>

*C. What (Less Than) Iconic Victims Reveal About Choice and Consent*

The *Melchor* and *Monsalve* cases did more than illustrate the challenges of prosecuting modern traffickers and of caring for those they victimize. The cases also challenge the accuracy of two competing views that in recent years have generated heated debate over the relationship between prostitution and forced prostitution—and in particular, the question of whether all prostitution is in fact sex trafficking.<sup>154</sup> The varied type of victimization that law enforcement authorities encountered in the *Melchor* and *Monsalve* cases goes to the very heart of this debate. The survivor accounts revealed that there had been three types of participants in the prostitution venture: (1) women who had never consented to prostitution; (2) women who had initially consented but whose consent was arguably overborne by the reality of what awaited them (35-45 sex acts nightly, isolation, debt servitude, and control of their freedom of movement); and (3) women who knowingly migrated to engage in commercial sex, who paid off their smuggling debt, and who then maintained a “partnership” of sorts with their traffickers,

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<sup>153</sup> The program requirements became a source of great distress for the survivors, and ultimately led other service providers to create an alternative living situation for the immigrant trafficking victims. Neither local law enforcement nor the other community service providers feel confidence in this interventionist program, and when interviewed noted that they would not refer future trafficking victims to this particular shelter.

<sup>154</sup> See *infra* notes 155-174. This debate has generated considerably more heat than light, and at times has been very acrimonious, especially between different feminist groups. The “abolitionist” school asserts that all prostitution is exploitative while the liberal feminist school insists that prostitution is labor and that women have a fundamental right to choose such “work.” See also Gregg Aronson, *Seeking a Consolidated Feminist Voice for Prostitution in the U.S.*, 3 RUTGERS J. L. & URBAN POL’Y 357, 383 (2006) (“[E]ach group has proceeded with the mentality that its own interests are the only right interest for the prostitute, [and] each is convinced that the goals of the [other] are not only wrong but contrary and injurious to [its] own.”); Ronald Weitzer, *The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade*, 35 POL. & SOC’Y 447, 450 (2007) (noting that even though the primary focus of the “sex as labor” proponents has been empowerment of sex workers and harm reduction, such groups are increasingly marginalized by abolitionists).

splitting subsequent prostitution proceeds equally with their pimps.

The criminal conspiracy perpetrated by the Colombian traffickers in the Florida Panhandle thus involved the exploitation of non-consenting women for prostitution alongside women who, by their own admission, had consented to some degree to performing such activities.<sup>155</sup> Determining whether such consent was meaningful, or whether it existed at all, was a precarious endeavor on the part of law enforcement officials.<sup>156</sup>

Crucial to such a determination is the more basic question of whether consent to prostitution is possible in the first place. The liberal feminist school of thought in the current trafficking debate holds that prostitution represents not merely a choice, but even a valid choice for women.<sup>157</sup> Those who would deny that women have such a choice, assert advocates from this camp, infantilize women and reduce them to being objects rather than agents.<sup>158</sup> This school of thinking holds that prostitution is neither inherently degrading nor exploitative.<sup>159</sup> This approach has also been termed the “autonomy”

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<sup>155</sup> See Abel, *supra* note 42 (noting that Monsalve appeared to have begun his criminal operation relying on voluntary prostitution, and at some point in 2005 began to also profit from non-consensual sex trafficking).

<sup>156</sup> Interviews with state and federal law enforcement officials (2006-2009).

<sup>157</sup> See Susan E. Thompson, *Prostitution—A Choice Ignored*, 21 WOMEN’S RTS. L. REP. 217, 217 (2001) (“[P]rostitution can be a tool of empowerment that will allow those women who choose it to exercise personal power, economic freedom, and sexual autonomy”).

<sup>158</sup> *Id.* at 234, 247. Thomson asserts:

[P]rostitutes, like all women, should be free to decide how to live their lives. To penalize a group of women on how they choose to earn a living suggests that women as a group are unable to decipher for themselves what is in their best interest.... [T]he radical methodology distrusts women’s judgment to make choices that accurately reflect their own desires.

<sup>159</sup> *Id.* at 236-37.

[F]or the liberal feminist, prostitution does not symbolize the degradation of women, or male dominance over women, but rather represents a positive step towards empowering women personally and nurturing their path to economic independence. Recognition of prostitution as a liberating and empowering force allows women to break down the social barriers that have restricted expression of their sexuality and reconstruct a definition of self that reflects their reality . . . . Recognizing

or “prostitution as work” school of thought.<sup>160</sup> It is premised on the notion that prostitution is an exercise of agency on the part of women, and comprises a right that cannot be denied them.<sup>161</sup> This school of thinking asserts women can and do consent to prostitution, and that prostitution is distinguishable from sex trafficking.<sup>162</sup> U.S. law agrees at least on this last point insofar as it distinguishes between prostitution and forced prostitution.

Critics assert, however, that the “prostitution as labor” school of thought has very little connection to the lived experience of the majority of women who are engaged in prostitution.<sup>163</sup> They allege

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prostitution as a choice allows women the opportunity to define for themselves what is in their best interest. It acknowledges the reality that women are independent beings capable of making well-informed, conscious decisions, which affect their own lives and personal interests.

<sup>160</sup> See Kara Abramson, *Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol*, 44 HARV. J. INT’L L. 473, 483-88 (2003) (describing “autonomy” arguments for the ability to consent to sex work); Aronson, *supra* note 154, at 364-66 (explaining how one of the leading groups in the United States that espouses the “sex as work” philosophy is COYOTE (“Call Off Your Old Tired Ethics”), a prostitutes rights organization that regards prostitution as a contract between two consenting adults).

<sup>161</sup> Abramson, *supra* note 160, at 484 (discussing how a corollary of this position is the assertion that women can and do migrate voluntarily for sex work).

<sup>162</sup> Aronson, *supra* note 154, at 366. Aronson explains that the COYOTE insists that most prostitutes choose their work willingly. Elizabeth Bernstein, *What’s Wrong with Prostitution? What’s Right with Sex Work? Comparing Markets in Female Sexual Labor*, 10 HASTINGS WOMEN’S L.J. 91, 107-111 (1999). Commentators have noted that COYOTE is made up primarily of those working in the “high end” of the prostitution field, such as call-girls, escorts, exotic dancers, and masseuses. These women are for the most part white, middle class, and better educated than many of their peers who are streetwalkers. Perhaps even more importantly, the women who describe prostitution as a means of empowerment and something to which they freely consent are free from male management (i.e., the presence of a pimp). Insofar as they fit this profile of an “independent agent,” members of COYOTE are arguably not representative of all women engaged in prostitution, and therefore speak with less authority when they frame sex-work exclusively in terms of choice or empowerment.

<sup>163</sup> See Dorchon Leidholdt, *Prostitution: A Violation of Women’s Human Rights*, 1 CARDOZO WOMEN’S L.J. 133, 136 (1993). The author, Leidholdt, asserts that:

[P]rostitution . . . isn’t about choice. Instead, prostitution is about the absence of meaningful choices; about having

that framing prostitution as a “woman’s right” fails to account for the myriad of abuses and personal violence suffered by a high percentage of women who engage in commercial sex.<sup>164</sup> It likewise fails to explain why the overwhelming majority of women engaged in commercial sex wish to leave it, and yet are unable to do so.<sup>165</sup> The experience of the women who allegedly consented to prostitution in the North Florida trafficking case certainly does not lend much support to those who would characterize prostitution as a woman’s right. Arguably, none of the female participants willingly involved in the prostitution were empowered or derived much benefit

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alternative routes to survival cut off or being in a situation where you don’t have options to begin with. Nothing demonstrates this more clearly than the fact that most women who enter the ‘profession’ do so as children, at age sixteen or younger. Or the fact that the majority of women in prostitution in this country – most studies estimate 60-70 % – have histories of sexual abuse in childhood . . . . Add to this the reality that the population targeted by pimps and traffickers is teenagers. It becomes clear that the majority of prostitutes are socialized into ‘sex work’ in childhood and adolescence when consent is meaningless and choice an illusion.

<sup>164</sup> Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, in PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS 33, 43-44 (Melissa Farley ed., 2003) (stating one recent study found that of persons surveyed who were involved in prostitution in nine different countries, 63% had been sexually abused as children, an average of 75% were homeless, and 71% had been assaulted while engaged in prostitution); Dorchen Leidholdt, *Prostitution and Trafficking in Women: An Intimate Relationship*, in PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS 167, 171 (Melissa Farley ed., 2003) (stating that while male customers of prostitution are rewarded by sexual gratification, and male profiteers of prostitution are rewarded by the enormous sums of money that they earn, the financial benefits to prostituted women and girls are usually meager and are almost always outweighed by the profound physical and emotional harms of prostitution: sexually transmitted diseases, internal injuries, depression, traumatic stress, [and] somatic and psychological disassociation); See generally CATHARINE A. MACKINNON, FEMINISM UNMODIFIED 10 (1987) (situating prostitution as being a part of a continuum of harm that includes pornography, sexual abuse, and rape).

<sup>165</sup> Leidholdt, *supra* note 164 (“[H]owever they got into prostitution, the women and children in it usually want to get out—as quickly as possible.”); see also Norma Ramos, *Addressing Domestic Human Trafficking*, 6 ST. THOMAS L. REV. 21, 25 (2008) (citing to a survey indicating that 87% of the women engaged in prostitution in Nevada’s legal brothels wanted to escape prostitution).



from the commercial sex venture. The degradation of 25-35 sex acts a night was no less brutal for those who supposedly consented than it was for the “iconic victims” who did not. The “right” to engage in this type of prostitution ring is at best a very impoverished one.

On the other side of the trafficking debate is the “abolitionist” school of thought, that contends that prostitution is “the world’s oldest oppression,”<sup>166</sup> and is “the end result of some of the worst political, social, and economic conditions imaginable.”<sup>167</sup> It is a cornerstone of abolitionist thinking that sex can never be regarded as work or as a valid form of labor. Abolitionists likewise assert that the decision to engage in prostitution represents for women not so much a choice as a lack of choice.<sup>168</sup> The abolitionist school also notes that the vast majority of women involved in prostitution enter the field as minors, or do so as the result of sexual abuse, substance abuse, or situations of gender inequity that arguably undermine their ability to truly consent to commercial sex.<sup>169</sup> Given such circumstances, abolitionists argue, the notion of “consent to prostitution” is utterly meaningless.<sup>170</sup> One observer interprets the abolitionist position as ultimately standing for the contention that no woman could ever truly consent to prostitution.<sup>171</sup> A corollary of this assumption that women do not actively make choices to enter or remain in prostitution is the insistence of the abolitionists that there is no such thing as voluntary migration for sex work.<sup>172</sup>

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<sup>166</sup> See Ramos, *supra* note 165, at 26.

<sup>167</sup> *Id.* at 21.

<sup>168</sup> *Id.*

<sup>169</sup> See Leidholdt, *supra* note 163, at 172-73.

<sup>170</sup> Farley et al., *supra* note 164, at 65 (“[I]nstead of the question did [a woman] voluntarily consent to prostitution? The more relevant question would be ‘did she have real alternatives to prostitution for survival?’”).

<sup>171</sup> See Holly B. Fechner, *Three Stories of Prostitution in the West: Prostitutes’ Groups, Law, and Feminist “Truth,”* 4 COLUM. J. GENDER & L. 26, 50 (1994) (“[W]omen cannot choose or consent to prostitution under current conditions of sex inequality . . .”). See also Srikantiah, *supra* note 118, at 194 (“[T]he abolitionist perspective . . . is that meaningful consent to sex work is impossible. . . .”);

<sup>172</sup> Abramson, *supra* note 160, at 489 (explaining that this position “builds on the domestic prostitution debates to stress the destitute backgrounds of many trafficked people, to highlight the coercive nature of trafficking, and to define it as a practice that is by its nature incapable of accommodating consent.”).

Aspects of the *Melchor* and *Monsalve* cases would seem to corroborate a number of the arguments of the abolitionists. All of the women exploited in the North Florida sex trafficking ring hailed from dire economic conditions in Latin America, where they saw few options for themselves or their children. Their options upon arriving in the United States were similarly foreclosed. Arguably, any “consent” they exercised in initially conforming to their traffickers’ demands that they prostitute themselves was close to meaningless.<sup>173</sup>

What proved troubling for law enforcement authorities was the fact that a number of the women encountered in the course of the investigation had very explicitly migrated to the United States for the purpose of participating in commercial sex, and had known from the outset that they were doing so. The cases posed an additional challenge by raising the question of whether the women who paid off their smuggling debts and then remained in prostitution could be deemed to have consented to that further prostitution.<sup>174</sup> That is to ask, did they cease to be victims once there ceased to be force, fraud, or coercion employed against them? Most challenging in this regard was the assertion by a number of the women that they had indeed made a choice, limited though their options were.<sup>175</sup> Their insistence on this point raises questions about the categorical contention of the abolitionists that no woman could ever “choose” prostitution.<sup>176</sup> The

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<sup>173</sup> Abel, *supra* note 42. The author notes that:

[S]he came from Guatemala, a woman in her early 20s smuggled into the United States for what she thought was a housekeeping job. The journey from her small town to the Texas border took 26 days. From there she was whisked to a safe house near Houston, then brought to Tampa and moved once more to a house in Jacksonville. There, an enforcer for the human trafficking operation told the woman her debt had jumped from \$5000 to \$30,000 . . . . She turned 25 tricks the next day and nearly every day for eight or nine months.

<sup>174</sup> Kenneth Shuster, *On the “Oldest Profession”: A Proposal in Favor of Legalized But Regulated Prostitution*, 5 U. FLA. J.L. & PUB. POL’Y 1, 12 (1992) Shuster states that one commentator in the prostitution debates has asserted that while women may initially be pressured into prostitution, they at times remain in it by choice.

<sup>175</sup> Interviews with Victims (2006-2009), *supra* note 7.

<sup>176</sup> Critics of the abolitionist school contend that this categorical denial that a

accounts of the survivors suggested that a number of them had explicitly done so, that they had migrated for sex work, and that they also very clearly regarded commercial sex as a form of labor.<sup>177</sup> The survivors' accounts do not conform to a number of the categorical positions that are articles of faith to the abolitionist school.

### *IX. Recommendation*

The failure of the two current and diametrically opposed schools of thought to account for the victimization in the *Melchor* and *Monsalve* cases suggests that a third conceptual framework is required to more accurately do so. One might term this third approach to be "Commercial Sex as a Compromised Choice." Such an approach would begin with the assumption that virtually all prostitution is inherently abusive. However, it would also recognize that some modicum of consent is possible in certain prostitution scenarios, even when the circumstances of the prostitution are abusive. Consistent with U.S. law, the model would recognize that any prostitution involving minors or prostitution involving adults that is induced through force, fraud, or coercion would constitute sex trafficking.

This proposed model does not canonize "sex as labor," but

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woman could ever "choose" prostitution "distrusts women's judgment to make choices that reflect their own desires." Thompson, *supra* note 157, at 234. Thompson explains:

This argument is not only demeaning but patronizing to women. It denies the reality and experience of women who may view prostitution in a positive light, by dismissing them as delusional and misguided. The radical approach assumes that all women speak with a unified voice. It buys into the social construct of women as the 'weaker' sex, incapable of defining themselves . . . [In contrast], [r]ecognizing prostitution as a choice allows women the opportunity to define for themselves what is in their best interest. It acknowledges the reality that women are independent beings capable of making well-informed, conscious decisions." *Id.* at 233, 237.

<sup>177</sup> Interviews with Victims (2006-2009), *supra* note 7. What was even more striking about the insistence of a number of the women that they had chosen to work in commercial sex was the fact that the nature and extent of such "work" was clearly abusive. It was not the kind of prostitution scenario championed by COYOTE or proponents of the liberal feminist school.

neither is it founded on a categorical insistence that no woman could ever consent to commercial sex. The model instead would recognize that people consent to prostitution in certain instances, and do so even in the absence of force, fraud, or coercion. This conceptual framework would allow for the scenario that emerged in the North Florida trafficking cases, where some women migrated voluntarily for sex work, and others, after acquitting their smuggling debts, chose to continue their participation in the prostitution venture, as harsh and demeaning as it was.

While some might term this latter phenomenon to be “survival sex,” the survivors who engaged in it were insistent that it nonetheless involved a sense of agency on their part.<sup>178</sup> To acknowledge the possibility that a person might “choose” prostitution when it is abusive is not to condone prostitution or even to credit it as a valid form of labor. Neither is it to hold the “john” blameless, or worse, to pass any kind of moral judgment on the person confronted by such a choice. It is rather to acknowledge that people at times make Faustian bargains, and that prostitution represents one such choice that generally will have negative consequences for those who engage in it. While many of the circumstances cited by abolitionists as reasons that women enter into or continue in prostitution are certainly accurate (i.e., homelessness, substance abuse, sexual abuse as minors, etc.) these simply do not account for all examples of prostitution.<sup>179</sup>

The two aforementioned models that currently dominate the debate about sex trafficking and prostitution both suffer from the same flaw: they are prescriptive rather than descriptive.<sup>180</sup> The

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<sup>178</sup> Interviews with Victims (2006-2009), *supra* note 7.

<sup>179</sup> One researcher notes that “[m]any critics of prostitution have assumed that all prostitutes were women who entered the practice under circumstances which included abuse and economic desperation. But that is a false assumption: the critics have mistaken a part of the practice for the whole.” Debra Satz, *Markets in Women’s Sexual Labor*, 106 ETHICS 63, 66 (1995). See also Ann M. Lucas, *The Work of Sex Work: Elite Prostitutes’ Vocational Orientations and Experiences*, 26 DEVIANT BEHAVIOR 5 (2005) (describing the experiences of women working in the “upper end” of the prostitution market).

<sup>180</sup> One commentator interprets this phenomenon as the result of both of these opposing schools of thought purporting to make “truth-based arguments.” Fechner, *supra* note 170, at 56. That is, “[e]ach group’s discourse filters its own

abolitionist school has a self-avowed goal of abolishing all forms of commercial sex, and this agenda colors its analysis and conclusions.<sup>181</sup> In particular, it fails to account for the reality that women in certain situations opt for prostitution and do so viewing it as work.<sup>182</sup> The “prostitution as labor” school of thought likewise has a prior agenda of vindicating a woman’s right, or choice, to engage in prostitution, and it roundly ignores the abusive nature of most forms of commercial sex. The ideological assumptions that underlie both schools of thought preclude them from accurately describing 21<sup>st</sup> Century commercial sex.<sup>183</sup>

What is needed now is a model that does not privilege consent, but that does not eradicate it entirely either.<sup>184</sup> A model that recognizes “Commercial Sex as a Compromised Choice” could fill the conceptual gap that currently afflicts the prostitution/trafficking debate. Moreover, a change in U.S. law could facilitate the evolution of such a model. It would be appropriate for federal law to

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truths about the world.” *Id.* In doing so, each “claims the truth of its own position and questions the validity of other descriptions.” *Id.* at 57.

<sup>181</sup> See Fechner, *supra* note 168.

<sup>182</sup> Weitzer, *supra* note 154, at 453. Sociologist Ronald Weitzer observes that:

Some prostitutes make conscious decisions to enter the trade and do not feel that their work is degrading or oppressive. Many independent call girls and employees of escort agencies, massage parlors, and brothels fall into this category. These workers are invisible in the discourse of the anti-prostitution crusade precisely because their accounts clash with abolitionist goals.

<sup>183</sup> Weitzer faults the radical feminist school in general for positions that are “absolutist, doctrinaire, and unscientific.” Ronald Weitzer, *Flawed Theory and Method in Studies of Prostitution*, 11 VIOLENCE AGAINST WOMEN 934, 934 (2005). He notes that few of the radical feminists’ claims about prostitution are amenable to verification or falsification. *Id.* at 936. In particular, asserts Weitzer, this is because radical feminist writers project the “worst examples” of prostitution as the norm. *Id.* at 946. Weitzer conversely faults the “sex as labor” school for projecting “‘best available examples’ – typically upscale call girls and escort agency workers – to argue that prostitution can be empowering and lucrative.” *Id.* at 946. These “best examples,” concludes Weitzer, “are no closer to the norm in prostitution than the ‘worst examples.’” *Id.*

<sup>184</sup> See generally Beverly Balos, *The Wrong Way to Equality: Privileging Consent in the Trafficking of Women for Sexual Exploitation*, 28 HARV. J. L. & GENDER 137 (2004) (criticizing approaches to human trafficking that make the supposed “choice” of a trafficked woman the linchpin of whether a human rights violation has occurred).

incorporate the provision of the UN Protocol on Trafficking that recognizes that trafficking can occur not only as a result of force, fraud, or coercion, but also as a result of the exploitation of an “abuse of power or of a position of vulnerability” in a particular situation.<sup>185</sup>

Evolving international law standards provide important support for the premise that abuses of power and of positions of vulnerability can nullify consent to the same extent as force, fraud, or coercion. International criminal law is especially illuminating in this regard. In the past decade, international criminal tribunals have of necessity addressed situations of systematic rape such as those that occurred in the conflicts in the Balkans and in Rwanda.<sup>186</sup> The tribunals have made vital contributions to the understanding that non-consent on the part of victims of rape and sexual violence can be demonstrated even in the absence of direct force or coercion.<sup>187</sup> The International Criminal Tribunal for Rwanda made the landmark finding that sexual violence “is considered to be any act of a sexual nature, which is committed on a person under circumstances which are coercive.”<sup>188</sup>

The International Criminal Tribunal for the Former Yugoslavia has likewise underscored the importance of assessing the context of the surrounding circumstances in determining when consent to a sexual act may not be possible. One series of cases examined a situation in which Serb soldiers confined Muslim women

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<sup>185</sup> See Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex II, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

<sup>186</sup> See, e.g., Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment (Sept. 2, 1998) (holding in the International Criminal Tribunal for Rwanda that rape can be a war crime as well as a form of genocide); Prosecutor v. Furundzija, Case No. IT-95-17/1-T, Judgment (Dec. 10, 1998) (holding in the International Criminal Tribunal for the Former Yugoslavia that rape may be a war crime or act of genocide if certain elements are met).

<sup>187</sup> The International Criminal Tribunal for Rwanda established that proof of physical force is not required to demonstrate coercion, but that “[t]hreats, intimidation, extortion, and other forms of duress which prey on fear or desperation may constitute coercion.” Pros. v. Akayesu, Case No. ICTR-96-4-T at ¶ 688.

<sup>188</sup> *Id.* at ¶ 598.

in brothel-like internment camps.<sup>189</sup> In rejecting a Serb officer's claim that he had engaged in consensual sex with a detained woman, the Tribunal ruled that the brutal circumstances of the camp were so coercive in nature that genuine consent by the woman was not possible in such a situation.<sup>190</sup> The ruling reflected the Tribunal's recognition that coercive circumstances that lead a victim to acquiesce to a sex act still constitute a situation of non-consent on the part of that victim.<sup>191</sup>

Recognition that consent can be overborne by coercive circumstances has also been introduced into U.S. domestic law. New Jersey state law, for example, imposes an absolute prohibition of any sexual relationships between inmates and prison guards.<sup>192</sup> The New Jersey Superior Court has explained that the legislative intent behind the statute reflects the recognition that a prison environment creates "unequal positions of power and inherent coerciveness . . . which [cannot] be overcome by evidence of apparent assent."<sup>193</sup>

U.S. anti-trafficking law would do well to incorporate this same recognition that certain situations of prostitution are so inherently coercive or characterized by an imbalance of power that genuine consent to a commercial sex act is not possible. To do so is not to assert that all prostitution is sex trafficking, but rather that certain instances of prostitution involve such unequal positions of power or such overall "coercive circumstances" that consent to the act of prostitution cannot be genuine. Such instances should be recognized as sex trafficking, even in the absence of force, fraud, or coercion. Incorporating such a change in U.S. anti-trafficking law would allow for a more accurate assessment of the elements brought to bear against modern trafficking victims. It would also mitigate the otherwise high burden of proof currently placed on U.S. prosecutors to establish non-consent on the part of potential trafficking

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<sup>189</sup> Prosecutor v. Kunarac, Kovac, & Vukovic, Case Nos. IT-96-23-T, IT-96-23/1-T, Judgment (Feb. 22, 2001).

<sup>190</sup> Prosecutor v. Kunarac, Kovac, & Vukovic, Case Nos. IT-96-23, IT-96-23/1-A, Appeals Judgment (June 12, 2002).

<sup>191</sup> *Id.* ¶ 127.

<sup>192</sup> See N.J. STAT. ANN § 2C:14-2 (West 2001).

<sup>193</sup> New Jersey v. Martin, 561 A.2d 631, 636 (N.J. Super. Ct. App. Div. 1989).

victims.<sup>194</sup> Nonetheless, the model would still recognize that women are not solely passive victims, and even in the complex realms of migration and prostitution still remain capable of varying degrees of agency.

The North Florida trafficking cases -and the accounts of their female survivors- suggest that the reality of prostitution and sex trafficking is much more nuanced and complex than either the “abolitionist” or “prostitution as labor” schools of thought are willing to allow.<sup>195</sup> Central to the trafficking and prostitution conspiracy in the *Melchor* and *Monsalve* cases were circumstances of poverty and economic deprivation that led women from all over Latin America to migrate in search of a better life. Upon their arrival in the United States, the vast majority of them participated in prostitution induced through some sort of force, fraud, or coercion. Yet also present in the criminal conspiracy were elements of voluntary migration for sex work, and some element of consent on the part of at least a small number of women after force, fraud, or coercion had ceased to be employed against them. The debate regarding the relationship between prostitution and sex trafficking is certain to continue, and will have important ramifications for U.S. law and policy. Such a debate has no hope of resolution, however, until a different model is

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<sup>194</sup> Determining what constitutes “an abuse of power or of a position of vulnerability” is not at all an impossible task for adjudicators. U.S. immigration officials and immigration judges routinely determine what constitutes “extreme hardship” and a “reasonable fear of persecution” in the context of immigration and asylum decisions. They do so on a case-by-case basis, with guidelines established through legal precedent. Criteria for assessing “an abuse of power or of a position of vulnerability” would evolve in a like fashion.

<sup>195</sup> Bernstein, *supra* note 162, at 116-17. Bernstein explains that:

Radical feminists are right in their insistence that prostitution is sexual violence against women—but they are only right sometimes. Pro-sex feminists are also right, sometimes, when they assert that prostitution may offer women possibilities for self-assertion, subversion, and resistance. Ethnographic research on markets in female sexual labor reveals that ‘prostitution’ is not a homogeneous phenomenon. ... Under certain circumstances, prostitution may be – at least in a very immediate sense – empowering or liberatory; under other circumstances, it can be the most disempowering of exchanges, particularly for the already desperate and weak.



introduced into the discussion – one more that is more descriptive than prescriptive, and rooted less in ideology than in the complex reality of 21<sup>st</sup> century commercial sex.

### *X. Conclusion*

Of course, the ultimate significance of the *Melchor* and *Monsalve* cases is not to be found in disputing the level of choice exercised by the victims. Far more important is the simple recognition of the victimization that *all* the survivors of this trafficking ring suffered to varying degrees. The true measure of how far the anti-trafficking movement has come in the United States lies in the fact that it is now characterized by a human rights paradigm – rather than a law enforcement framework, or one that is reducible to an anti-prostitution campaign.<sup>196</sup> Much still remains in terms of better recognizing and crediting the types of coercion that are employed by modern traffickers against their victims. But here the *Melchor* and *Monsalve* cases are once again instructive. Even given the tensions that emerged regarding victim interviews and cooperation with law enforcement, what remained constant throughout the investigation and prosecution of these cases was the baseline recognition by police and prosecutors that they were in fact dealing with victims. While advocates nationwide continue to push for more victim-friendly law enforcement measures and for improved victim remedies, the groundwork provided by U.S. anti-trafficking law is by now foundational. Just as the U.S. legal community in recent decades has reconsidered traditional views of domestic violence and of rape, so too has it begun rethinking how

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<sup>196</sup> See U.S. Dep't of Just., *DOJ Position on H.R. 3887*, at 1, available at <http://www.usdoj.gov/olp/pdf/doj-position-on-hr3887.pdf> (last visited Sept. 6, 2009) (objecting to equating all forms of adult prostitution with the worst forms of forced labor and sexual exploitation. The U.S. Justice Department has been particularly insistent that not all prostitution is trafficking, and has hotly contested abolitionist efforts to redefine trafficking as including all instances of prostitution. This point of contention led to a vehement public debate when the House of Representatives incorporated the abolitionist position in the House version of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007 (H.R. 3887). The Justice Department, in addition to a host of U.S. anti-trafficking organizations, ultimately prevailed in their efforts to maintain the original trafficking definition established by the Trafficking Victim Protection Act of 2000).

modern slavery occurs and can best be combated. This process began with the implementation in 2000 of the Trafficking Victims Protection Act and remains ongoing.

A number of sobering lessons still obtain from the *Melchor* and *Monsalve* trafficking cases. The cases defied the conventional wisdom that sex trafficking occurs only in larger cities or in metropolitan areas that have a history of tolerating sexually oriented businesses. Quite the opposite was true in these two cases: they occurred in a region that historically has had virtually no tolerance for prostitution, escort services, strip clubs, or massage parlors. In this regard, the cases do not support the argument that eliminating official tolerance for the demand side of prostitution will necessarily eliminate all sex trafficking.

The cases also challenge the contention of some advocates who insist that no woman could ever consent to prostitution. Interviews with the survivors of the *Melchor* and *Monsalve* cases revealed situations that did not admit of such a black and white generalization. While the survivors spoke of limited choices available to them, the majority of the women nonetheless insisted that they had had choices. A number of the survivors acknowledged an initial choice to seek better opportunities through prostitution; most also said that they had neither anticipated nor chosen the harsh and brutal conditions that awaited them. A few, however, acknowledged a choice to continue in prostitution after paying off their smuggling debt.<sup>197</sup> Notably, all the survivors were insistent that they had exercised some modicum of choice in their decision-making.

For whatever their level of consent, the women induced to participate in the North Florida smuggling and prostitution ring all endured unimaginable suffering. In imposing the criminal sentence on Jorge Melchor, the federal judge presiding over his trial declared

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<sup>197</sup> Interviews with Victims (2006-2009), *supra* note 7. Even for this latter group, the exploitation they endured clearly constituted mitigating circumstances in terms of passing any sort of judgment upon their actions. Federal authorities clearly felt the same, and declined to prosecute any of the women survivors of the two cases on prostitution or immigration charges (even those who continued in the prostitution venture after paying off their debt, or those who declined to participate as witnesses in the criminal investigations).

that the defendant's conduct had been horrendous, and was nothing less than a crime against humanity.<sup>198</sup>

Even beyond the legacy of the trauma they left upon their victims, the *Melchor* and *Monsalve* sex trafficking operations bear sobering messages for the larger anti-trafficking movement in the U.S. and abroad. The cases illuminate a shadow world in which traffickers deal ruthlessly and without compunction in peddling human flesh across international borders. They also demonstrate that tremendously lucrative trafficking schemes can still thrive utilizing low-tech means of recruiting, transportation, and advertising. And as indicators of the “dark side of globalization,” the cases are a portent of the type of human exploitation that is certain to continue in the 21<sup>st</sup> Century. Human trafficking finds its origin in the regions of the world where desperately poor people are now capable of travelling to distant countries to pursue the siren song of economic improvement. Harrowing journeys such as those undertaken by the Florida Panhandle sex trafficking victims are sure to be repeated, and cities as quiet as Tallahassee are certain to remain their destination.

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<sup>198</sup> Notes by author from *United States v. Melchor*, No. 4:07cr14-SMP (N.D. Fla. May 15, 2007), Sentencing Hearing, Dec. 15, 2008.

