

**GANG-CONTROLLED SEX TRAFFICKING**

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**ABSTRACT**

*Looking for new sources of revenue, gangs have turned to sex trafficking to fill their coffers with illicit profits. Their penchant for violence and experience with other unlawful activities make gang involvement in sex trafficking a dangerous combination. This Article discusses the mechanisms by which gangs traffic victims, including: the means by which gangs recruit and maintain victims; the tools they use to market victims to customers; and the methods they employ to prevent victims from escaping their clutches. The Article provides examples of these activities from sex trafficking cases prosecuted in federal courts throughout the United States. It also discusses the attributes of gangs that make them formidable sex traffickers, including their structure, discipline, and reputation for violence. The Article concludes by arguing that, absent aggressive intervention, gangs are likely to expand their domain in the world of sex trafficking.*

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*“[W]hen devoid of virtue man is the most unscrupulous and savage of animals, and the worst in regard to sexual indulgence and gluttony.”*

– Aristotle<sup>1</sup>

## I. INTRODUCTION

Criminal enterprises have always found creative ways to make money outside of the confines of the law. They do so through the commission of robberies and the operation of extortion schemes, gambling enterprises, narcotics distribution rings, and loan sharking ventures, to name but a few.<sup>2</sup> Prostitution and sex trafficking have also been an important source of revenue for organized criminals.<sup>3</sup> For a number of reasons, sex trafficking has even stronger appeal to criminal street gangs. Among other things, sex trafficking is highly profitable; it entails relatively minimal risk of detection by the police, and gangs already possess many of the tools and connections necessary to operate a sex

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<sup>1</sup> ARISTOTLE, *POLITICS* bk. I, at 13 (H. Rackham trans., Harvard Univ. Press rev. ed. 1978) (c. 350 B.C.E.).

<sup>2</sup> Andrew R. Dick, *When Does Organized Crime Pay? A Transaction Cost Analysis*, 15 INT’L REV. L. & ECON. 25, 26 (1995).

<sup>3</sup> *See, e.g.*, *United States v. Martinez*, 962 F.2d 1161, 1166 n.9 (5th Cir. 1992) (noting that the Mexican mafia raised money through prostitution and the sale of narcotics); *Doe v. Doe*, 941 F.2d 280, 283 (5th Cir. 1991) (describing how the mafia generated revenue through prostitution, gambling, and narcotics distribution); *United States v. Juvenile Male No. 2*, 761 F. Supp. 2d 27, 34 (E.D.N.Y. 2011) (discussing a member of the MS-13 gang who admitted that MS-13 was involved in prostitution, among other unlawful enterprises); RONALD GOLDFARB, *PERFECT VILLAINS, IMPERFECT HEROES: ROBERT F. KENNEDY’S WAR AGAINST ORGANIZED CRIME* 29 (1995) (noting the mafia’s involvement in prostitution); SUDHIR VENKATESH, *GANG LEADER FOR A DAY: A ROGUE SOCIOLOGIST TAKES TO THE STREETS* 37 (2008) (explaining how one Chicago gang made its money “not only [by] dealing drugs[,] but also by extortion, gambling, prostitution, selling stolen property, and countless other schemes”).

trafficking venture.<sup>4</sup> For these and other reasons, law enforcement agencies have seen an increase in gang activity,<sup>5</sup> including gang-controlled sex trafficking.<sup>6</sup>

This Article gives an overview of gang-controlled sex trafficking.<sup>7</sup> In particular, it discusses some of the advantages that sex trafficking offers gangs, including the substantial profits that can be gained from prostitution with minimal risk.<sup>8</sup> It further considers the many attributes of

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<sup>4</sup> John M. Hagedorn, *Gang Violence in the Postindustrial Era*, 24 CRIME & JUST. 365, 365 (1998) (“Many gangs operate as well-armed economic units inside a vastly expanded informal economy.”).

<sup>5</sup> NAT’L GANG INTELLIGENCE CENTER, NAT’L GANG THREAT ASSESSMENT 9 (2011) [hereinafter NAT’L GANG THREAT ASSESSMENT] (“Gangs are expanding, evolving and posing an increasing threat to US communities nationwide.”); Heather Mac Donald, *The Immigrant Gang Plague*, CITY J., Summer 2004, at 31–32 (“Gang crime is exploding nationally—rising 50 percent from 1999 to 2002—driven by the march of Hispanic immigration east and north across the country.”).

<sup>6</sup> NAT’L GANG THREAT ASSESSMENT, *supra* note 5, at 9 (“Gangs are increasingly engaging in non-traditional gang-related crime, such as alien smuggling, human trafficking, and prostitution.”); *see also* United States v. Juarez-Santamaria, 513 F. App’x 306, 307 (4th Cir. 2013) (“Juarez is a member of the MS-13 gang. Through his involvement in the gang, Juarez and his associates orchestrated the prostitution of a twelve-year-old girl named G.T. During the course of three to four months, Juarez set up clients for G.T. in Maryland, Virginia, and the District of Columbia . . .”).

<sup>7</sup> Criminologists, prosecutors, and law enforcement agencies differ with respect to the definition of “gang-related” and “gang-controlled” crimes. For purposes of this article, the authors define “gang-controlled” crime as occurring “when gang members participate [in a given activity], regardless of motive.” Anthony A. Braga et al., *Understanding and Preventing Gang Violence: Problem Analysis and Response Development in Lowell, Massachusetts*, POLICE Q., Mar. 2006, at 33 (noting that the foregoing definition of “gang-related” is used by the Los Angeles Police Department).

<sup>8</sup> Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169, 176 (1968) (economists assume “that a person commits an offense if the expected utility to him exceeds the utility he could get by using his time and other resources at other activities”). It appears that gangs have become involved with sex-trafficking because it generates higher profits than other crimes, or at least represents a way for gangs to diversify their criminal revenue portfolios.

gangs that make them such formidable sex traffickers.<sup>9</sup> The Article likewise discusses some of the mechanisms that sex trafficking gangs use—including recruiting and marketing techniques—and compares them to those used by autonomous pimps.<sup>10</sup> This Article demonstrates that gang-controlled sex trafficking is extremely pernicious and generally more dangerous than solo pimps who engage in sex trafficking. Because there are numerous gang members in the United States and many potential victims,<sup>11</sup> gangs have developed the skills and attributes required for sex

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<sup>9</sup> For purposes of this article, a “gang” is an “ongoing group, club, organization, or association of 5 or more persons . . . that has as 1 of its primary purposes the commission of 1 or more . . . criminal offenses.” 18 U.S.C.A. § 521(a)(A) (West 2002). Another suitable definition would be, “any long-term arrangement between multiple criminals that requires coordination and involves agreements that, owing to their illicit status, cannot be enforced by the state.” David Skarbek, *Putting the “Con” into Constitutions: The Economics of Prison Gangs*, 26 J.L. ECON. & ORG. 183, 184 (2010). As is the case with the term “gang-related,” there are multiple definitions of the term “gang.” See Scott H. Decker et al., *Gangs, Migration, and Crime: The Changing Landscape in Europe and the USA*, 10 J. INT’L MIGRATION & INTEGRATION 393, 396 (2009) (“The term ‘gang’ is fraught with considerable definitional diversity in American research . . .”).

<sup>10</sup> “Autonomous pimps,” however, are not always so autonomous. For example, gangs sometimes require that these pimps pay “rent” to operate in a gang’s area of control. See, e.g., *United States v. Machado-Erazo*, 986 F. Supp. 2d 39, 50 (D.D.C. 2013) (noting that one “of MS-13’s primary methods for controlling territory is threatening physical harm to force illicit businesses [including pimps] operating in the area to pay ‘rent’ or ‘taxes’ to the gang”); *Hoang v. Walker*, No. CV 08-5651-GHK(AJW), 2011 WL 940208, at \*1 (C.D. Cal. Mar. 11, 2011) (“One of the primary activities of the gang discussed at trial was the extortion of money from illegal houses of prostitution.”); PEGGY J. PARKS, *GANGS* 23 (2011) (describing how a gang required a vendor to pay “rent” to operate in an area controlled by the gang); VENKATESH, *supra* note 3, at 37 (noting that prostitutes controlled by pimps give the gang a “cut” of their proceeds).

<sup>11</sup> In this Article, the term “victim” is used to describe those who are sex-trafficked. Under federal law, a person is sex trafficked—and is therefore considered to be a victim of sex trafficking—if a trafficker causes or attempts to cause that person to engage in a commercial sex act and: (1) the trafficker uses, or attempts to use, fraud, force, or other coercion to induce the prostitution; or (2) the person to be prostituted is under the age of eighteen. See 18 U.S.C.A. § 1591(a) (West 2008). Thus, based on the authors’ collective experience investigating cases and interviewing sex trafficking victims—as well as women who choose to prostitute themselves—the authors do not espouse the view that all

trafficking.<sup>12</sup> Furthermore, this Article concludes that, because sex trafficking is so profitable, gang-controlled sex trafficking is unlikely to abate any time soon.<sup>13</sup>

## II. WHY GANGS HAVE MOVED INTO SEX TRAFFICKING

Gangs are delving into sex trafficking because they want money, and sex trafficking is where the money is.<sup>14</sup> Trafficking—especially of girls between the ages of fourteen and eighteen—entails a number of advantages for gangs, including a ready supply of “product,”<sup>15</sup> low overhead, a large customer base, and the fact that prostitution ventures require only a minimal amount of skill to operate.<sup>16</sup> Many gang leaders

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women who prostitute (including adult women who are self-employed prostitutes) are “victims.” *But see* Ronald D. Weitzer, *Flawed Theory and Method in Studies of Prostitution*, 11 *VIOLENCE AGAINST WOMEN* 934, 935 (2005) (noting that some people hold the view that the “distinction between ‘forced’ and ‘voluntary’ prostitution is . . . a myth and that some type of coercion and domination is always involved”).

<sup>12</sup> Hagedorn, *supra* note 4, at 376 (“One important change in modern gangs is that there are more of them.”).

<sup>13</sup> *United States v. Todd*, 627 F.3d 329, 336 n.2 (9th Cir. 2010) (“[I]n enacting section 1591 Congress found that trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises.”) (citation omitted) (internal quotation marks omitted).

<sup>14</sup> *See* Hagedorn, *supra* note 4, at 365 (noting that money is one of the main reasons that people join gangs in the first place); PARKS, *supra* note 10, at 19 (noting that one reason for joining a gang is the lure of making money from illegal activities); VENKATESH, *supra* note 3, at 35 (“[I]f you rose high enough [in the gang hierarchy] and lived long enough, you could make an awful lot of money.”).

<sup>15</sup> LEONARD W. WEISS, *ECONOMICS AND SOCIETY* 107 (2d ed. 1975) (explaining that “[s]upply is the quantity of some commodity that sellers are ready and willing to sell”). Sadly, the “commodity” that gangs sell are victims’ bodies.

<sup>16</sup> *See, e.g.*, ROBERT K. JACKSON & WESLEY D. MCBRIDE, *UNDERSTANDING STREET GANGS* 26 (1992) (“One should keep in mind that most gang members are unskilled and poorly educated, especially during their younger, active years.”); KAREN L. KINNEAR, *GANGS: A REFERENCE HANDBOOK* 4 (2d ed. 2009). Still, there are exceptions to this rule, and the authorities sometimes encounter highly intelligent gang members. *See, e.g.*,

understand that capital—in addition to allowing the gang to operate, thrive, and project power—is also necessary for gang members to sustain themselves.<sup>17</sup> For example, money gives a gang an edge in warfare with rival gangs who cannot afford firearms, vehicles, and other gang accoutrements.<sup>18</sup> Because gang leaders are motivated by the desire for money, power, and influence—which can be purchased directly or indirectly with money<sup>19</sup>—they see sex trafficking as an excellent opportunity to generate revenue.<sup>20</sup>

### A. SUBSTANTIAL PROFITS AND MINIMAL STARTUP COSTS

Perhaps the greatest attraction to sex trafficking is its low startup costs.<sup>21</sup> With as little as one hundred dollars of investment capital, a gang

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VENKATESH, *supra* note 3, at 27–29 (describing an intelligent and business-savvy gang leader named “J.T.”). Sex trafficking, however, allows even those with minimal skills to reap substantial profits, with minimal effort. SIDDHARTH KARA, SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY 24 (2009) (noting that maintaining sex slaves “requires minimal effort” but can result in huge profits for traffickers).

<sup>17</sup> See, e.g., *United States v. Turkette*, 452 U.S. 576, 590 (1981) (describing how profit-generating crimes are “a major source of revenue and power” for organized criminals); VENKATESH, *supra* note 3, at 18 (noting that gang members enjoyed talking about “sex, power, and money”); James Fallows, *How America Can Rise Again*, ATLANTIC MONTHLY, Jan. 2010, at 48 (“As wealth flows, so inevitably will armed strength.”).

<sup>18</sup> *Executive Summary*, 53 JOINT FORCE Q. 1, 6 (2009) (for nations as well as gangs, “[s]ustained economic power is at the root of sustainable military power”).

<sup>19</sup> JOHN STUART MILL, PRINCIPLES OF POLITICAL ECONOMY 489 (W. J. Ashley ed., Longmans, Green & Co. 1936) (1848) (“[T]he value of money is what money will exchange for; the purchasing power of money.”).

<sup>20</sup> Tom Donilon, *The National-Security Case for Free Trade*, WALL ST. J., Oct. 6, 2011, at A19 (noting that power and influence are directly tied to “economic strength”).

<sup>21</sup> In 1977, Congress recognized that child prostitution was both organized and lucrative. S. Rep. No. 95-438, at 5 (1977), *reprinted in* 1978 U.S.C.C.A.N. 40, 42 (noting that “child pornography and child prostitution have become highly organized, multimillion dollar industries that operate on a nationwide scale”). The more recent

can quickly recoup its investment and reap substantial profits. To get started, a gang simply needs a single victim to prostitute. Victims can usually be acquired for nothing, or merely a small percentage of the profits.<sup>22</sup> It helps if the gang has alcohol or drugs to inebriate the victim and a cellular telephone that customers can call,<sup>23</sup> but even these tools are not essential. Access to a hotel room is also valuable, insofar as hotels are the place where victims usually hold “dates,” as commercial sexual assignations are typically called by pimps and victims.<sup>24</sup> However, gangs and autonomous pimps have been known to prostitute victims in cars, abandoned houses, garages, automobile repair shops, and even borrowed apartments.<sup>25</sup> A gang can also sometimes persuade a customer to rent a

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manifestations of gang-controlled sex trafficking may be due, at least in part, to law enforcement agencies’ increased awareness of sex trafficking. It also appears, however, that certain gangs have discovered that sex trafficking is an easy way to generate revenue.

<sup>22</sup> Peter T. Leeson & Douglas B. Rogers, *Organizing Crime*, 20 SUP. CT. ECON. REV. 89, 94 (2012) (“Natural barriers to entry are significantly higher in some criminal industries than others. Differences in startup costs are an important determinant of these barriers. Startup costs include physical capital, labor, and human capital; requirements that would-be criminals must satisfy to engage in their desired enterprise.”). For sex traffickers, those barriers are paltry, particularly in comparison to their likely profits.

<sup>23</sup> PARKS, *supra* note 1010, at 18 (“Cell phones . . . play a crucial role in gang operations. Gangbangers communicate with each other by sending text messages, and it is not uncommon for them to use multiple phones that they discard after they have completed criminal operations such as drug trafficking.”).

<sup>24</sup> See *United States v. Warren*, 491 F. App’x 775, 777 (8th Cir. 2012) (describing how one prostitute often referred to appointments with customers as “dates”); *United States v. Madison*, 477 F.3d 1312, 1314 (11th Cir. 2007) (referring to meetings with sexual customers as “dates”); *United States v. Evans*, 476 F.3d 1176, 1177 (11th Cir. 2007) (“Evans arranged ‘dates’ for Jane Doe at local hotels, and Jane Doe gave the money she earned on these dates to Evans.”); *United States v. Pipkins*, 378 F.3d 1281, 1285–86 (11th Cir. 2004) (“[P]rostitutes were required to perform sexual acts, known as ‘tricks’ or ‘dates,’ for money.”), *cert. granted, vacated by* 544 U.S. 902 (2005), *opinion reinstated by* 412 F.3d 1251 (11th Cir. 2005), and *cert. denied*, 546 U.S. 994 (2005).

<sup>25</sup> *United States v. Hornbuckle*, Nos. 12–10541, 12–10615, 2015 WL 1783073, at \*1 (9th Cir. Apr. 21, 2015) (noting that “[t]he three homeless minors who are the subject of this case . . . often performed sex acts for clients . . . in [the defendants’ mother’s]



hotel room for the customer's sex acts with a victim. Once the customer leaves, the victims and the gang can take over the hotel room for the night and use it for other customers, as well as gang revelry. Furthermore, once the gang has been paid by a few customers, they can then use that money to rent other hotel rooms, purchase cellular telephones, and post advertisements on the Internet. Moreover, if the gang has access to a car or public transportation, they might do "outcalls," which entail taking the victims to whatever location a customer requests, usually the customer's house or apartment.<sup>26</sup> A gang just beginning its foray into sex trafficking, therefore, can be successful with only a minimal investment of capital.

Once a gang has begun to engage in sex trafficking, it quickly becomes profitable. Some gangs charge as little as \$30 for fifteen minutes of sex,<sup>27</sup> but others charge as much as \$250 or higher for "extras" or "fetishes."<sup>28</sup> Obviously, the level of profitability depends on the number of customers and the amount each customer is charged, but in many parts of the United States, there is a large customer base willing to pay substantial

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garage); *Pipkins*, 378 F.3d at 1286 (noting that commercial sex acts were performed "in adult clubs, in parking lots, on mattresses behind local businesses, in cars, in motel rooms, or in rooming houses"); see also Transcript of Trial of Jul. 26, 2011, vol. 2, 163–68, 174, *United States v. Juarez-Santamaria*, No. 1:11-CR-217 (E.D. Va. Feb. 2, 2012) (describing how the victim was required to perform sexual acts with customers at an apartment, on a mattress placed on the floor of a mechanic's garage, and in a parked car).

<sup>26</sup> See *United States v. Pringler*, 765 F.3d 445, 450 (5th Cir. 2014) (noting that the defendant "drove [the victims] to 'outcall' appointments"); *Floyd v. Baker*, 47 F. Supp. 3d 1148, 1156 (D. Nev. 2014) (noting that an "outcall" entailed a woman being "dispatched" to the customer's apartment); *Goodman v. Las Vegas Metro. Police Dep't*, 963 F. Supp. 2d 1036, 1048 n.4 (D. Nev. 2013) (noting that an "outcall nude entertainer essentially operates as an exotic dancer, but performs at locations requested by the client").

<sup>27</sup> *Pipkins*, 378 F.3d at 1286 (noting that a female prostitute charged customers thirty to eighty dollars for each "trick" performed, but was then "required to turn over all of this money to her pimp").

<sup>28</sup> "Fetishes" can include kissing, oral or anal sodomy, or anything else a pimp or gang chooses. Because pimps and gangs charge customers more for fetishes, they have incentive to broadly define the term.

sums of money for sex.<sup>29</sup> A single victim can easily generate at least \$500 per day—even in suburban areas—and can frequently generate much more.<sup>30</sup> This money is also tax-free. Assuming that a gang has \$100 per day in overhead costs—for condoms, a cheap hotel room, Internet advertisements, food for the victim, drugs, and cellular telephone service—that still leaves the gang with \$400 profit per day, and that is simply for trafficking one victim. If two victims are prostituted from the same hotel room, the additional overhead is negligible, while the profits double. Add a third victim—which is fairly common—and gangs can easily generate profits in excess of \$1,000 per day, all of which is tax-free.<sup>31</sup> Although most victims are prostituted six or seven days per week,<sup>32</sup> even a gang that only prostituted three victims three hundred days per year would reap over \$300,000 per year, tax-free. And some victims generate much more than \$500 per day, so \$300,000 of income may be on the low side.

Unlike the sale of drugs—which can generally be sold only once—sex-trafficking victims can be sold day after day, month after month. Although some gangs have been known to sell drugs to customers, steal them back, and then resell the drugs to other customers,<sup>33</sup> this cycle can

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<sup>29</sup> See, e.g., Statement of Facts at 4, *United States v. Sanchez Hernandez*, No. 1:14-CR-263 (E.D. Va. Jul. 30, 2014) [hereinafter *Hernandez Statement of Facts*] (describing how the females prostituted by the defendant typically “would have sexual relations with approximately 20 customers per day”).

<sup>30</sup> See, e.g., Statement of Facts at 9, *United States v. Barcus*, No. 1:13-CR-95 (E.D. Va. Mar. 11, 2013) [hereinafter *Barcus Statement of Facts*].

<sup>31</sup> By “tax free,” the authors mean that it is unlikely that sex traffickers will report their ill-gotten proceeds or pay income taxes.

<sup>32</sup> See *Hernandez Statement of Facts*, *supra* note 29, at 4 (noting that the defendant would prostitute females six days per week); Statement of Facts at 7, *United States v. Swinney*, No. 1:13-CR-422 (E.D. Va. Nov. 4, 2013) [hereinafter *Swinney Statement of Facts*] (“Swinney generally did not allow the women and girls whom he prostituted to take a day off, despite the fact that [the victims] asked to have days off.”).

<sup>33</sup> See, e.g., *United States v. Alviar*, 573 F.3d 526, 532 (7th Cir. 2009) (noting that the defendant both stole and sold drugs); *United States v. Baker*, 432 F.3d 1189, 1220 (11th Cir. 2005) (describing how the defendant, a police officer, was hired by drug dealers “to steal drugs and money from their customers”). Drugs are a “particularly

neither go on forever nor result in as many transactions as can safely be conducted by prostituting sex-trafficking victims. Additionally, the “sale-theft-resale” cycle of drug distribution generally requires the use of weapons and often entails forceful confrontations.<sup>34</sup> It also creates a substantial risk of reprisal by the defrauded customers. Such a scheme greatly endangers the safety of the gang members and increases the risk of police detection. Moreover, these fleeced customers will likely never be return customers, so the gang constantly has to find new patrons. This can become labor intensive, and it also increases the risk that one of the “customers” is an undercover police officer making a controlled purchase of narcotics.<sup>35</sup> Sex trafficking is therefore a much safer way to generate profits that are as great as—or greater than—those a gang can earn from narcotics trafficking. Is it any wonder, then, that many gangs have elected to form sex trafficking ventures for this reason alone?

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attractive target” for thieves because a victim of drug theft is unlikely to report to the police that he was robbed of an unlawful substance and thereby confess to possessing a controlled substance. Tomas J. Philipson & Richard A. Posner, *The Economic Epidemiology of Crime*, 39 J.L. & ECON. 405, 428 (1996) (noting that a criminal who is a victim of theft is “unlikely to complain to the police”).

<sup>34</sup> See *United States v. Williams*, 81 F.3d 1434, 1437 (7th Cir. 1996) (“[El Rukn gang members] committed many murders, and engaged in much other violence, in the turf wars that are endemic to the trade in illegal drugs.”); *United States v. Martinez*, 938 F.2d 1078, 1083–84 (10th Cir. 1991) (recognizing that a high level of violence is not uncommon in the drug distribution business and “weapons are often viewed as necessary tools to facilitate it”).

<sup>35</sup> There likewise is a risk that a “customer” is actually an undercover police officer when pimps and gangs engage in prostituting victims. Pimps and gangs, however, take precautions to minimize this risk. See, e.g., Barcus Statement of Facts, *supra* note 30, at 8 (noting that victims were taught how to screen for undercover law enforcement agents and were instructed to touch a customer’s genitalia before performing sexual services, based on the belief that an undercover police officer would not permit such contact). Furthermore, some Hispanic gangs will only transact business with illegal aliens who have accents from Central American countries. Other pimps and gangs will only accept new customers if a former customer vouches for a new customer.

## B. RISK MINIMIZATION

In addition to providing an opportunity for substantial profits, sex trafficking also usually allows gangs to minimize a variety of risks. These include: the risk of death or injury from violence,<sup>36</sup> the risk of detection by the police, and the risk of successful prosecution.

Sex trafficking usually does not require traffickers to engage in violent acts towards anyone other than the victims,<sup>37</sup> and even those harms can be minimized through the gang's pervasive ability to intimidate and

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<sup>36</sup> This is not to say that sex trafficking poses no risk of violence to the perpetrators. Pimps and gangs sometimes use firearms and violence to “steal” victims from other pimps. *See, e.g.*, Statement of Facts at 14, *United States v. Dumas*, No. 1:13-CR-94 (E.D. Va. Mar. 18, 2013) [hereinafter *Dumas* Statement of Facts] (noting that a semi-automatic pistol was carried to threaten and intimidate a rival pimp); *Barcus* Statement of Facts, *supra* note 30, at 13–14 (describing how a member of the Cold Blooded Cartel organization kept a firearm in his pocket when confronting a rival pimp and taking his juvenile victims). Unruly or dissatisfied customers can also sometimes be violent. Still, on average, a purveyor of prostitution faces less risk of violence than a typical drug trafficker.

<sup>37</sup> That is not to say that sex traffickers never use violence; indeed, many frequently do. The point is simply that many sex traffickers can be successful without resorting to violence. Pimps and gangs that engage in prostitution, however, are known to use violence to enforce the rules they impose upon victims. *See, e.g.*, *United States v. Pipkins*, 378 F.3d 1281, 1286 (11th Cir. 2004). One court described the violence inflicted by a group of pimps as follows:

The pimps sometimes brutally enforced these rules. Prostitutes endured beatings with belts, baseball bats, or “pimp sticks” (two coat hangers wrapped together). The pimps also punished their prostitutes by kicking them, forcing them to lay naked on the floor and then have sex with another prostitute while others watched, or “trunking” them by locking them in the trunk of a car to teach them a lesson.

*Pipkins*, 378 F.3d at 1286. *See also* *United States v. Cephus*, 684 F.3d 703, 706 (7th Cir. 2012) (discussing how the violence inflicted on victims included “whipping, beating, or choking,” among other acts, such that one victim looked “like she got hit by a train”); *Barcus* Statement of Facts, *supra* note 30, at 10 (noting that the defendant broke the nose of one victim and battered two others).

manipulate victims.<sup>38</sup> Most victims are too afraid of gang members to resist the gang openly, so gangs are frequently able to control victims without having to resort to violence. Furthermore, when instances of sex trafficking do require the use of violence, traffickers are less likely to be on the receiving end of the violence, unlike in drug transactions or extortion attempts where there is a greater danger of being harmed.<sup>39</sup> With sex trafficking, the gang is typically the entity that perpetrates the violence.<sup>40</sup> Thus, running a prostitution operation usually poses significantly less risk of injury from violence than does narcotics distribution,<sup>41</sup> loan sharking,<sup>42</sup> or extortion.<sup>43</sup> In committing those crimes,

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<sup>38</sup> JACKSON & MCBRIDE, *supra* note 16, at 13 (noting that the average gang member is “accomplished in the art of manipulation”).

<sup>39</sup> *See, e.g.*, United States v. Maddox, 944 F.2d 1223, 1228 (6th Cir. 1991). In *Maddox*, a panel of the Sixth Circuit described the danger of violence faced by the members of a cocaine distribution conspiracy:

Selling cocaine is a rough business, and the Maddox organization was prepared for trouble. Guns were pervasive at each location. All of the persons who worked there had guns available. Sometimes, especially at night, they would meet persons at the door with guns drawn. Nor was their caution baseless. Lionel Keener chose to get out of the cocaine business because, once, while he was on duty at a Maddox crack house, a scuffle escalated to gunplay, and Keener was shot.

*Id.* at 1228.

<sup>40</sup> *See* United States v. Rubi-Gonzalez, 311 F. App'x 483, 486 (2d Cir. 2009) (noting that the commission of acts of violence was both a part of membership in MS-13 and a way for gang members to gain respect); *Pipkins*, 378 F.3d at 1285 (discussing how sex traffickers use violence to control victims).

<sup>41</sup> Narcotics distribution often entails the danger of violence from suppliers, rival distributors, dissatisfied or impecunious customers, and thieves. *See* United States v. Williams, 81 F.3d 1434, 1437 (7th Cir. 1996); United States v. Martinez, 938 F.2d 1078, 1083–84 (10th Cir. 1991).

<sup>42</sup> *See, e.g.*, United States v. Riggi, 541 F.3d 94, 109 (2d Cir. 2008) (“[Loansharking involves] lending money at high interest rates, and using violence or the threat of violence to ensure repayment.”); United States v. Perrotta, 289 F.3d 155, 167 (1st Cir.

gangs face a substantial risk that their victims will be armed.<sup>44</sup> Thus, those endeavors are more dangerous for gangs than sex trafficking, where victims are usually unarmed.<sup>45</sup>

Furthermore, although traffickers may beat victims as a means of controlling them, any such beatings are likely to occur away from prying eyes and sympathetic individuals who might otherwise report this violence to the police.<sup>46</sup> Also, victims frequently are not in a position to resist with force, retaliate with violence, or report their victimization to the police, at least while they are under a gang's control.<sup>47</sup> Most female victims also lack the upper body strength needed to inflict significant injury on their traffickers, and they usually do not have access to firearms that might level the playing field. This further reduces the risk to gang members who elect to engage in sex trafficking. Thus, whatever violence a gang chooses to inflict upon a victim, it is unlikely to result in publicly observable confrontations or injuries that could garner police attention. Reducing the level of violence required to earn a profit, therefore, also minimizes the

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2002) (noting that a “loansharking conspiracy . . . used violence to enforce repayment obligations”).

<sup>43</sup> Most definitions of the term “extortion” require the criminal to use violence, or at least create a credible threat of violence. *See* 18 U.S.C.A. § 1951(b)(2) (West 2014) (“The term ‘extortion’ means the obtaining of property from another, with his consent, induced by the wrongful use of actual or threatened force, violence, or fear.”). There is often the risk that a victim will have access to firearms or otherwise possess the ability to counter whatever pressure an extortionist brings to bear.

<sup>44</sup> *See Maddox*, 944 F.2d at 1228.

<sup>45</sup> Philipson & Posner, *supra* note 33, at 410 (“The fact that a sizable fraction of potential crime victims is armed makes violent crime a dangerous activity . . .”).

<sup>46</sup> *See, e.g., Swinney Statement of Facts, supra* note 32, at 4–5 (describing how the defendant would often beat women, but usually only in the presence “of the other women that he was prostituting as a means of instilling fear in all of them”).

<sup>47</sup> Braga et al., *supra* note 7, at 34 (noting that gang violence is “often retaliatory in nature”).

risk of discovery by law enforcement agents, who are more likely to be called when a violent confrontation ensues.<sup>48</sup>

The nature of the “product”—that is, the victims—distributed by sex trafficking gangs also does not lend itself to police detection. Consider that when the police encounter a drug trafficker and find a quantity of narcotics in the trafficker’s possession, the unlawful nature of the narcotics is usually readily apparent. When the drug distributor is prosecuted, the patent unlawfulness of his wares leaves the distributor with only the defense of lack of knowledge: “The drugs were not mine, and I did not know that they were in my car, bag, pocket, etc.” But such a defense can be easily defeated in most cases because distributors will have demonstrated the requisite mens rea through prior transactions; the quantity and location of the narcotics; testimony of customers; false exculpatory statements; or, through admissions by the distributor. In short, it is not difficult for law enforcement agencies to determine when a gang member is in possession of unlawful substances, such as narcotics, and the available defenses are extremely limited once the unlawful substance is discovered. This makes it more likely that such drug-related crimes will result in the arrest and successful prosecution of the perpetrator.

By contrast, a gang member in possession of a sex trafficking victim may look innocuous, even to a well-trained investigator. After all, there is nothing particularly suspicious about young men having young women or teenage girls in their presence. They may be dating, or they could be friends or even relatives. A police officer making a traffic stop, therefore, has no reason to believe that the women or girls he sees in a vehicle with gang members are victims of trafficking. Even if he suspects that something is amiss, the officer will have no articulable facts upon which to make an arrest unless a victim confirms the she is the victim of

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<sup>48</sup> RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* 264 (Aspen Law & Business 5th ed. 1998) (noting that the violence the public is aware of tends to frighten “the public and therefore incites great effort by the police to prevent the activity that gives rise to it”); see also Cynthia C. Harper & Sara S. McLanahan, *Father Absence and Youth Incarceration*, 14 J. RES. ON ADOLESCENCE 369, 375–77 (2004) (“Violent crimes are more likely to be reported to the police than property crimes and are more than twice as likely to end in arrest.”).

sex-trafficking. Moreover, most victims will be too intimidated to say anything while gang members are nearby, even if a patrol officer conducts a private interview of a victim. Victims often will remain too fearful—or too loyal to the pimp or gang—to confide in the police. Without a victim willing or able to report the crime, sex trafficking often goes undetected. Thus, this too makes sex trafficking a much less dangerous endeavor than most other means that gangs use to generate income.

Assuming, however, that the police are able to determine that certain gang members are sex traffickers, they still need probable cause to make an arrest, and the prosecution must marshal sufficient evidence to prove each element of the crime of sex trafficking beyond a reasonable doubt.<sup>49</sup> Thus, to prove that a gang member—or any other sex trafficker—was involved in sex trafficking a minor, for example, the prosecution would have to show that: (1) the defendant knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained a victim or benefitted financially from participation in a venture which sex trafficked a victim; (2) the defendant did so knowing or in reckless disregard of the fact that the victim would be caused to engage in a commercial sex act; (3) the defendant knew that the victim was under the age of eighteen years, recklessly disregarded this fact, or had a reasonable opportunity to observe the victim; and (4) the sex trafficking had an effect on interstate commerce.<sup>50</sup> Notably, there is no need for the government to show that a

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<sup>49</sup> See, e.g., *In re Winship*, 397 U.S. 358, 364 (1970) (noting that due process requires the government to prove every element of the charged offense beyond a reasonable doubt); see also *United States v. Gaudin*, 515 U.S. 506, 511 (1995) (“The Constitution gives a criminal defendant the right to demand that a jury find him guilty of all the elements of the crime with which he is charged . . . .”); *Holland v. United States*, 348 U.S. 121, 138 (1954) (“The Government must . . . prove every element of the offense beyond a reasonable doubt though not to a mathematical certainty.”).

<sup>50</sup> See 18 U.S.C.A. § 1591(a) (West 2008). 18 U.S.C.A. § 1591(a) provides that:

Whoever knowingly in or affecting interstate or foreign commerce . . . recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or . . . benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described [above] . . . knowing, or in reckless disregard of the



minor victim was coerced or forced to perform sex acts.<sup>51</sup> Because sex trafficking necessarily requires a victim who was trafficked,<sup>52</sup> establishing probable cause and proof beyond a reasonable doubt requires at least

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fact . . . that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished . . .

*Id.* See also *United States v. Brinson*, 772 F.3d 1314, 1325 (10th Cir. 2014) (enumerating the elements of the offense); *United States v. Garcia-Gonzalez*, 714 F.3d 306, 312 (5th Cir. 2013) (approving a jury instruction listing the elements of 18 U.S.C. § 1591(a)); *United States v. Robinson*, 702 F.3d 22, 34 (2d Cir. 2012) (“In a prosecution under § 1591, the government may satisfy its burden of proof with respect to the defendant’s awareness of the victim’s age by proving any of the following beyond a reasonable doubt: (1) the defendant knew that the victim was under eighteen; (2) the defendant recklessly disregarded the fact that the victim was under eighteen; or (3) the defendant had a reasonable opportunity to observe the victim.”); *United States v. Booker*, No. 11-1241, 2011 WL 5924380, at \*1 (7th Cir. Nov. 16, 2011) (“Under the statute, lack of knowledge of the minor’s age is not a defense if the defendant had ‘a reasonable opportunity to observe’ the victim.”); *United States v. Brooks*, 610 F.3d 1186, 1196–97 (9th Cir. 2010). Individuals are also liable under the statute if they participate in a venture that engages in sex trafficking and benefit financially or receive something of value from their participation in the venture. See 18 U.S.C. § 1591(a)(2); *United States v. Cook*, 782 F.3d 983, 987–88 (8th Cir. 2015).

<sup>51</sup> *United States v. Campbell*, 764 F.3d 880, 888 (8th Cir. 2014) (noting that when a minor is trafficked, the government is not required to show that the defendant used fraud, force, or coercion to induce the minor to commit sex acts); *United States v. Elbert*, 561 F.3d 771, 777 (8th Cir. 2009) (“[T]he government was only required to prove defendant knowingly recruited, enticed, harbored, transported, provided, or obtained a minor, knowing the minor would be caused to engage in commercial sex acts.”).

<sup>52</sup> In contrast, the crime of *attempted* sex trafficking does not require that there be an actual victim, because mistake of fact is not a defense to attempted crimes. See, e.g., *United States v. Williams*, 553 U.S. 285, 300 (2008) (“As with other inchoate crimes . . . impossibility of completing the crime because the facts were not as the defendant believed is not a defense.”); *United States v. Resendiz-Ponce*, 549 U.S. 102, 107 (2007) (“As was true at common law, the mere intent to violate a federal criminal statute is not punishable as an attempt unless it is also accompanied by significant conduct.”). Thus, for example, a defendant could commit the crime of attempted sex trafficking by trying to recruit an undercover detective—whom the defendant incorrectly believes is less than eighteen years of age—online.

minimal cooperation from the victim. But because such cooperation is frequently lacking,<sup>53</sup> that, too, makes sex trafficking less risky for criminals than other remunerative crimes.

Theoretically, prosecutors could establish the essential elements of sex trafficking of a child without the testimony of the victim. For example, if there were video footage of the sex acts and the payment for the act, that might be sufficient evidence. But it is uncommon to find such video evidence. It is also possible to establish the elements of sex trafficking of a child through the testimony of a sex customer that he paid for sex and engaged in a commercial sex act or attempted to do so. But most sex customers lack the moral fiber that would compel them to tell the truth absent some further inducement, such as immunity from prosecution. Furthermore, an underage victim could still testify falsely for the defense that she prostituted herself and was not being prostituted by anyone else. If the court believed the victim's testimony, this would also result in a sex trafficker's acquittal.

Most sex traffickers are happy to prostitute both minors and adults; after all, both result in money in the traffickers' pockets.<sup>54</sup> Although consent is not a defense to sex trafficking minors, true consent—or consent which is not vitiated by fraud or unlawful coercion—is a defense to the trafficking of adults.<sup>55</sup> Thus, when adults are trafficked, the

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<sup>53</sup> As discussed below in section III-A, many victims have emotional and family “issues.” Many identify with their traffickers and remain loyal to them, despite threats, beatings, and mistreatment.

<sup>54</sup> See, e.g., *United States v. Patrick*, 707 F.3d 815, 817 (7th Cir. 2013) (“[The defendant] made his living as a pimp, trafficking both minors and adult women.”); *United States v. Tavares*, 705 F.3d 4, 12 (1st Cir. 2013) (noting that the defendants prostituted minors as well as a woman who was over the age of eighteen); *United States v. Cephus*, 684 F.3d 703, 705 (7th Cir. 2012) (noting that the defendant prostituted girls and women); *Dumas Statement of Facts*, *supra* note 36, at 2 (noting that the defendant prostituted women and girls).

<sup>55</sup> *United States v. Robinson*, 508 F. App'x 867, 870 (11th Cir. 2013) (“[The defendant's] assertion that he did not force [the victim] to prostitute is unavailing. Under the law, minors cannot consent to prostitution.”); see Terry Coonan, *Anatomy of a Sex Trafficking Case*, 5 INTERCULTURAL HUM. RTS. L. REV. 313, 315 (2009) (noting that prosecutors have the burden of demonstrating “non-consent” of the trafficking victim).

government must show that the defendants used fraud, force, or coercion to cause the victims to submit to sex acts with customers.<sup>56</sup> That is, the prosecution must demonstrate that a defendant “(1) did knowingly (2) in or affecting interstate and foreign commerce, (3) entice, recruit, harbor, transport, provide, obtain, or maintain by any means a person, (4) knowing, or in reckless disregard of the fact, (5) that fraud [force, or coercion] would be used to cause such person to engage in a commercial sex act.”<sup>57</sup> Additionally, a defendant is criminally liable when he has aided and abetted some other person in sex trafficking,<sup>58</sup> or benefitted financially from participating in a sex trafficking venture.<sup>59</sup> Sex trafficking

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<sup>56</sup> See, e.g., *United States v. Willoughby*, 742 F.3d 229, 241 (6th Cir. 2014); *Cephus*, 684 F.3d at 708 (noting that coercion is an element of sex trafficking when the victim is not a minor); *United States v. Clark*, 442 F. App’x 774, 775 (4th Cir. 2011) (“[S]ex trafficking of a child, 18 U.S.C. § 1591, does not include force or coercion as an element of the offense.”); *Elbert*, 561 F.3d at 777 (“Because the victims were minors and could not legally consent, the government did not need to prove the elements of fraud, force, or coercion, which are required for adult victims.”). The government may also elect to show that fraud, force, and coercion were used to prostitute minor victims, which increases the mandatory minimum sentence to fifteen years of imprisonment. See, e.g., 18 U.S.C. § 1591(b)(1); *United States v. Weise*, No. 13–14467, 2015 WL 1515578, at \*1, 1 n.1 (11th Cir. Apr. 6, 2015).

<sup>57</sup> *United States v. Flanders*, 752 F.3d 1317, 1330 (11th Cir. 2014) (citing 18 U.S.C. § 1591(a)); see also *Weise*, 2015 WL 1515578, at \*1 (enumerating the elements of the offense of sex trafficking by fraud, force, and coercion).

<sup>58</sup> See *Nye & Nissen v. United States*, 336 U.S. 613, 620 (1949) (“Aiding and abetting [involves] a rule of criminal responsibility for acts which one assists another in performing.”); *id.* at 619 (“In order to aid and abet another to commit a crime it is necessary that a defendant ‘in some sort associate himself with the venture, that he participate in it as in something that he wishes to bring about, that he seek by his action to make it succeed.’”).

<sup>59</sup> See *Flanders*, 752 F.3d at 1331 (“The evidence showed that Flanders benefitted personally when he received payment from two victims in the form of auditioning fees and when he took money from the wallet of a third victim.”); *United States v. Jennings*, 280 F. App’x 836, 844 (11th Cir. 2008) (holding that the defendants derived a financial benefit from a sex-trafficking venture where their codefendant used money derived from a minor’s prostitution to pay for their gas and hotel room); see also 18 U.S.C.A. § 1591(a)(2) (West 2008) (“[Whoever knowingly] benefits, financially or by receiving

of juveniles is also often accomplished by pimps' use of fraud, force, and coercion;<sup>60</sup> but the government need not prove that a defendant employed fraud, force, or coercion in order to convict a defendant of the crime of sex trafficking a child.<sup>61</sup> Still, because the statute imposes a mandatory minimum sentence of fifteen years of imprisonment when sex trafficking is accomplished through the use of fraud, force, or coercion,<sup>62</sup> the prosecution has an incentive to prove this element even in cases involving the sex trafficking of minors. It would be extremely difficult to prove that fraud, force, or coercion induced acts of prostitution without the testimony of the victim.

Because the sex trafficking of adults requires the government to prove that the victim was in some way coerced into performing the commercial sex acts, the government cannot prove that the defendant was guilty of sex trafficking if an adult victim refuses to testify that she was coerced and instead falsely claims that she was voluntarily performing commercial sex acts.<sup>63</sup> When the victims are juveniles, the prosecution

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anything of value, from participation in a venture which has engaged in an act described in violation of [18 U.S.C. § 1591(a)(1)] . . . shall be punished . . . .”).

<sup>60</sup> See *Willoughby*, 742 F.3d at 233 (6th Cir. 2014) (noting that the defendant beat the juvenile victim).

<sup>61</sup> *United States v. Garcia-Gonzalez*, 714 F.3d 306, 313 n.4 (5th Cir. 2013) (“[T]he government was not required to prove coercion under the plain terms of § 1591(a) given that [the victim] was under the age of eighteen.”).

<sup>62</sup> 18 U.S.C.A. § 1591(a)–(b) (West 2008).

<sup>63</sup> This is one of the many ways in which sex trafficking cases are similar to domestic violence cases. See, e.g., *United States v. Hall*, 419 F.3d 980, 988 n.6 (9th Cir. 2005) (“The difficulty of securing the testimony of domestic violence victims . . . against their batterers is well recognized . . . the most common reason for dismissal of domestic violence prosecutions . . . [is] victims' failure to make court appearances or to testify against the defendants.”) (citation omitted) (internal quotation marks omitted); see also 8 U.S.C.A. § 1101(a)(15)(T)(i)(III)(aa) (West 2014) (foreign citizens who are victims of trafficking and seek a T visa to remain in the United States are generally required to cooperate with the prosecution of traffickers, but there are statutory exceptions and there is no enforcement mechanism for ensuring that victims cooperate with prosecution efforts).

does not need to establish that the victims were coerced,<sup>64</sup> but the prosecution generally still needs a victim to testify that she was prostituted by the defendant or defendants. As noted above, this theoretically could also be accomplished through testimony from sex customers who had commercial sex with a juvenile. But even when such testimony is obtained, the victim could sabotage such a prosecution by falsely claiming that she was prostituting herself and that the defendants were merely present when she was doing so.<sup>65</sup> Mere presence at a crime or mere association with criminals is not sufficient to establish guilt.<sup>66</sup> Therefore, testimony from sex trafficking victims is crucial to successfully prosecuting such cases.

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<sup>64</sup> See, e.g., *United States v. Campbell*, 764 F.3d 880, 888 (8th Cir. 2014); *United States v. Elbert*, 561 F.3d 771, 777 (8th Cir. 2009).

<sup>65</sup> *United States v. Romano*, 382 U.S. 136, 141 (1965) (“Presence tells us only that the defendant was there and very likely played a part in the illicit scheme. But presence tells us nothing about what the defendant’s specific function was and carries no legitimate rational or reasonable inference that he was engaged in one of the specialized functions connected with [the crime].”).

<sup>66</sup> See, e.g., *United States v. Williams*, 341 U.S. 58, 64 n.4 (1951) (“To be present at a crime is not evidence of guilt . . . .”); *United States v. Tavares*, 705 F.3d 4, 20 (1st Cir. 2013) (“Mere presence at the scene of the crime, even with knowledge that a crime is being committed, is generally insufficient.”) (internal quotation marks omitted). *But see* *United States v. Westry*, 524 F.3d 1198, 1213 (11th Cir. 2008) (“[M]ere presence is material, highly probative, and not to be discounted.”) (internal quotation marks omitted); *United States v. Figueroa*, 720 F.2d 1239, 1246 (11th Cir. 1983) (“A conspiracy conviction will be upheld . . . when the circumstances surrounding a person’s presence at the scene of conspiratorial activity are so obvious that knowledge of its character can fairly be attributed to him.”); *In re Terrorist Bombings of U.S. Embassies in East Africa*, 552 F.3d 93, 113 (2d Cir. 2008) (“A defendant’s knowing and willful participation in a conspiracy may be inferred from . . . her presence at critical stages of the conspiracy that could not be explained by happenstance, or a lack of surprise when discussing the conspiracy with others.”) (citation omitted) (internal quotation marks omitted); *United States v. Brantley*, 68 F.3d 1283, 1288 n.4 (11th Cir. 1995) (“Although mere association with conspirators and mere presence at the scene of a crime do not in themselves establish participation in a criminal conspiracy, a jury may properly consider both in conjunction with one another and with other facts to infer knowing and intentional participation.”).

When initially encountered, however, many victims commonly claim that they were not coerced into prostitution, or were not even being prostituted. Such victims often prevaricate because of their misplaced loyalty to a gang or a particular gang member, or because they fear that a gang or a pimp will retaliate against them for telling the truth. In the same way, juvenile victims often claim, at least initially, that they were prostituting themselves, or had never engaged in sex acts. Indeed, many victims are willing to commit perjury to help their traffickers avoid being convicted of sex trafficking, and the government often cannot establish that perjury was committed without the victim telling the truth. This should not be a surprise. After all, gangs are able to induce victims to endure sex acts with numerous men for months and sometimes years. For these gangs, convincing these same victims to lie to the police or a jury—or to refuse to say anything—is relatively simple.

These are just a few of the many advantages that sex trafficking offers gangs. In light of these advantages, even gangs that choose to raise revenue primarily from narcotics trafficking and gangs that cannot find enough victims to prostitute full-time have seen fit to supplement their incomes with sex trafficking.<sup>67</sup>

### III. THE OPERATION OF A SEX-TRAFFICKING VENTURE

For numerous reasons, gangs are especially well-suited to carry out sex trafficking crimes. Their structure, organization, and enforced loyalty<sup>68</sup>—among other attributes—make them difficult to monitor and prosecute, particularly when they choose to engage in sex trafficking. In

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<sup>67</sup> A significant number of sex traffickers started out as narcotics traffickers and will continue to distribute drugs if there is demand. *See, e.g.*, *United States v. Duff*, 76 F.3d 122, 125 (7th Cir. 1996) (“People who participate in the drug operations on Monday may conduct different illegal business on Tuesday . . . .”); Dumas Statement of Facts, *supra* note 36, at 3 (noting that a leader of the Cold Blooded Cartel “supported himself primarily through pimping girls and women, and secondarily, by selling narcotics”).

<sup>68</sup> *See, e.g.*, JACKSON & MCBRIDE, *supra* note 16, at 34 (“[Generally speaking, a] gang member is loyal to the death to his gang.”); Skarbek, *supra* note 9, at 189 (noting that the only way for most members to leave the NF gang is by dying).

addition, the connections; command and control structures; willingness to use violence when necessary;<sup>69</sup> reputation for violence;<sup>70</sup> access to drugs and dangerous weapons;<sup>71</sup> and, specialization of labor that already exist in many gangs, make them formidable sex traffickers. Because no two gangs are exactly alike—many gangs draw upon ethnic cultures that vary from one gang to another<sup>72</sup>—no two gangs prostitute victims in the same way. But there are many similarities in the way that these gangs operate, and many gangs have learned to imitate the “best practices” of successful pimps.

### A. VICTIM RECRUITING MECHANISMS

Sex trafficking is a labor-intensive endeavor, at least in the sense that, there is no prostitution business without girls and women to prostitute.<sup>73</sup> The victims’ bodies are the commodities that the sex

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<sup>69</sup> See, e.g., *United States v. Zelaya*, 336 F. App’x 355, 356 (4th Cir. 2009) (“Once in the [gang, members frequently engage in violent criminal activity, including murders, assaults, and kidnappings, as committing acts of violence is required to maintain membership. MS-13 members commonly recite the phrase ‘mata, viola, controla,’ which means ‘kill, rape, control.’”).

<sup>70</sup> A gang member’s reputation for violence will serve him well in a sex trafficking scheme. See JACKSON & MCBRIDE, *supra* note 16, at 15 (“[L]ack of self-discipline and a violent temper are unacceptable traits in the non-gang society, but in the gang system [one] can turn these ‘liabilities’ to [one’s] advantage by letting go completely and building a reputation as a *vato loco* (‘crazy guy’).”).

<sup>71</sup> See, e.g., JACKSON & MCBRIDE, *supra* note 16, at 2 (“At one time, gang members used chains, knives and an occasional ‘zip gun’ in their forays. Now they use shotguns, automatic rifles, handguns, and explosives.”).

<sup>72</sup> See, e.g., Hagedorn, *supra* note 4, at 375 (“The gang has always been a variable form: Thrasher’s dictum that ‘no two gangs are just alike’ remains valid today. . . . Ethnicity still strongly influences gang forms and behavior.”) (citation omitted).

<sup>73</sup> This article primarily discusses the sex trafficking of women and girls because they are the most frequent victims of sex trafficking. See JAMES Q. WILSON, *THE MARRIAGE PROBLEM: HOW OUR CULTURE HAS WEAKENED MARRIAGE* 62 (HarperCollins Publishers, 1st ed. 2002) (“[P]rostitutes are overwhelmingly female and their customers overwhelmingly male.”). Sex traffickers also prey upon boys, but this is

traffickers sell for money. Without these commodities, there is no way to generate profits.<sup>74</sup> Many regular sex customers also express a preference for having sex with a variety of women, and they will patronize pimps who can accommodate their desire for variety. A ready supply of females who can be prostituted, therefore, is essential to a successful sex trafficking operation.

Most victims of sex trafficking—including gang-controlled sex trafficking—come from troubled or “broken” homes.<sup>75</sup> Most victims—and most gang members<sup>76</sup>—overwhelmingly come from single-parent or no-

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believed to be less common than the trafficking of women and girls, at least in the combined experience of the authors. Admittedly, though, many instances of sex trafficking go unreported, so the frequency with which males (and females, for that matter) are sex trafficked can only be estimated. *See also* Willoughby Mariano, *Despite Millions Spent, Human Trafficking’s Scope Is Unknown*, ATLANTA JOURNAL-CONSTITUTION (Dec. 31, 2012), <http://www.ajc.com/news/news/despite-millions-spent-human-traffickings-scope-is/nTjRn/> (“Trafficking is a hidden crime. Gay runaways duck police to avoid being sent home. Girls confuse investigators by calling pimps their ‘boyfriends.’ Foreign victims stay in the shadows because they fear deportation.”).

<sup>74</sup> Of course, the authors do not believe that victims are commodities or should be treated as commodities. The term is used simply to show the reader how sex traffickers typically view their victims.

<sup>75</sup> *People v. Callahan*, No. BA304359, 2009 WL 976203, at \*3 (Cal. Ct. App. Apr. 13, 2009) (describing the testimony of a prostitution expert who stated that most “prostitutes come from ‘broken backgrounds.’ They are ‘desperate to fill that void, to have someone . . . actually be there for them, especially a male figure.’”) This is true even with gang-controlled sex trafficking in other nations. *See, e.g.,* Sam Marsden, *Gang of Nine Asian Men in Oxford Groomed Girls As Young As 11, Court Hears*, TELEGRAPH (Jan. 15, 2013), <http://www.telegraph.co.uk/news/uknews/crime/9803018/Gang-of-nine-Asian-men-in-Oxford-groomed-girls-as-young-as-11-court-hears.html> (discussing how a gang prostituted girls as young as eleven years old and “allegedly targeted sex girls with troubled backgrounds, including some living in care homes, sometimes picking them up as they were out drinking or playing truant”).

<sup>76</sup> *See* JACKSON & MCBRIDE, *supra* note 16, at 11 (noting that most gang members come from family units composed of single mothers and generally grew up lacking “a male authority figure”); WILSON, *supra* note 2, at 8 (“[H]olding income constant, young people in father-absent families were twice as likely to be incarcerated as those in two-parent families.”).



parent residences, which makes them vulnerable to a host of evils.<sup>77</sup> Typically, it is the father who is absent from the victims' lives, and it is well known among law enforcement personnel that women and girls from father-absent households are more likely to become victims of sex trafficking and other crimes.<sup>78</sup> There are a number of reasons for this, including the fact that mothers of victims have less time and fewer resources to protect their daughters from the traffickers than two-parent families do.<sup>79</sup> They also lack a spouse with whom they can share parental duties.<sup>80</sup> Children raised in single-parent homes are "more likely to be suspended from school, to have emotional problems, and to behave badly.

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<sup>77</sup> See WILSON, *supra* note 73, at 8 ("The children of single moms are more likely than those of two-parent families to be abused, to drop out of or be expelled from school, to become juvenile delinquents, to take drugs, and to commit adult crimes."); Jonathan V. Last, *Our Endangered Species: What, If Anything, Can Be Done to Save the Family?*, WKLY. STANDARD, Oct. 27, 2014, at 35, available at [http://www.weeklystandard.com/print/articles/our-endangered-species\\_816382.html?nopager=1](http://www.weeklystandard.com/print/articles/our-endangered-species_816382.html?nopager=1) ("The crises of the welfare state, wage stagnation, income inequality, unemployment, the prison-industrial complex—all of these, and much more, can be traced to the breakdown of the family.").

<sup>78</sup> See PARKS, *supra* note 10, at 18–19 ("One of the most common reasons kids join gangs [and why some teenage sex trafficking victims are attracted to gangs] is that they are from broken homes and desperately want to be part of a family-like group, and they perceive gangs as being able to provide that."); Harper & McLanahan, *supra* note 48, at 370 ("Past research shows a link between father absence and delinquency or crime, both official and unofficial.").

<sup>79</sup> This is not to say that all daughters of single-parent homes will become trafficking victims, but there is an increased risk of them becoming victims of crimes, including trafficking crimes. See JAMES Q. WILSON & RICHARD J. HERRNSTEIN, *CRIME & HUMAN NATURE: THE DEFINITIVE STUDY OF THE CAUSES OF CRIME* 249 (Simon & Schuster 1985) ("[I]f one parent must do the work of two, then, at the margin, less of that work will get done."). See also Harper & McLanahan, *supra* note 48, at 370 ("Children in disadvantaged populations are more likely to grow up in father-absent households, as marriage rates are lower and fertility is higher."). These correlative challenges make it even more difficult for single mothers to protect their daughters.

<sup>80</sup> See Last, *supra* note 77 ("From incarceration rates to education to income to health, children raised by both mother and father are better off than children raised in any other family configuration. If you care about outcomes, and not some moral or ideological agenda, then the traditional nuclear family is the gold standard.").

. . . The children of single moms are more likely than those of two-parent families to be abused, to drop out of or be expelled from school, to become juvenile delinquents, to take drugs, and to commit adult crimes.”<sup>81</sup> All of these things make such children, teenagers, and young adults more vulnerable to sex traffickers.<sup>82</sup>

Deprived of any meaningful relationship with their fathers, many victims crave attention from strong male figures.<sup>83</sup> They wonder why their fathers take no interest in them and seek a substitute.<sup>84</sup> Indeed, many victims will endure violent abuse because, to them, this abuse is sometimes mixed with affection—or at least attention—and they think that any attention from a man is better than none.<sup>85</sup> After dropping out of school or being suspended, many victims also have plenty of time on their hands. Brimming with emotional troubles and unfulfilled emotional needs, these victims walk with large targets on their backs, which sex traffickers readily perceive. Many victims are also “followers” rather than leaders. They may be withdrawn from their peers and lack the assertiveness to tell men “no.”<sup>86</sup> Most victims do not run with the popular crowd, despite longing to fit in somewhere, which also makes them vulnerable to pimps and gangs who exploit this longing.<sup>87</sup> Prior to becoming sex trafficking

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<sup>81</sup> WILSON, *supra* note 73, at 8.

<sup>82</sup> Thus, the scholarship of those like Last might suggest that one way to reduce the incidence of sex trafficking may be to strengthen familial bonds. *See* Last, *supra* note 77.

<sup>83</sup> *See, e.g.*, *People v. Callahan*, No. BA304359, 2009 WL 976203, at \*3 (Cal. Ct. App. Apr. 13, 2009).

<sup>84</sup> *See id.*; LOUISE SHELLEY, *HUMAN TRAFFICKING: A GLOBAL PERSPECTIVE* 240 (Cambridge, 2010) (“The absence of father figures explains the psychological hold that many pimps have over their youthful female trafficking victims who seek in the pimp the fathers they never knew.”)

<sup>85</sup> *See, e.g.*, *United States v. Campbell*, 764 F.3d 880, 889 (8th Cir. 2014) (noting that the victims were “socially isolated” and pleased with the pimp’s “attention and gifts”); SHELLEY, *supra* note 84, at 240.

<sup>86</sup> *See Campbell*, 764 F.3d at 889.

<sup>87</sup> *See id.*

victims, many women and girls endured childhood sexual and/or physical abuse, which creates its own set of vulnerabilities.<sup>88</sup>

Sex traffickers quickly size up potential victims, ascertain their vulnerabilities, and exploit them. To those victims deprived of parental leadership and discipline, gang members—with their facade of strength and power—can quickly become objects of affection.<sup>89</sup> Indeed, attention from gang members may be more valuable to victims than attention from other males, insofar as gang members may have elevated status in certain neighborhoods, schools, and sub-cultures.<sup>90</sup> To some victims, gang members are the powerful “alpha males” with whom they want to be associated.<sup>91</sup> The respect and fear that gang members engender in a community makes gangs attractive to many victims, especially those who feel impotent and disempowered.<sup>92</sup> Set adrift in the world without a compass or a home port, victims will seek out—and then tenaciously cling to—the stability, support, and safety that gangs appear to offer.

This makes gangs particularly well-suited to recruiting victims. Many teenage girls are attracted to gang culture and gang members. In many middle and high schools, gang members enjoy a certain status that

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<sup>88</sup> See MICHAEL SHIVELY ET AL., NAT’L INST. OF JUST., DEP’T OF JUST., A NATIONAL OVERVIEW OF PROSTITUTION AND SEX TRAFFICKING DEMAND REDUCTION EFFORTS, 11–12 (2012), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/238796.pdf> (“Women and girls drawn or forced into prostitution typically are economically and emotionally vulnerable, with most having been scarred by childhood sexual and physical abuse and other forms of dysfunction in the home.”).

<sup>89</sup> See PARKS, *supra* note 10, at 18–19.

<sup>90</sup> See Jodi Lane & James W. Meeker, *Subcultural Diversity and the Fear of Crime and Gangs*, 46 CRIME & DELINQUENCY 497, 501 (2000) (“Gangs may . . . invoke fear in residents because gangs are often visible, hanging out on street corners in groups, wearing distinctive dress and hair styles, leaving identifying graffiti on walls and buildings, and making an effort to intimidate others within and outside their neighborhoods.”).

<sup>91</sup> See *People v. Callahan*, No. BA304359, 2009 WL 976203, at \*3 (Cal. Ct. App. Apr. 13, 2009).

<sup>92</sup> See Lane & Meeker, *supra* note 90, at 501.

adolescent girls find desirable in men.<sup>93</sup> Gangs sometimes exercise substantial influence over certain neighborhoods, and potential victims quickly discern that gang members enjoy power and esteem that the victims usually lack.<sup>94</sup> Like autonomous pimps, gangs also frequently promise financial rewards to those who prostitute for them.<sup>95</sup> It is, therefore, quite simple for gang members to convince victims that a life of prostituting for the gang is much better than a dull, lonely life without the protection and attention that association with the gang entails.

Some gangs go beyond relying solely on the allure of the gang. Pimps have long exploited many victims' craving for a relationship with a strong "father figure." It is no accident that "traditional" pimps require the victims that they prostitute to refer to them as "daddy."<sup>96</sup> Many pimps also

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<sup>93</sup> *See id.*

<sup>94</sup> *See id.*

<sup>95</sup> In some of the gang-controlled sex trafficking cases prosecuted in the Eastern District of Virginia, the gangs allowed victims to keep half of the money earned from prostitution. Some victims used this money to help support their families. *See* RICHARD J. ESTES & NEIL A. WEINER, *THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO* 3 (2002), available at <http://www.hawaii.edu/hivandaids/Commercial%20Sexual%20Exploitation%20of%20Children%20in%20the%20US,%20Canada%20and%20Mexico.pdf> (noting that some children living on the streets support themselves through prostitution).

<sup>96</sup> *People v. McFarland*, No. B171999, 2005 WL 713815, at \*2 (Cal. Ct. App. Mar. 30, 2005) (noting that the victims referred to their pimp as "Daddy"). "Traditional" pimping and prostitution is sometimes referred to as "the game." *See, e.g., United States v. Pipkins*, 378 F.3d 1281, 1285–86 (11th Cir. 2004). Indeed, some pimps will recruit young victims by asking them if they want to get into "the game." *Id.* at 1285. "The game" has a whole set of rules, primarily for the women and girls prostituted, but it also has a few for the pimps. *Id.* at 1285–86. Additionally, the game also has its own lingo. For example, being "out of pocket" has a number of meanings related to a victim's being disobedient or disrespectful to her pimp. *See, e.g., McFarland*, 2005 WL 713815, at \*4 ("[O]ut-of-pocket' means disrespectful, out of line . . ."); *see also United States v. Davis*, 453 F. App'x 452, 457 (5th Cir. 2011); *United States v. Todd*, 627 F.3d 329, 337 (9th Cir. 2010); *People v. Tillis*, No. D054245, 2011 WL 5117721, at \*3 (Cal. App. Oct. 27, 2011). When a victim is out of pocket, the traditional rules of pimping suggest that the victim should be punished by her pimp so that she learns respect and discipline. *See Pipkins*, 378 F.3d at 1286 (noting that a victim was "required to unquestionably obey her

recruit victims with promises of fatherly attention and care; some pimps require the victims they prostitute to compete with one another for “daddy time” and sexual favors from “daddy.”<sup>97</sup> Some victims will perform extra sex acts—or dangerous sex acts—and take on extra customers in an effort to raise more money and, thus, please “daddy.” Many pimps will promise victims that prostituting will help them create “a family,” which, as mentioned above, is something many victims crave.<sup>98</sup> Indeed, many pimps will enforce the isolation of victims, so that the pimp takes on the roles of the victim’s mother, father, and siblings.<sup>99</sup> This both ensures that victims form strong emotional attachments to the pimp and that victims have no refuge, should they ever desire to leave the pimp.<sup>100</sup> When largely isolated from friends and family, victims starved for some form of emotional relationship will, over time, often develop a bond with the pimp that substitutes for a family relationship.<sup>101</sup> Most important for pimps and

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pimp and treat him with respect; if she did not, she was ‘out of pocket’”). Speaking to a competing pimp also makes a victim out of pocket. Under some versions of the rules of the game, the competing pimp has a right either to take the victim as his own or require that the victim’s pimp pay the competing pimp a fee to get her back.

<sup>97</sup> See *People v. McFarland*, No. B171999, 2005 WL 713815, at \*8 (Cal. Ct. App. Mar. 30, 2005).

<sup>98</sup> See *PARKS*, *supra* note 10, at 18–19.

<sup>99</sup> See *McFarland*, No. B171999, 2005 WL 713815, at \*8.

<sup>100</sup> Gang members themselves often refer to their gang as their only family. See *Mac Donald*, *supra* note 5, at 33 (describing a gang member who has no intention of leaving his gang because he considers his fellow gang members “family”); see also *PARKS*, *supra* note 10, at 37 (“One of the most common reasons young people give for joining gangs is the desire to belong to a family-like group in the absence of that sort of closeness at home. This most often happens during the adolescent years.”).

<sup>101</sup> Thus, when rescuing victims—whether they are adults or minors—the police often must be sensitive to the psychological dimensions of trafficking. One reason why sex trafficking is so difficult to stop through law enforcement is that “the police are designed, organized, staffed, and trained to deal with crime, not social services.” Eric J. Fritsch et al., *Gang Suppression Through Saturation Patrol, Aggressive Curfew, and Truancy Enforcement: A Quasi-Experimental Test of the Dallas Anti-Gang Initiative*, 45 *CRIME & DELINQUENCY* 122, 135 (1999). Successful prosecution of sex trafficking requires a united effort by law enforcement officials and entities capable of tending to the

gangs is the fact that many such victims develop a loyalty to their sex traffickers much like the loyalty they would have otherwise developed with their parents.

Gangs exploit victims' vulnerability and their longing for a family to advance the gangs' sex-trafficking endeavors.<sup>102</sup> Indeed, because gangs already have a quasi-family relationship and hierarchical structure in place, it is easy for them to dupe victims into believing that they can become beloved members of this large and powerful family.<sup>103</sup> Oftentimes, the victims may not realize that this will entail having to endure prostitution until it is too late and they are already wrapped tightly into the gang "family" and its culture. Other times, however, victims are well aware that they will be prostituted, but consider it a small price to pay for the emotional "benefits" that the gang provides.

Once victims become associated with gangs, the gangs have a much easier time recruiting them to prostitute. The gangs use a variety of means, but, essentially, gangs employ both carrots and sticks to motivate victims. That is, they use incentives to encourage "good" behavior and impose penalties to punish "bad" behavior. Five common recruitment mechanisms are those used by the so-called wealthy pimps, Romeo/finesse pimps, gorilla pimps, drug-supplier pimps, and creditor pimps. Each provides a different means of recruiting and maintaining victims. Because victims and gangs change over time—and because some victims may be vulnerable to certain types of coercion but not others— not all of these means are employed with all victims. Nor are any of these methods mutually exclusive with one another. Gangs and autonomous pimps may end up using all of these mechanisms and others to control a single victim.

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various needs of victims. Detectives, agents, and prosecutors attuned to these needs are much more successful in investigating and prosecuting sex trafficking cases.

<sup>102</sup> PARKS, *supra* note 10, at 19 ("[G]ang members look out for each other, help feed each other, and stick up for each other, much like a family would.").

<sup>103</sup> JACKSON & MCBRIDE, *supra* note 16, at 7 ("The lack of love and respect from the family, along with the deterioration of the family unit, drives the young person elsewhere to satisfy his need to belong. Other gang members understand his need and supply an abundance of camaraderie, respect, and even a form of love.").

For example, when wooing a victim fails or is insufficiently swift, a gang may resort to gorilla-pimp behavior.<sup>104</sup> Additionally, although these five methods are commonly used tactics, pimps and gangs are forever finding new and creative ways to entice and coerce victims.

### 1. WEALTHY/SUCCESSFUL PIMPS

Sex trafficking victims, among others, are generally attracted to wealthy, successful, high-status men.<sup>105</sup> Because many sex trafficking victims come from homes afflicted by poverty or are runaways in need of life's necessities,<sup>106</sup> they may have a particularly strong attraction to wealthy men who can provide for a victim's physical needs, and even small luxuries that are beyond a victim's financial means.<sup>107</sup> Victims from middle class backgrounds likewise recognize the advantages that wealth entails and are not immune to the allure of riches and status. Pimps and gangs exploit this attraction to wealth and success. If victims could see the

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<sup>104</sup> See *United States v. Campbell*, 764 F.3d 880, 889 (8th Cir. 2014) (noting that the victim initially thought that she was in a romantic relationship with the trafficker but that the defendant later became violent with her). Pimps who frequently resort to violence to control the women and girls they prostitute are known as "gorilla pimps." *People v. Leonard*, 228 Cal. App. 4th 465, 492–93 (Cal. Ct. App. 2014). Some pimps want to be known as gorilla pimps in order to instill fear in their victims..

<sup>105</sup> See *United States v. Pipkins*, 378 F.3d 1281, 1285–86 (11th Cir. 2004); see also Andrew J. Elliott, et al., *Red, Rank, and Romance in Women Viewing Men*, 139 J. EXPERIMENTAL PSYCH. 399, 401 (2010) ("A great deal of research supports the idea that women view high-status men as particularly attractive and desirable. . . . Women asked to indicate the characteristics they value in dates and mates rate status indicators (e.g., financial prospects, social position) as important . . ."); Elizabeth G. Schomake, *Human Mate Selection Theory: An Integrated Evolutionary and Social Approach*, 2007 J. SCI. PSYCH. 35, 38 (2007) (noting a study which showed that women desire males with demonstrated "earning capacity")

<sup>106</sup> See Shively et al., *supra* note 88, at 12 ("Many runaway and homeless youth are too inexperienced, unskilled, drug involved, traumatized, and/or young to maintain legitimate employment, and may turn to prostitution to survive.").

<sup>107</sup> See *Campbell*, 764 F.3d at 889; *United States v. Williams*, 564 F. App'x 568, 574 (11th Cir. 2014).

reality of prostitution and the hardships that it entails, they would quickly run from gangs and pimps long before they became ensnared by their false promises. For that reason, pimps often hide behind a patina of wealth and success when recruiting victims.

In describing such a group of pimps, one court noted that: “[t]o persuade underage females to prostitute for them, the Defendants (and other pimps charged in the indictment) presented a vision of ostentatious living, promising fame and fortune. Pimps perpetrated this myth with their own flamboyant dress, flashy jewelry, and exotic, expensive cars.”<sup>108</sup> Pimps use this flashy exterior to attract victims and to trick them into thinking that they will enjoy a luxurious life if they agree to be prostituted by a gang or pimp.<sup>109</sup> Some pimps and gang members post photographs of the cash they have made from prostitution on their Facebook pages and other forms of social media. They do this both as a status symbol and as a means of luring potential victims into prostitution. Sadly, many women are dazzled by the jewelry, cars, cash, and false promises of a glamorous life.<sup>110</sup>

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<sup>108</sup> *Pipkins*, 378 F.3d at 1285–86 (11<sup>th</sup> Cir. 2004). Later in the opinion, the court also notes that “[a]t the whim of her pimp, a prostitute was obligated to have sexual intercourse with him, another pimp, or even another prostitute.” *Id.* at 1286.

<sup>109</sup> See ANTHONY M. DE STEFANO, *THE WAR ON HUMAN TRAFFICKING: U.S. POLICY ASSESSED* xvi (Rutgers Univ. Press 2007) (noting that human trafficking often involves “trickery, fraud, or coercion”). It is important to note that an adult victim’s initial agreement to be prostituted does not necessarily mean that no sex trafficking is occurring. The consent may be the product of fraud or coercion, but even when it is not, subsequent acts of prostitution that are coerced violate the law. See *United States v. Valenzuela*, 495 F. App’x 817, 820 (9<sup>th</sup> Cir. 2012) (“Even if some of the victims consented initially, Appellants violated § 1591 by continuing to harbor and maintain them once Appellants realized that force, fraud, or coercion (or threats thereof) would have to be used to cause the girls to engage in a commercial sex act.”); *United States v. Mack*, No. 1:13-CR-278, 2014 WL 356502, at \*5 (N.D. Ohio Jan. 31, 2014) (“The fact that the victims may have initially agreed to engage in commercial sex acts does not preclude a subsequent charge of sex trafficking based on later non-consensual acts.”).

<sup>110</sup> See *United States v. Flanders*, 752 F.3d 1317, 1326, 1330 (11<sup>th</sup> Cir. 2014) (noting that the defendant used false promises of modeling opportunities); *United States v. Madkins*, No. 3:08-CR-J-34MCR, 2014 WL 4417849, at \*22 (M.D. Fla. Sept. 8, 2014)



Because sex trafficking victims are frequently marketed to customers online, pimps and gang sex traffickers are now able to exploit the Internet to recruit victims.<sup>111</sup> Sometimes recruiting starts on Facebook or MySpace with a message to a potential victim that she looks pretty or lonely.<sup>112</sup> Other pimps are more direct and open with their invitation, asking, “Do you want to make some money?” There are at least two major advantages to using the Internet for recruitment. First, gang members can recruit a larger number of victims from anywhere they can get an Internet connection, which is now nearly everywhere. Second, Internet recruitment allows pimps and gangs to maintain anonymity and misrepresent their identities as they recruit victims.<sup>113</sup>

With the assistance of the Internet and social media, pimps and gangs can falsely present themselves not only as being successful, but also as females of a similar age and background as the targeted victims.

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(noting that the defendant lured the victims with “false representations and promises” of “moving to Florida[] and living luxuriously there”).

<sup>111</sup> See PARKS, *supra* note 10, at 18 (noting that gangs also use the Internet and social media to recruit new members).

<sup>112</sup> Statement of Facts at 1–2, United States v. Strom, No. 1:12-CR-159 (E.D. Va. Jun. 26, 2012) [hereinafter Strom Statement of Facts].

<sup>113</sup> Members of the Underground Gangster Crips successfully used the Internet to recruit juvenile sex trafficking victims:

Strom posted or caused to be posted, numerous messages on internet websites, through the use of a computer or interactive computer service, to persuade, induce, and entice females, including juveniles, to travel and engage in prohibited sexual conduct. These websites included Facebook, MySpace, Craigslist, and Datehookups, all of which are involved in interstate commerce. Strom knowingly misrepresented, or caused to be misrepresented, his identity and the identities of others involved in the enterprise . . . .

*Id.* Fairfax County Police Detective William C. Woolf, III investigated this case, along with some of the other cases, treated in this article. Detective Woolf is nationally recognized as an expert on gang-controlled sex trafficking and sex trafficking generally.

Teenage girls thus may be duped into thinking that they are communicating with a young girl like themselves, when really a pimp or gang member is typing away at the other keyboard. Pimps and gang members know that many girls and young women would be much more cautious if they knew the true identities of those with whom they were corresponding. While some girls would be attracted to gangs, others would be more reticent, and the Internet permits a level of deception that can be useful in recruiting these girls.<sup>114</sup> Sadly, the true identities of the pimps may not be revealed until it is too late for the girls to do anything but acquiesce.

Yet another way of recruiting experienced victims is facilitated by the online advertisements that many pimps post on the Internet. Online advertisements used to advertise victims to sex customers, such as those found on [www.Backpage.com](http://www.Backpage.com), usually include a telephone number at which customers ostensibly can contact the victims.<sup>115</sup> This has proven to be a prime recruiting tool for pimps: they simply call or send a text message to the telephone number with the hope of finding a victim looking to leave her pimp. Indeed, many victims have received countless communications from pimps that ask: “Are you happy with your current situation?” Such communications are merely the opening salvo in a full-fledged campaign to recruit victims by convincing them that they would be happier with the pimp or gang that is sending the communication. Relatively few victims respond to these recruitment communications. Indeed, victims report that they are bombarded with such communications

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<sup>114</sup> Sex traffickers frequently use deception to recruit victims. *See, e.g.*, *United States v. Bell*, 761 F.3d 900, 908 (8th Cir. 2014) (“Bell also procured their services through deception. He consistently misrepresented his marital status. More significantly, Bell adopted a pattern of convincing these women that he loved them and would take care of them at the exclusion of all others. He convinced them that they would be financially secure, emotionally secure, and loved. In short, Bell preyed upon vulnerable women.”).

<sup>115</sup> We say “ostensibly” because some pimps control the communications with sex customers. These pimps lead customers to believe that they are communicating with a female victim when they call or text the telephone number listed on a [Backpage.com](http://www.Backpage.com) advertisement; in fact, however, it is the pimp or a female accomplice—if a female voice is needed—with whom the customer is actually communicating.

daily. But, in light of the financial benefits in store for a pimp who obtains a victim through this technique, even a minimal success rate is worthwhile.<sup>116</sup> Once a potential victim responds, the trafficker is likely to lead off with a rich/successful pimp persona, but might switch to a Romeo/finesse pimp style if that is what it takes to lure the victim into his clutches.

## 2. ROMEO/FINESSE PIMPS

Among the “carrots” that gangs and pimps offer victims are faux romantic relationships and emotional attachments.<sup>117</sup> Sex traffickers who recruit victims by feigning love for, or romantic interest in, the victims are sometimes known as “Romeo” or “suave” pimps. They use romance as a means of gaining the trust of girls and women, and then exploit that trust.<sup>118</sup> Once hooked, many Romeo pimps explicitly tell their victims: “If you love me, you’ll prostitute.”<sup>119</sup> As with many real romances, the Romeo figure makes promises of future wealth and bliss. The first step

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<sup>116</sup> Some victims respond to these entreaties and end up migrating from pimp to pimp in search of a happiness that they will never find.

<sup>117</sup> See, e.g., *Bell*, 761 F.3d at 908.

<sup>118</sup> See John Simerman, *Federal Judge Hands Down 40-Year Sentence in Human Trafficking Case*, NEW ORLEANS TIMES-PICAYUNE (Feb. 8, 2013), [http://blog.nola.com/crime\\_impact/print.html?entry=/2013/02/federal\\_judge\\_hands\\_down\\_40-ye.html](http://blog.nola.com/crime_impact/print.html?entry=/2013/02/federal_judge_hands_down_40-ye.html) (describing how the defendant enticed “a 14-year-old girl into prostitution by convincing her she was his girlfriend”).

<sup>119</sup> Brief of the United States at 3–4, *United States v. Rooke*, No. 13-4952 (4th Cir. Jun. 2, 2014) (describing how sex trafficking victims were “recruited through promises of love and romance,” and how one defendant told a victim “that if she loved him, she would prostitute for him”); see also *United States v. Roy*, 781 F.3d 416, 418 (8th Cir. 2015) (noting that, although the sex trafficker—whom the victim identified as her “boyfriend”—“initially treated [the victim] well,” he “eventually told her that if she loved him she would go make money for him,” later beat her repeatedly, and threatened to kill her); *United States v. Williams*, 564 F. App’x 568, 574 (11th Cir. 2014) (“[The defendant] enticed [the victims] into his home with promises of food and shelter, offered narcotics to them, and then invited them to engage in sexual activity under the pretext of a romantic relationship before recruiting them into his prostitution business.”).

toward this dream coming true, according to the pimp, is earning some quick cash from prostitution.<sup>120</sup> This request or demand is usually made with whatever promises the pimp deems necessary to motivate the victim.<sup>121</sup> Romeo pimps are also not opposed to buying small presents or clothes for victims, so long as the victims continue to produce significantly more money than the pimp spends on them.<sup>122</sup> Amazingly, because many victims have never had a man give them a present, these small trinkets often induce victims to prostitute.<sup>123</sup> Others are satisfied with being permitted to have their hair and fingernails professionally done.<sup>124</sup> Still other victims are content with a little attention from a man; they simply enjoy being told that they are good, loyal, and beautiful, and that they will continue to be loved by the pimp so long as they continue to prostitute. As one victim described her relationship with a pimp:

“Yes, he was my world. He was my daddy . . . [H]e made me believe that he would give me the world and that . . . I was meant to be with him and that I would always be his slave and that I was . . . a good loyal white bitch, I was a

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<sup>120</sup> See Brief of the United States, *supra* note 119, at 3–4.

<sup>121</sup> See, e.g., *id.* at 3–4; *United States v. Jones*, 546 F. App’x 946, 946 (11th Cir. 2013) (“[The defendant] told the [victim] he loved her, and he bought . . . hair products, jewelry, makeup, and condoms.”).

<sup>122</sup> See, e.g., *id.*

<sup>123</sup> Although such victims may then prostitute without coercion, the defendants have still committed the crime of sex trafficking—regardless of the victims’ “willingness” to perform sexual acts—if the victims are juveniles. See *United States v. Dhingra*, 371 F.3d 557, 567–68 (9th Cir. 2004) (“[A juvenile] victim’s willingness to engage in sexual activity is irrelevant, in much the same way that a minor’s consent to sexual activity does not mitigate the offense of statutory rape or child molestation.”).

<sup>124</sup> *United States v. Madison*, 477 F.3d 1312, 1314 (11th Cir. 2007) (“All the money Jane Doe #2 received was transferred to Madison, and, in exchange, Madison supplied her with lodging and money to have her hair and nails done.”).

good bitch. He used to always say, 'You're my white bitch, you're my good loyal slave.'<sup>125</sup>

When necessary, Romeo pimps are happy to promise that the prostitution is only a temporary means to realize their dreams, and that as soon as they have made "enough" money, the prostitution will stop. In other cases, victims live only for the moment and are so shortsighted that there is no need to make promises of future happiness. Being with the gang and the Romeo figure suffices, at least for a while. Still others come to accept that prostitution will be their lifelong occupation. These victims soon hope that the gangs recruit other victims to help carry some of the load. This may induce them to take on a recruiting role, and they might help ensnare other victims.<sup>126</sup> Whatever these various victims of Romeo pimps perceive about their futures, initially they all feel love for their pimps.<sup>127</sup>

In time, some of these victims figure out that they have been conned. But many victims do not come to this realization for years. By that time, prostitution will have become a way of life for many of the victims. They frequently will have become so habituated to making money through prostitution and the peregrinations that such a life requires that they will have begun to see it as normal. Often, they will develop a certain numbness, or acquiescence, that will keep them in "the game."<sup>128</sup> They will perceive a life of prostitution as the lesser of two evils and may fail to

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<sup>125</sup> *People v. McFarland*, No. B171999, 2005 WL 713815, at \*5 (Cal. Ct. App. Mar. 30, 2005).

<sup>126</sup> Many pimps and gangs instruct their victims that they are responsible for helping to recruit other victims, and that, if they encounter possible victims, they should make efforts to entice them.

<sup>127</sup> *McFarland*, 2005 WL 713815, at \*1 ("Both victims admitted having loving feelings towards [the defendant] at times during their relationships . . .").

<sup>128</sup> *See, e.g., United States v. Pipkins*, 378 F.3d 1281, 1285 (11th Cir. 2004) ("Both pimps and prostitutes generally referred to their activities as 'the game.' To the pimps, an important component of the game was domination of their females through endless promises and mentally sapping wordplay, physical violence, and financial control. The pimps created a system in which their prostitutes were incapable of supporting themselves or escaping their reliance on the pimp.").

see any readily available alternatives—or, at least, certainly none that pay so well or require such little skill.<sup>129</sup> To them, it will frequently appear easier to continue prostituting than to attempt escape and face the dangers that escape entails, not to mention the uncertainty and lack of structure that comes with leaving a gang.<sup>130</sup> Without anyone to assist them in finding alternatives, many victims may end up spending a substantial portion of their lives in servitude to gangs or a series of pimps.

Because Romeo pimps use style and finesse to attract and control victims, they are also sometimes known as “finesse pimps,” although the wealthy/successful type of pimp may also be considered a “finesse” pimp. A finesse pimp, however, does not always use romance to control victims, nor do finesse pimps always use a veneer of success and wealth to entice victims. For example, a finesse pimp may plainly state to a victim that he is down on his luck and penniless as a means to gain sympathy from victims. That sympathy will then be exploited to convince the victims to perform commercial sex acts. Talented finesse pimps with charisma and a convincing routine can attract followers without promises of wealth, claims that they are in love with their victims, or the trappings of success. Therefore, while many Romeo pimps and wealthy/successful type pimps could accurately be described as “finesse” pimps, not every finesse pimp is a Romeo pimp or a wealthy/successful type pimp.

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<sup>129</sup> As discussed below, most pimps and gangs permit victims to keep none or almost none of the money that is earned from prostitution. *See United States v. Roy*, 781 F.3d 416, 418 (8th Cir. 2015) (noting that the victim “was required to give Roy all the money she made from prostitution”); *United States v. Garcia-Gonzalez*, 714 F.3d 306, 311 (5th Cir. 2013); (noting that the sex trafficker kept all of the money earned by the victims); *United States v. Kizer*, 517 F. App’x 415, 416 (6th Cir. 2013) (noting that the victim turned over all of the prostitution proceeds to the defendant); *United States v. Warren*, 491 F. App’x 775, 776–77 (8th Cir. 2012). Despite that fact, many victims balk at working minimum-wage jobs, even though such jobs would actually result in them making more money than they are permitted to keep while being prostituted. After realizing that sex customers will pay handsomely for sex with them, victims feel that working for less money is unfair, even when pimps refuse to ever let them keep a dime.

<sup>130</sup> *See Garcia-Gonzalez*, 714 F.3d at 311.

### 3. GORILLA PIMPS

Violent pimps who gain control over victims via threats and acts of violence are frequently known as “gorilla pimps.”<sup>131</sup> Gangs are well-suited to gorilla pimping. Because gangs already account for a significant portion of violent crime,<sup>132</sup> it is not difficult for gangs to channel their violence toward victims to induce them to prostitute.<sup>133</sup> Thus, gang-controlled sex traffickers have more than their fair share of gorilla pimps.

It is important to note that some gorilla pimps and their gang member counterparts do not initiate contact with victims as gorilla pimps.<sup>134</sup> More frequently, they initially attempt to recruit victims using a Romeo or finesse method.<sup>135</sup> But when that fails—or when victims are no longer beguiled by those empty promises—the pimps sometimes show that they are truly gorilla pimps.<sup>136</sup> The reason is simple enough: “[b]rutality works. Not always and never forever, but often long enough for the brute’s purposes.”<sup>137</sup> Many trafficking victims have suffered substantial injuries at the hands of gorilla pimps, and nobody knows how

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<sup>131</sup> See, e.g., *People v. Zambia*, 254 P.3d 965, 968 (Cal. 2011) (noting that an undercover police officer who posed as a prostitute characterized the defendant as “acting like a ‘gorilla pimp,’ or one who uses ‘verbal threats and violence to get their way and to scare prostitutes into working for them’”); *Grier v. State*, 624 S.E.2d 149, 152 (Ga. Ct. App. 2005) (describing how one pimp forced a victim “into his car and took her to a house. During the drive to the house, Grier told her that she was his ‘ho,’ and that he was ‘gorilla pimping’ her”).

<sup>132</sup> WILSON & HERRNSTEIN, *supra* note 79, at 297 (“[G]angs account for a significant fraction of all violent crime . . .”).

<sup>133</sup> See, e.g., Marsden, *supra* note 75 (noting that an Asian gang involved in sex trafficking juveniles “would exercise ‘extreme’ violence on the girls and threaten to inflict ‘serious harm’ on them or their families if they tried to free themselves”).

<sup>134</sup> See Brief of the United States, *supra* note 119, at 3–4; see also *United States v. Roy*, 781 F.3d 416, 418 (8th Cir. 2015).

<sup>135</sup> See Brief of the United States, *supra* note 119, at 3–4; see also *Roy*, 781 F.3d at 418.

<sup>136</sup> See also *Roy*, 781 F.3d at 418.

<sup>137</sup> GEORGE F. WILL, *SUDDENLY: THE AMERICAN IDEA ABROAD AND AT HOME* 1986-1990 54 (1990).

many such beatings have resulted in death.<sup>138</sup> Some traffickers even brag that they are “gorilla pimps.”<sup>139</sup> From a sex trafficker’s perspective, this brutality—along with a reputation as a gorilla pimp—not only generates fear in the victim who is beaten, but also effectively communicates to other victims: “Obey, or else you’re next in line for a beating.”<sup>140</sup> Indeed, pimps are known to beat their victims in front of other victims to demonstrate their power and inspire fear in the other victims.<sup>141</sup> Gorilla pimps understand the value of beatings and the fact that a little violence goes a long way toward ensuring obedience.<sup>142</sup>

Even those traffickers who are insufficiently violent to warrant the label “gorilla pimp” know of ways to psychologically control their victims. For example, pimps frequently refer to their victims as “ho” and “bitch,” which demonstrates to the victims that they have no value or identity except as the slave of a pimp.<sup>143</sup> By contrast, victims typically are required to refer to the pimp as “daddy,” and to treat him with respect.<sup>144</sup> Pimps also impose a laundry list of rules that implicitly communicate to victims that they are simply chattel and must remain subservient to their pimp.<sup>145</sup> For example, many victims are not permitted to look a pimp in

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<sup>138</sup> See, e.g., *United States v. Pipkins*, 378 F.3d 1281, 1286 (11th Cir. 2004).

<sup>139</sup> *Grier v. State*, 624 S.E.2d 149, 152 (Ga. Ct. App. 2005)

<sup>140</sup> See Swinney Statement of Facts, *supra* note 32, at 5.

<sup>141</sup> See, e.g., *id.* (“Swinney would often beat women in front of the other women that he was prostituting as a means of instilling fear in all of them.”).

<sup>142</sup> See, e.g., *id.* at 1–2 (“Swinney used force, violence, coercion, and threats of force and violence to maintain some of the women he prostituted and ensure that the women he prostituted would remain with Swinney, would perform commercial sex acts, and would provide Swinney with the money that these women earned from performing commercial sex acts.”).

<sup>143</sup> *Grier*, 624 S.E.2d at 152.

<sup>144</sup> *People v. McFarland*, No. B171999, 2005 WL 713815, at \*2 (Cal. Ct. App. Mar. 30, 2005).

<sup>145</sup> See *United States v. Pipkins*, 378 F.3d 1281, 1285 (11th Cir. 2004) (“The pimping subculture in Atlanta operated under a set of rules, presented in the video called *Really Really Pimpin' in Da South*. This videotape was made in Atlanta by Pipkins and Carlos Glover, a business associate. *Really Really Pimpin' in Da South* featured prominent



the eye or to keep the money they earn; moreover, they must walk behind their pimps, obey any order from their pimps, and submit to sex with the pimp whenever he desires.<sup>146</sup> All of these things effectively communicate to victims that the pimp is superior to them and that their very existence is of no consequence. Pimps have also been known to force victims to undergo abortions, both as a means of demonstrating the trafficker's power over the lives of others and because the demands of pregnancy and childcare would reduce the pimp and gang's profits.<sup>147</sup> Victims thus quickly learn that profits are the only thing that matters.

#### 4. DRUG-SUPPLIER PIMPS

Nearly all pimps and gangs supply their victims with drugs and alcohol as a means of numbing the victims.<sup>148</sup> Indeed, most pimps and gangs know quite well that prostitution takes a toll on victims and that drugs are a means of coping with the abuse that they suffer daily.<sup>149</sup>

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Atlanta pimps, including Pipkins, explaining the rules of the game.”); Swinney Statement of Facts, *supra* note 32, at 8–9 (“On various occasions, Swinney instructed SG, EP, [two victims] and others about the rules to be followed . . . Breaking the rules would result in Swinney beating the woman or girl who broke any of the rules.”).

<sup>146</sup> See, e.g., Swinney Statement of Facts, *supra* note 32, at 8–9.

<sup>147</sup> See, e.g., Sentencing Memorandum of the United States at 14–15, *United States v. Lenny Paul Haskins*, No. 1:14-CR-432 (E.D. Va. Apr. 10, 2015) (noting that one of the victims was forced to undergo an abortion); Swinney Statement of Facts, *supra* note 32, at 8 (“Around January 2013, Swinney ordered SG to have an abortion against the will of SG and despite SG’s protests and requests that she not be required to have an abortion. Swinney paid for the abortion and was present with SG and EP as SG was transported to the abortion provider. SG continues to suffer emotional trauma from this abortion.”); KARA, *supra* note 16, at 193 (noting that sex traffickers in the Carreto organization forced victims to “undergo painful abortions”).

<sup>148</sup> See, e.g., *Pipkins*, 378 F.3d at 1285 (“Other times, a pimp dispensed drugs to a prostitute to ensure that she was able to function through the night and into the early morning hours.”).

<sup>149</sup> See, e.g., Barcus Statement of Facts, *supra* note 30, at 7–8.

Drugs, therefore, are one of the tools of the trade, as the case of *United States v. Barcus* poignantly demonstrates:

Some of the women and girls found it difficult to have sex with strange men repeatedly. Barcus and other members of the child exploitation enterprise provided the girls and women whom they prostituted with alcoholic beverages, such as vodka and beer, and narcotics, such as marijuana, cocaine, and MDMA . . . which in its crystalline form is commonly known as “Molly,” and in its pill form is commonly known as “Ecstasy.” The alcohol and narcotics made the girls more vulnerable and susceptible to being prostituted, and Barcus sometimes told the girls that these substances would “loosen up” and “calm” the women and girls and would help the girls to have sexual relations with the customers. . . . Sometimes Barcus poured “Molly” directly into the mouths of girls whom Barcus prostituted.<sup>150</sup>

Indeed, many victims are able to function under the stresses of the prostitution lifestyle only if they are drunk or high. Many victims will submit to sex acts when numbed by intoxicants, but will not be able to submit when they are fully sober.<sup>151</sup> As one victim testified, she was given drugs because “you can’t do a date sober.”<sup>152</sup> Because of this, most pimps and gangs that prostitute victims also provide their victims with drugs and/or alcohol.<sup>153</sup> Pimps and traffickers know that drugs and alcoholic beverages are essential tools of the prostitution trade.<sup>154</sup>

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<sup>150</sup> *Id.*

<sup>151</sup> *See, e.g., id.*

<sup>152</sup> Brief of the United States, *supra* note 119, at 5.

<sup>153</sup> *See, e.g.,* Barcus Statement of Facts, *supra* note 30, at 7–8.

<sup>154</sup> *See, e.g.,* Dumas Statement of Facts, *supra* note 36, at 8 (“[A]lcohol and narcotics made the girls more vulnerable and susceptible to being prostituted, and Dumas knew that Barcus sometimes told the girls that these substances would ‘loosen up’ and ‘calm’

Beyond merely numbing victims with drugs, pimps and gangs have been known to target women with drug addictions or victims who can likely be turned into addicts for recruitment.<sup>155</sup> This is no accident. These criminals know that addicts are already enslaved to one master, and the trick is simply to induce an addict to accept a second master who has a ready supply of whatever drugs the victim craves. Just as some pimps exploit victims' craving for a family and fatherly love, "drug supplier pimps" have learned to exploit a craving for mind-altering substances.<sup>156</sup> Once a pimp or gang knows a victim's weaknesses, they will use them to gain control of a victim. In *United States v. Warren*, that is precisely what happened when a victim's drug supplier assumed the role of her pimp. As the court of appeals described it:

At trial, witness Larisha Duncan testified she lived in Minnesota and was a prostitute who regularly purchased drugs from Warren. Duncan testified that when she told Warren she was a prostitute in 2004 or 2005, he expressed interest in splitting her earnings. Duncan testified that in May 2008, she moved into a house her mother was renting

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the women and girls and would help the girls to have sexual relations with the customers.").

<sup>155</sup> See, e.g., *United States v. Kizer*, 517 F. App'x 415, 416 (6th Cir. 2013) ("Kizer enticed an 18-year-old crack addict identified as A.W. into a world of prostitution with promises to feed her drug habit. She prostituted herself in Knoxville, Memphis, and West Memphis, Arkansas, and gave Kizer all of the proceeds. He, in turn, gave her crack."); *United States v. Royal*, 442 F. App'x 794, 796-97 (4th Cir. 2011) (noting that the sex trafficker provided drugs to victims in order to take further advantage of them); *United States v. Amedeo*, 370 F.3d 1305, 1317 (11th Cir. 2004) (describing how a teenage victim's drug addiction rendered him "unusually vulnerable" to a defendant who supplied him with cocaine); *United States v. Altman*, 901 F.2d 1161 (2d Cir. 1990) (noting that the defendant drugged his victims, which made them more physically and mentally vulnerable).

<sup>156</sup> See *United States v. Campbell*, 49 F.3d 1079, 1083-84 (5th Cir. 1995) ("[The defendant] used drugs and violence to control the women and make them prostitute for him.").

from Warren. After that time, Warren generally knew when Duncan went to prostitution appointments and how much she earned from those appointments because he was often present when Duncan scheduled her prostitution appointments, drove her to the appointments, or asked her how much she was earning from the appointments. Duncan referred to these appointments as “dates” throughout her testimony. Duncan testified that Warren sometimes paid for her to post online ads and book hotel rooms for her prostitution services, and that he started demanding she give him all her prostitution earnings in exchange for drugs. On several occasions when Duncan failed to give Warren all her prostitution earnings, he either beat her or withheld drugs.”<sup>157</sup>

Gangs are particularly well-suited to taking on this role in light of their connections to narcotics suppliers and the fact that many sex traffickers—including gang sex traffickers—cut their criminal teeth in the drug trade.<sup>158</sup> Although autonomous pimps also frequently have little difficulty obtaining narcotics, gangs typically have a ready supply of drugs that they can tap at any time.<sup>159</sup> Traffickers will sometimes brag to victims

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<sup>157</sup> *United States v. Warren*, 491 F. App’x 775, 776–77 (8th Cir. 2012).

<sup>158</sup> See MEREDITH DANK ET AL., ESTIMATING THE SIZE AND STRUCTURE OF THE UNDERGROUND COMMERCIAL SEX ECONOMY IN EIGHT MAJOR US CITIES 142 (2014) (noting that twenty-five percent of pimps in their study worked as drug dealers before becoming pimps and eighteen percent continued to distribute narcotics after becoming pimps); *United States v. Harris*, 695 F.3d 1125, 1136 (10th Cir. 2012) (discussing how members of a Crips gang set jointly operated houses from which various set members sold drugs); *United States v. Smith*, 413 F.3d 1253, 1264, (10th Cir. 2005) (noting that a gang used drug distribution proceeds to support the families of fellow gang members).

<sup>159</sup> See Max Boot, *The Two Faces of Latin America: Columbia vs. Honduras*, WKLY. STANDARD, June 10, 2013, at 17, available at [http://www.weeklystandard.com/articles/two-faces-latin-america\\_732056.html](http://www.weeklystandard.com/articles/two-faces-latin-america_732056.html) (discussing how gangs like MS-13 and the 18th Street gang have a large presence in Honduras and move drugs from Mexico into the United States via the Pan-American Highway).

they are recruiting that they have access to all kinds of drugs and can get the victims whatever drugs they need. Although most addicts are not choosy when they are in the throes of withdrawal, many addicted victims have a preference for certain types of substances. To the extent that victims have addictions to or a preference for specific substances, a gang that enjoys access to a wide variety of narcotics is usually better situated to satisfy such victims, and thereby to successfully recruit and retain them. For example, a ready supply of heroin might not be the ideal substance to use with a victim addicted to cocaine, especially if the gang is trying to entice a victim to work for them. A competing gang that has a ready supply of the cocaine that the victim craves will be more likely to ensnare the victim than a pimp who cannot so easily obtain cocaine.

Once a gang has some control over the addicted victim, it is rather easy to motivate the victim to become or remain profitable; all that a pimp needs to do is threaten to take away the substances that the victim craves.<sup>160</sup> Indeed, if mere threats to withhold drugs do not motivate the victim, it is easy enough to cease providing drugs to the victims until they are in the throes of detoxification.<sup>161</sup> Once that process begins, victims are extremely pliable and can be induced to do almost anything to make the pain of detoxification stop.<sup>162</sup> Addicted victims, therefore, bring with them another carrot and a stick that gangs are happy to exploit for their own financial benefit.

Furthermore, even victims who are not addicts per se can be motivated with drugs. Many pimps have been known to motivate victims to earn more with promises of drugs; at least one victim was enticed by a promise that she could give up prostitution and instead make a living selling drugs.<sup>163</sup> As noted above, most victims cannot continue to perform

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<sup>160</sup> See *United States v. Mack*, 298 F.R.D. 349, 350 (N.D. Ohio 2014) (noting that the defendant “controlled [the victims’] access to drugs to force them to continue to prostitute themselves in order to avoid painful withdrawal symptoms”).

<sup>161</sup> See *id.*

<sup>162</sup> See, e.g., *Pretty on Top v. City of Hardin*, 597 P.2d 58, 63 (Mont. 1979) (“The process of detoxification is a painful physical and mental process.”) (Shea, J., dissenting).

<sup>163</sup> See *United States v. Jackson*, 697 F.3d 1141, 1142 (9th Cir. 2012):

commercial sex acts without “medicating” themselves with alcohol or narcotics.<sup>164</sup> In light of this need, drugs make a suitable reward for the cash that victims produce for their controllers,<sup>165</sup> and providing these narcotics helps to ensure that victims will continue to submit to sex acts with customers.<sup>166</sup> The drugs provided typically cost only a fraction of the revenue that the victims generate, especially when gangs purchase the narcotics in large volumes and can obtain them at a wholesale price. This allows gangs to further trim costs and become more profitable in their sex trafficking efforts.

#### 5. CREDITOR PIMPS

Sex traffickers have also been known to use debts incurred by victims or their families to compel victims to perform commercial sex acts.<sup>167</sup> A victim with a debt ensures that the creditor will have power over

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[The defendant] met a fourteen-year-old minor, referred to as AK, on the streets of Seattle, Washington, where AK was engaged in prostitution and cocaine distribution. After giving AK alcohol and having sex with her multiple times, Appellant convinced AK to move with him to Portland, Oregon so the two could sell ecstasy. Once in Portland, Appellant told AK that she would have to prostitute herself to pay for their motel room. Appellant beat and choked her during this first night in Portland. For the next three months, AK earned approximately \$400–\$600 per day as a prostitute and gave her earnings to Appellant.

<sup>164</sup> See Barcus Statement of Facts, *supra* note 30, at 7.

<sup>165</sup> See, e.g., *United States v. Pipkins*, 378 F.3d 1281, 1285 (11th Cir. 2004) (“[The pimp] rewarded his prostitutes with drugs for meeting monetary goals.”).

<sup>166</sup> See Barcus Statement of Facts, *supra* note 30, at 7.

<sup>167</sup> See *United States v. Kozminski*, 487 U.S. 931, 943 (1988) (“[P]eonage—a condition in which the victim is coerced by threat of legal sanction to work off a debt to a master—is involuntary servitude under the Thirteenth Amendment.”). Requiring someone to labor in peonage violates 18 U.S.C. §§ 1581 (peonage), 1589 (forced labor), and 1591 (sex trafficking), when the victim is forced to perform acts of prostitution.

the debtor, and some such creditors have been known to use this power to coerce victims.<sup>168</sup> Peonage prostitution is often successful because of the power that unpaid debts give to creditors who operate outside the confines of the law.<sup>169</sup> Traffickers are notorious for using debt bondage with great frequency on impoverished victims, particularly those from Mexico, Central America, and Asia.<sup>170</sup> These traffickers will sometimes smuggle victims into the United States themselves or pay smuggling networks to perform this task.<sup>171</sup> Adult victims usually know that being smuggled into the United States in violation of U.S. law is expensive, at least according to the victim's financial standards. Some victims know in advance of their smuggling trip that they will be prostituted to pay off their smuggling debts.<sup>172</sup> Many of these victims, however, agree to be smuggled into the United States based on false promises of employment as waitresses, cleaners, or kitchen staff, without the traffickers even mentioning a smuggling debt.<sup>173</sup> Once the victims arrive in the United States, however,

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<sup>168</sup> See, e.g., *United States v. Booker*, 655 F.2d 562, 563 (4th Cir. 1981) (noting that farm workers were forbidden to leave their employment without having first paid off their debts).

<sup>169</sup> See, e.g., *Bailey v. Alabama*, 219 U.S. 219, 242 (1911) ("The essence of [peonage] is compulsory service in payment of a debt. A peon is one who is compelled to work for his creditor until his debt is paid."); *Pierce v. United States*, 146 F.2d 84, 86 (5th Cir. 1944) ("In a prosecution for peonage, the law takes no account of the amount of the debt, or the means and method of coercion. It is sufficient to allege and prove that a person is held against his will and made to work to pay a debt.").

<sup>170</sup> See, e.g., *United States v. Sabhnani*, 599 F.3d 215, 243 (2d Cir. 2010) (discussing how two workers from Indonesia were held in debt bondage).

<sup>171</sup> See, e.g., *United States v. Cortes-Castro*, 511 F. App'x 942, 944 (11th Cir. 2013) ("The Department of Homeland Security learned that Ernesto, Alberto, Israel, and a coconspirator were smuggling women from Mexico into the United States, where they were forced to become prostitutes.").

<sup>172</sup> See, e.g., *United States v. Valenzuela*, 495 F. App'x 817, 819 (9th Cir. 2012) ("A minority of the girls who testified expected to work in prostitution for a brief time to pay off their smuggling debts.").

<sup>173</sup> See *Cortes-Castro*, 511 F. App'x at 944 ("The defendants encouraged the women to find jobs in the United States and, after smuggling them into the country, they learned that . . . [they had] to become prostitutes and give the defendants the proceeds.") (internal

they are informed that they have incurred a smuggling debt and that the only way to pay off the debt is to submit to prostitution.<sup>174</sup> For example, in *United States v. Garcia-Gonzalez*, the Fifth Circuit described how the defendant made use of debts incurred by two minor victims to coerce them into prostitution:

Garcia arranged for C.M. and her sister, B.Y., to leave Honduras with no money or clothes besides what they were wearing, under false pretenses that they would be working in a restaurant. C.M. was seventeen years old and B.Y. was fifteen years old when they were smuggled into the United States. On the day that C.M. and B.Y. arrived in United States, Garcia took them to buy revealing clothing for their

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quotation marks omitted); T.K. Logan et al., *Understanding Human Trafficking in the United States*, 10 TRAUMA, VIOLENCE & ABUSE 3, 5 (2009) (“[Traffickers] will actually use the fee charged for transporting the individual into the United States as a form of debt bondage to entrap people into the trafficking situation.”).

<sup>174</sup> See *Valenzuela*, 495 F. App’x at 819. As the *Valenzuela* court noted:

Testimony at trial recounted that appellants and co-conspirators recruited impoverished minors and young women from their home country of Guatemala with promises of well-paying jobs in the United States. A minority of the girls who testified expected to work in prostitution for a brief time to pay off their smuggling debts. Appellants and co-conspirators arranged for the girls’ travel and paid the smugglers for the girls upon arrival in the United States. Appellants then forced the girls to work for them as prostitutes, using threats of force and witchcraft against the girls and their families, brutal physical and sexual violence, economic and social dependence, as well as lock and key to keep the girls from running away.

*Valenzuela*, 495 F. App’x at 819. See also *United States v. Fan*, 36 F.3d 240, 245 (2d Cir. 1994) (“[T]he aliens had paid sums ranging from \$100 to \$15,000 to board the Chin Wing, and had each agreed to pay a total of \$25,000–30,000 to be smuggled into the United States. . . . [T]hese huge debts would be paid through years of labor under circumstances fairly characterized as involuntary servitude.”).



jobs in his bar, where customers paid for the sisters to drink alcohol. Garcia kept and applied all wages earned to the sisters' smuggling debt. Garcia and his employees constantly monitored the sisters, and Garcia threatened that he would harm the sisters' family if they tried to escape. C.M. testified that Garcia told her that the only way she could make money was through having sex with customers. Garcia proposed that the sisters engage in prostitution, told them how much to charge for sex, and arranged the sexual encounters.<sup>175</sup>

For some victims, the debts continue to accrue even after they are in the United States. That is, some traffickers continue to add to the debt things such as "rent" and "living expenses" that the victims incur while residing in the United States.<sup>176</sup> Oftentimes, traffickers inflate these amounts to ensure that they will have women and girls to prostitute for at least a few years.<sup>177</sup> Still other traffickers will loan money to women unlikely to be able to repay them and demand that the victims submit to

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<sup>175</sup> *United States v. Garcia-Gonzalez*, 714 F.3d 306, 313 (5th Cir. 2013).

<sup>176</sup> In *United States v. Kozminski*, 487 U.S. 931, 957 (1988), the Court observed that:

Other involuntary servitude cases have also chronicled a variety of nonphysical and nonlegal means of coercion including trickery; isolation from friends, family, transportation or other sources of food, shelter, clothing, or jobs; denying pay or creating debt that is greater than the worker's income by charging exorbitant rates for food, shelter, or clothing; disorienting the victims by placing them in an unfamiliar environment, barraging them with orders, and controlling every detail of their lives; and weakening the victims with drugs, alcohol, or by lack of food, sleep, or proper medical care.

<sup>177</sup> *See, e.g., United States v. Farrell*, 563 F.3d 364, 368–69, 374 n.4 (8th Cir. 2009) (describing how labor traffickers kept their victims enslaved by repeatedly inflating the victims' debts well beyond what their meager incomes could liquidate).

prostitution when payment is not made.<sup>178</sup> Undoubtedly creative traffickers will utilize variations of this technique to exercise control over victims.<sup>179</sup>

### B. TECHNIQUES FOR RETAINING VICTIMS

Many of the features of gangs that help them recruit victims also ensure that they are able to retain victims. This is highly important to gangs insofar as their profits are tied to the number of victims that can be prostituted. Under “traditional” pimping rules, there is a rule that prohibits victims from leaving their pimps,<sup>180</sup> although some permutations of this rule allow victims to pay a “choose up” fee that permits them to leave one pimp for another.<sup>181</sup> This simply creates a Hobson’s choice for the victims. Under these same rules, competitor pimps can take possession of a victim if she is “out of pocket.” But such victims are still prostituted by some pimp.

Some gangs engaged in sex trafficking also do not allow their victims to leave, for the obvious reason that this permits the gang to maintain victims—and the profit streams that they generate—for a longer duration. Indeed, many pimps and gangs explicitly tell victims that if they

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<sup>178</sup> See, e.g., Statement of Facts at 2, *United States v. Miller*, No. 1:13-CR-175-CMH (E.D. Va. Nov. 19, 2013) (noting that the defendant encouraged at least one victim to incur a debt to the defendant, “and then placed the victim in a form of debt bondage as a means of controlling the victim to submit to commercial sex acts”).

<sup>179</sup> Gangs and organized criminal syndicates are well suited to carry out creditor-debtor sex trafficking, particularly when this entails smuggling victims into the United States. See Coonan, *supra* note 55, at 315–20 (describing a sex trafficking case that involved the smuggling and indebting of victims, and noting that the “scheme also bore the unmistakable imprint of organized crime”).

<sup>180</sup> See, e.g., *People v. McFarland*, No. B171999, 2005 WL 713815, at \*4 (Cal. Ct. App. Mar. 30, 2005) (noting that a pimp informed a victim that she “had no right to leave” him).

<sup>181</sup> See *People v. Watler*, 2013 WL 5739146, at \*1 (Cal. Ct. App. Oct. 23, 2014) (noting that a “choose up” fee was “money a pimp charged a prostitute” to become part of his “family”).

leave, they and/or their families will be killed.<sup>182</sup> Other gangs do not rigorously enforce this “no exit” rule—particularly with respect to juvenile victims—but they also do not make it easy for victims to leave, often taking steps to isolate victims and hinder relationships with anyone who might assist a victim in departing.<sup>183</sup> Perhaps because of the legal penalties that sex trafficking minor victims entails, some gangs are more liberal in allowing victims to leave—at least for a period of time—to return to whatever remnants of their family still exist. Their thinking is that after being allowed some freedom of movement, these victims will be less likely to realize the extent of their exploitation and will come back to the gang after brief absences. This practice, of course, is also designed to maximize profits under the theory that it is better to allow the victims a brief respite rather than lose them altogether. Other gangs, however, prefer to completely isolate victims, and thereby preclude any absences.

Although initially some victims may acquiesce to being prostituted, at some point nearly all victims want to escape the ordeal of prostitution. Indeed, most victims quickly discover that a life of prostitution is not glamorous; that pimps are not romantic or kind-hearted; that prostitution entails substantial dangers; and, that there are many incentives to flee such a life.<sup>184</sup> Because the gang’s business model requires a steady supply of victims to prostitute, the gang has an equally strong incentive to ensure that victims do not depart. Gangs, therefore, utilize various mechanisms to retain the labor they need to remain profitable in their sex trafficking efforts.

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<sup>182</sup> *Id.* at \*6 (describing how the pimp caused the victim to believe that if she left him, he would find her and kill her, along with her family).

<sup>183</sup> KARA, *supra* note 16, at 193 (noting that a group of sex traffickers forced victims “to abide by strict rules: no talking, no hiding money, no contacting family in Mexico, no looking outside the window”).

<sup>184</sup> See John J. Potterat et al, *Mortality in a Long-Term Open Cohort of Prostitute Women*, 159 AM. J. EPIDEMIOLOGY 778, 784 (2004) (“Women engaged in prostitution face the most dangerous occupational environment in the United States.”); Teela Sanders, *The Risks of Street Prostitution: Punters, Police and Protesters*, 41 URB. STUD. 1703, 1705 (2004) (discussing the risk of violence faced by prostitutes).

When a victim is successfully recruited via promises of love and romance, the gang member who is the “Romeo” pimp typically continues the fake romance for as long as possible.<sup>185</sup> As mentioned above, many such victims will discover that the relationship is a sham, motivated only by greed and loyalty to the gang. When that happens, the gangs must often resort to other carrots and sticks to prevent the victim from leaving. Pimps and gangs have become very creative in this regard. Their methods include providing drugs to the victims—either to numb the victims<sup>186</sup> or to cause them to become addicted—isolating victims, and informing victims that they will be permitted to leave after they earn a specified amount. Gangs and traffickers have also been known to withhold a victim’s property and identification documents until the victim produces sufficient money to “ransom” them.<sup>187</sup> Traffickers also beat victims into submission and threaten violence to prevent departures;<sup>188</sup> these threats sometimes extend to the victims’ family members.<sup>189</sup> Similarly, traffickers also use rape as a means of controlling, demoralizing, and punishing victims.<sup>190</sup> They have

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<sup>185</sup> KARA, *supra* note 16, at 192 (2009) (discussing a Mexican sex-trafficking organization that used romantic seduction as the primary means to recruit victims, including long-term courtship and marriage); *see also* United States v. Carreto, 583 F.3d 152, 154–55 (2d Cir. 2009) (noting that the defendants “seduced women, . . . many of whom were . . . poor and uneducated”).

<sup>186</sup> *See* Barcus Statement of Facts, *supra* note 30, at 7–8.

<sup>187</sup> United States v. Townsend, 521 F. App’x 904, 906–07 (11th Cir. 2013) (“L.F. testified that she sought employment as a prostitute for Townsend after seeing a help wanted advertisement he posted, but a few days after she met him, he hit her, took away her passport, phone, and other personal belongings, and told her that she would have to engage in prostitution to get her belongings back.”).

<sup>188</sup> *See* United States v. Pipkins, 378 F.3d 1281, 1286 (11th Cir. 2004).

<sup>189</sup> *See, e.g.*, United States v. Williams, 220 F. App’x 851, 853 (10th Cir. 2007) (noting that the defendant “manipulated the prostitutes in his charge through threats of brutality against them and their children”).

<sup>190</sup> *See, e.g.*, Townsend, 521 F. App’x at 907 (“[The victim] testified that when [the defendant] was raping her, he told her that he was doing so because she was not bringing in enough prostitution money.”); *see also* Alexis Flynn & Nicholas Winning, *Rotherham Residents Search for Answers in U.K. Sex Abuse Scandal*, WALL ST. J., Aug. 28, 2014, at A9, available at <http://www.wsj.com/articles/rotherham-residents-search-for-answers-in->

also been known to threaten to reveal to the victims' friends and family that the victims were engaging in commercial sex acts<sup>191</sup> and to make any number of false promises.<sup>192</sup> When all else fails, traffickers may promise to let the victim leave—tomorrow or next week—all the while knowing that this is simply a tactic to keep the victim for as long as possible.

Gangs are well situated to use any and all of these mechanisms to retain victims. For example, some victims may have firsthand knowledge of a gang's penchant for violence, either because they have been recipients of that violence themselves, have seen other victims being beaten, or have

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u-k-sex-abu&#13;se-scandal-1409272644 (noting that “predatory gangs” raped, beat, and abducted children and teens— most of them girls—in the process of trafficking them).

<sup>191</sup> Among other forms of psychological coercion, shame can be a powerful motivator. Often the mere threat that a victim's friends, spouse, or family will be informed that she is a “slut” or a “ho” will quash a victim's hope of departing the gang's sphere of control. See Maurice E. Stucke, *Is Intent Relevant?*, 8 J. L., ECON. & POL'Y 801, 826 (2012) (noting that people are motivated by praise, shame, guilt, empathy, and sensitivity to social sanctioning); Danielle Einstein & Kevin Lanning, *Shame, Guilt, Ego Development, and the Five-Factor Model of Personality*, 66 J. PERSONALITY 555, 556 (1998) (noting that guilt has the power to motivate people).

<sup>192</sup> In *People v. McFarland*, No. B171999, 2005 WL 713815, at \*8 (Cal. Ct. App. Mar. 30, 2005), the California Court of Appeals observed that:

[P]imps use a variety of strategies to get and maintain control over prostitutes. In addition to physical violence, they use threats of violence against both the prostitute and her family or anyone the prostitute cares about. They force the prostitutes to engage in frequent sex with the pimp or a group of pimps. They alternate violence and threats of violence with promises of protection, material comfort, and caring. Pimps control the prostitute's environment so she has contacts only with pimps, other prostitutes, and customers, and is permitted to talk only with other prostitutes. The pimp frequently pits the prostitutes against each other to try to win his affection and favor and to become the dominant prostitute in his group. Thus, the prostitute feels she has nowhere to go even if she wants to escape the life of prostitution.

seen the gangs inflict their violence on rival gang members.<sup>193</sup> Other victims may simply have seen the weapons that the gangs carry and realized that these were not simply for show.<sup>194</sup> Gangs are notorious for their gratuitous violence,<sup>195</sup> and most victims have either seen the violent side of gangs or at least know of a gang's reputation for violence.<sup>196</sup> Indeed, a reputation for violence is frequently sufficient in and of itself to convince victims not to rock the boat, disobey, or attempt to flee.<sup>197</sup> Traffickers are also well known for threatening to kill or harm members of

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<sup>193</sup> See, e.g., *United States v. Zelaya*, 336 F. App'x 355, 357 (4th Cir. 2009) (noting that defendants—who were MS-13 gang members—were involved in: “murdering a rival gang member;” celebrating the “stabblings of rival gang members;” and, punishing fellow “MS-13 members for not killing members of other gangs when the opportunities arose”).

<sup>194</sup> See *City of Chicago v. Morales*, 527 U.S. 41, 99 (1999) (Thomas, J., dissenting) (“Gangs fill the daily lives of many of our poorest and most vulnerable citizens with a terror . . . often relegating them to the status of prisoners in their own homes.”).

<sup>195</sup> America can expect even more of this violence if the predictions of experts prove to be correct. See Mac Donald, *supra* note 5, at 35:

The constant invasion of illegal aliens is worsening gang violence as well. In Phoenix, Arizona, and surrounding Maricopa County, illegal alien gangs, such as Brown Pride and Wetback Power, are growing more volatile and dangerous, according to Tom Bearup, a former sheriff. Even in prison, where they clash with American Hispanics, they are creating a more vicious environment.

<sup>196</sup> A gang's reputation for violence is extremely important to gang members because it gives them leverage over rival gangs, sex trafficking victims, and extortion victims. See JACKSON & MCBRIDE, *supra* note 16, at 59 (“If a gang has a reputation for violence, then it will be feared by other less violent gangs, and the reputation for violence will devolve to the individual members simply through association.”).

<sup>197</sup> The Bloods gang, for example, became infamous for attempting to kidnap a prosecutor who had successfully convicted gang leaders. However, the Bloods mistakenly went to the home of the prosecutor's father, and so had to settle for abducting him as opposed to the prosecutor. *Officials Say Kidnappers Abducted Wrong Person*, WALL ST. J., Apr. 23, 2014, at A5, available at <http://www.wsj.com/articles/SB10001424052702304279904579517610053914966>.

a victim's family.<sup>198</sup> Many traffickers explicitly inform victims that their families will be harmed if the victim even attempts to escape.<sup>199</sup> Victims of gang-controlled trafficking know that this is not usually an idle threat.<sup>200</sup> Furthermore, if the gang controls—or is particularly active—in the neighborhood in which a victim's family resides, running away may be seen as a futile endeavor by the victim, insofar as the gang is likely to recover the victim and force her to come back to the gang.<sup>201</sup> Similarly, if a particular gang controls the area in which a victims' relatives live—perhaps even in a foreign country—a victim will likely perceive escape as endangering her family.<sup>202</sup> In such situations, victims may perceive that there is no safe haven from the gang.<sup>203</sup> This gives gangs a competitive advantage over autonomous pimps, even particularly violent ones.<sup>204</sup>

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<sup>198</sup> See, e.g., Swinney Statement of Facts, *supra* note 32, at 10–11 (noting that the trafficker threatened to use a razor to cut the face of a victim's younger brother if she did not comply with his demands); Brendan O'Neill, *Sexual Predators and Politically Correct Cowardice*, WALL ST. J., Sept. 2, 2014, at A13, available at <http://www.wsj.com/articles/brendan-oneill-sexual-predators-and-politically-correct-cowardice-1409701244> (noting that “gangs of older men” trafficked underage victims around England and that these victims “were often threatened with violence against their families to stop them from seeking help”).

<sup>199</sup> See, e.g., *People v. McFarland*, No. B171999, 2005 WL 713815, at \*8 (Cal. Ct. App. Mar. 30, 2005).

<sup>200</sup> See Lane & Meeker, *supra* note 90, at 501.

<sup>201</sup> See *id.*

<sup>202</sup> *United States v. Garcia-Gonzalez*, 714 F.3d 306, 313 (5th Cir. 2013).

<sup>203</sup> See Coonan, *supra* note 55, at 326 (noting that sex trafficking victims were reluctant to cooperate with investigators because, among other reasons, they realized that their traffickers were part of a syndicate and they “knew exactly where the victims’ family and children could be found”).

<sup>204</sup> Of course, even autonomous pimps can—and often do—convince victims that there is no safe refuge from the pimp or that escape would be futile and result in death or bodily injury for the victim or her family. Autonomous pimps can mislead victims into believing that their power extends to wherever a victim might seek to escape. But gangs do not have to convince victims of their geographic reach; many victims already know the extent of the gang's influence.

Both gangs and solo pimps use various methods to control victims and prevent escape. For example, many gangs will post a guard outside of the hotel room where a victim is housed and prostituted.<sup>205</sup> Gangs and pimps may claim that this is done to protect the victims and ensure that competitors do not “steal” them or their earnings, but the presence of a guard also inhibits escape and reminds the victims that they are under constant surveillance. Such surveillance is often sufficient to destroy any hope of escape that victims may secretly harbor, although victims who remain vigilant can still sometimes find opportunities for escape.

When gangs lack the personnel to stand guard—or choose not to stand guard to minimize the opportunity for the police to observe them around the victims—they usually require the victims to send frequent reports via text messages. That is, they often require victims to send a text message at every step in the process: receipt of a call from a customer; arrival of the customer; payment by the customer (including the amount paid); and departure of the customer. Pimps and gang controllers have been known to punish victims who fail to text them after each event, so victims have a strong incentive to comply with these rules. Some gang members will also perform surprise checks on victims to ensure that they are complying with this reporting requirement. Accordingly, gangs can cause victims to perform self-surveillance through fear, thus freeing the gang members for other tasks.

### C. MARKETING THE VICTIMS

Paying customers are essential to all businesses, including those in the sex trade. But sex trafficking entails a unique dilemma regarding the marketing and advertising of the victims. On the one hand, gangs and pimps must let customers know that they have victims available for commercial sex, lest the customers not patronize them. On the other hand, they must hide this fact from the police. This creates an obvious problem.

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<sup>205</sup> See Dumas Statement of Facts, *supra* note 36, at 12 (“[The defendant] acted as a ‘look out’ to conduct surveillance of customers, ensure that the police were not around, and to detect whether customers were undercover police officers.”).



If there is too much secrecy, no customers will ever find out about the prostitution, and there will be no business. However, being too open about the nature of the business will invite unwanted attention from law enforcement personnel, which may result in the arrest and prosecution of the traffickers, not to mention the rescue of the victims.

### 1. INTERNET ADVERTISING

Some gangs have simply adopted the practices of autonomous pimps and advertise their victims on a variety of Internet sites,<sup>206</sup> the most common being Backpage.com.<sup>207</sup> Pimps can easily create and post these advertisements with minimal risk.<sup>208</sup> Many pimps—including gang member pimps—know that using pre-paid debit cards to pay Backpage to post advertisements allows the pimps to cover their tracks.<sup>209</sup> The advertisements usually include photographs of the victim—generally dressed only in lingerie and posed in a sexually suggestive manner—and a telephone number which customers can call to arrange a “date” with the victim. As a further hindrance to law enforcement, many traffickers use

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<sup>206</sup> See, e.g., *United States v. Pipkins*, 378 F.3d 1281, 1286 (11th Cir. 2004) (“[The defendant] branched out on the Internet, forming a web-based escort service which allowed customers to select a particular prostitute from pictures posted on a website.”); Mitali Thakor & Dannah Boyd, *Networked Trafficking: Reflections on Technology and the Anti-Trafficking Movement*, 37 DIALECTICAL ANTHROPOLOGY 277, 286 (2013) (“Technology has reconfigured many aspects of sex trafficking . . . altering the ways in which connections are made between exploiters, purchasers, and victims and changing the ways in which information flows regarding how to engage in criminal conduct.”).

<sup>207</sup> See Barcus Statement of Facts, *supra* note 30, at 2 (discussing the various Internet sites that the Cold Blooded Cartel used to advertise victims to sex customers); Strom Statement of Facts, *supra* note 112, at 2 (listing Internet sites that were used to solicit customers to pay for commercial sex acts with victims).

<sup>208</sup> See Mary G. Leary, *Fighting Fire with Fire: Technology in Child Sex Trafficking*, 21 DUKE J. GENDER L. & POL’Y 289, 308 (2014) (noting that sex traffickers advertise the availability of victims on Internet sites such as Backpage).

<sup>209</sup> See, e.g., Barcus Statement of Facts, *supra* note 30, at 6 (discussing how a sex trafficking organization “conducted . . . transactions relating to posting by use of pre-paid debit cards”).

prepaid telephones and periodically change telephone numbers, often ceasing to use particular numbers altogether.

Some traffickers train victims to answer telephone calls from customers seeking sex themselves, although others prefer to have trusted and experienced women—sometimes the trafficker’s “bottom”—answer the calls.<sup>210</sup> This latter strategy has two advantages. First, an experienced

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<sup>210</sup> Many traffickers have a woman or girl who is designated as the “bottom” or “bottom bitch.” This woman or girl is usually the most trusted prostitute, although the level of trust a trafficker places in a particular bottom varies. As the Eleventh Circuit observed with regard to the role of the bottom in one sex trafficking operation:

At the top of each pimp’s organization was his “bottom girl,” a trusted and experienced prostitute or female associate. Next in the pimp’s chain of command was a “wife-in-law,” a prostitute with supervisory duties similar to those of the bottom girl. A pimp’s bottom girl or wife-in-law often worked the track in his stead, running interference for and collecting money from the pimp’s other prostitutes. The bottom girl also looked after the pimp’s affairs if the pimp was out of town, incarcerated, or otherwise unavailable.

*Pipkins*, 378 F.3d at 1285. Although the bottom usually does not receive any compensation for the extra duties she must perform, being the bottom is the only form of status that most victims can earn. Many victims, therefore, compete with other victims to become the “bottom,” as it is a coveted position. Some pimps assign the position to the most trusted woman or girl, while others confer the title based on longevity or earning history. *See United States v. Daniels*, 685 F.3d 1237, 1241 (11th Cir. 2012) (“Eventually, Head became Daniels’s ‘bottom girl,’ meaning that she earned the most money and was respected and trusted above Daniels’s other prostitutes.”). A bottom’s duties vary from trafficker to trafficker. Their duties may include: answering calls from customers, collecting money from victims and other prostitutes, creating and posting advertisements on the Internet, training new victims, transporting victims and prostitutes, supervising victims and preventing them from escaping, purchasing drugs, alcohol, and condoms, recruiting new victims, and attacking prostitutes who attempt to recruit victims to their pimp. The Third Circuit described one such bottom:

One prostitute in the organization, Tana Adkins, carried the label of Britton’s bottom bitch. Bottom bitches are prostitutes in charge of a pimp’s other prostitutes, responsible for the recruitment, training, collection of earnings, forwarding the earnings to the pimp, and

woman may be better at determining whether the caller is an undercover police officer. Second, conducting the initial negotiations over the telephone—usually in code—allows the trafficker to learn the amount the customer is likely to pay, based on the amount of time that the customer requests and whether he requests “extras” or “fetishes” for which he must pay more. Whether it is a victim or another woman who answers the calls, the trafficker will instruct them to be vigilant for undercover law enforcement personnel posing as customers.<sup>211</sup> One common technique used to screen for law enforcement personnel is to ask the caller his occupation.<sup>212</sup> If the caller hesitates, the recipient of the call often will hang up. Most victims are instructed to ask if the caller is affiliated with law enforcement, apparently under the mistaken belief that police officers are obliged to confess their employment by a law enforcement agency.<sup>213</sup> Victims are also told never to explicitly discuss sex over the telephone, in case the call is being recorded.<sup>214</sup>

If the caller sounds like a legitimate sex customer, he is instructed to go to a location near the hotel or apartment where the sex is to take place. Once there, he calls again and will be told which hotel. The customer usually is not provided the hotel room number at that time. Instead, he is instructed to call back once he has arrived at the hotel. There is a reason for this. Once traffickers know that a customer is on his way to the hotel, they can begin their surveillance to see if the customer arrives

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oversight of other prostitutes. In addition, when called upon to do so, the bottom bitch will defend her territory against other prostitutes and will attack renegades, that is, prostitutes who work without a pimp.

United States v. Britton, 567 F. App'x 158, 159 (3d Cir. 2014) (internal citation omitted) (internal quotation marks omitted).

<sup>211</sup> See, e.g., Barcus Statement of Facts, *supra* note 30, at 8.

<sup>212</sup> See, e.g., *id.*

<sup>213</sup> See, e.g., *id.* (noting that the victims were instructed to “always . . . ask a potential customer if he is affiliated with law enforcement” and to “never discuss sex with a customer over the telephone”).

<sup>214</sup> See, e.g., *id.*

with multiple cars or with another person in his car, both indications that the “customer” is really an undercover police officer. Solo pimps are necessarily limited in their ability to conduct such surveillance. Gangs are limited only to the extent they are willing to dedicate personnel to this task, which often means that they can conduct extensive surveillance. This makes it much more difficult for the police to conduct undercover “sting” operations in gang-controlled cases. Indeed, with sufficient surveillance, gangs can usually thwart all but the most sophisticated sting operations.

Once at the hotel, the customer typically calls the telephone number he called previously. He may be asked to describe himself and the car he drove to further confirm that he is alone and to allow the surveillance personnel to correctly identify him and zero in on him. Assuming the customer does not raise any alarms, he is then provided with the number of the room to which he is supposed to go for the commercial sex.

The gang’s surveillance of the customer continues for as long as possible to ensure that he does not call anyone else and tell them the room number. Once the customer is in the room, the surveillance continues, since the customer may be wearing a body wire and an arrest team may arrive while the customer is in the hotel room. Again, because various hotels are not well configured to perform surveillance or counter-surveillance and may have multiple points of entry that need to be monitored, the fact that gangs can muster multiple personnel to perform these tasks gives them a substantial advantage over smaller operations.<sup>215</sup>

## 2. DIRECT SOLICITATION OF CUSTOMERS

Many gangs and pimps do not use the Internet to solicit customers. There are a number of reasons for this. Some are risk averse and realize that advertisements will eventually draw the police to the prostitution

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<sup>215</sup> Of course, gangs must be careful about bringing too many gang members to the scene, lest this cause a hotel operator to become nervous and call the police. Some disreputable hotels, however, are willing to look the other way, and some hotel personnel even receive “tips” from the pimps or gangs that frequently patronize a favorite hotel. In such cases, the gangs can operate with impunity and need not limit their numbers.

operation. Other traffickers do not use the Internet because the customers they seek to service are illegal aliens who may not have ready access to the Internet or may not know which Internet sites to search. These gangs and pimps, however, are still able to make substantial profits by using other mechanisms to obtain customers. One such method is to drive around to sites where illegal aliens are known to congregate and inform these potential customers that the traffickers have girls who are available for sex.<sup>216</sup> Sometimes traffickers even take the victims along to entice customers and let the potential customers get a firsthand look at the “merchandise.” Eager customers may occasionally have commercial sex right in the car, but they are more commonly given a telephone number to call if they are interested in having sex with the victims.

Other advertising mechanisms include handing out business cards—typically in the Spanish language—that advertise sporting goods, flowers, plumbing, automobile repair, or any type of innocuous occupation.<sup>217</sup> When handing out the cards, however, the potential customer is informed that they should call the telephone number if they

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<sup>216</sup> Many victims prostituted by Hispanic gangs have related that most of their sex customers were illegal aliens, who, due to their unlawful status and other reasons, are unlikely to call the sex trafficking (even of minors) to the police. *See, e.g.*, Statement of Facts 2–3, *United States v. Ramos*, 1:12-CR-474 (E.D. Va. Nov. 7, 2012) (noting that the defendant sought out customers at sites frequented by illegal aliens and that most of the minor victim’s customers were also illegal aliens); Coonan, *supra* note 55, at 323 (noting that “the traffickers very deliberately targeted areas in Florida where a large pool of Hispanic males were available to patronize their prostitution service” and that the “vast majority of these ‘johns’ were themselves undocumented immigrants and therefore unlikely to contact law enforcement”). Customers who are United States citizens tend to utilize Internet sites to find victims.

<sup>217</sup> *See, e.g., id.* at 2 (“Ramos and his co-conspirators advertised the prostitution business by handing out business cards that purported to be for plumbing, landscaping, or a snow removal business, but which contained a telephone number that a customer could call to obtain sexual services.”); *see also* Statement of Facts at 2–3, *United States v. Ramirez*, 1:14-CR-238 (E.D. Va. Jul. 16, 2014) (noting that the defendant distributed business cards that advertised an automobile mechanic but were really for prostitution).

want commercial sex.<sup>218</sup> Of course, in the event that the police or some uninformed person—such as a wife or girlfriend—found one of the cards, they would presume that the cards were advertising a legitimate business. From the trafficker’s perspective, that makes this particular system of advertising better than the Internet, as it helps insulate the sex trafficking from detection. Business cards may also be less expensive than Internet advertisement. Backpage, for example, charges around eight to twelve dollars per advertisement, and many traffickers post multiple advertisements throughout the day. The key drawbacks to using business cards include the fact that customers may lose them and the fact that the trafficker must keep the telephone number listed on the business cards, lest the information on the cards become obsolete.

Still other gangs have been known to take victims door to door in neighborhoods populated largely by immigrants, including illegal aliens. If a male answers the door and seems like a potential customer, the gang member will then offer the victim for sexual services. To outsiders, it would seem that this method is quite risky, insofar as one of the residents could easily call the police and report the venture. Yet, such calls to the police are infrequent, despite the fact that primarily underage girls are prostituted using this method. Certain cultures believe that girls as young as twelve are old enough for sexual activities, and some members of those cultures who reside in the United States believe that there is little or nothing wrong with prostituting teenage girls.<sup>219</sup> Apparently, gangs have correctly foreseen that apartment-to-apartment advertising bears only minimal risk. In such neighborhoods, traffickers are free to prostitute underage girls with impunity.

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<sup>218</sup> See Coonan, *supra* note 55, at 320 (noting that the sex trafficker handed out business cards to potential sex customers).

<sup>219</sup> See generally Shively et al., *supra* note 88, at 11 (“Most studies find the average age of entry into prostitution to be between 12 and 16, and the vulnerabilities leading girls and young women into commercial sex often conspire to keep them there.”).

### 3. SOLICITATION THROUGH GANG NETWORKS

Another advantage that gangs enjoy regarding the solicitation of customers is the breadth of their associations with individuals who are more likely to engage in commercial sex acts with victims. MS-13, in particular, is known for offering incentives to gang members who solicit customers and enjoying a structure that facilitates cooperation:

MS-13 is organized into “cliques” that operate under the umbrella rules of MS-13 and work cooperatively to commit acts of violence. Members meet on a regular basis to discuss acts of violence committed by their cliques, and leaders of cliques from across the United States will meet to discuss gang rules and business, to resolve any issues or problems among the cliques, and to unite gang members across the country. Furthermore, MS-13 members pay dues to be provided to those members imprisoned in both the United States and El Salvador.<sup>220</sup>

Using this structure, cliques that undertake sex trafficking can reach out to other cliques for assistance. For example, a sex trafficking clique may offer members of another clique free sex with the victims in exchange for obtaining a certain number of customers. Other times, the sex trafficking clique may offer a percentage of the profits in exchange for help in obtaining sex customers. Sometimes they will offer both a cut of the profits and free sex. Particularly on days when business is slow, a gang’s ability to draw upon other gang members to generate business can be extremely valuable. With assistance from the various branches of a gang, a sex trafficking clique will continue to accrue profits, part of which can be used to pay the requisite dues for the maintenance of imprisoned gang members.<sup>221</sup>

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<sup>220</sup> United States v. Zelaya, 336 F. App’x 355, 357 (4th Cir. 2009).

<sup>221</sup> Many gangs require their members to pay dues or a “tax.” *See, e.g.*, Skarbek, *supra* note 9, at 192 (noting that the La Nuestra Familia gang requires members to “pay a

#### D. THE “CUSTOMER RELATIONS” DEPARTMENT

Another advantage that gangs enjoy is their ability to effectively handle “customer relations” issues. Specifically, gangs are well designed to handle “problem” customers or thieves posing as customers. Many prostituted women and girls are raped or beaten by customers.<sup>222</sup> Undeterred by the word “no,” sex customers have been known to become violent with little or no provocation.<sup>223</sup> If a victim is in “the game”—as prostitution is often called—long enough,<sup>224</sup> the victim will probably be raped or beaten by customers, including customers who want sexual

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‘gang tax’ of 25% of their earnings for the rest of their lives to higher-ranking members inside and outside of prison”).

<sup>222</sup> See John Lowman, *Violence and the Outlaw Status of (Street) Prostitution in Canada*, 6 VIOLENCE AGAINST WOMEN 987, 988–89 (2000) (noting the high murder rate of prostitutes, often at the hands of customers); Mimi H. Silbert & Ayala M. Pines, *Occupational Hazards of Street Prostitutes*, 8 CRIM. JUST. & BEHAV. 395, 397 (1981) (discussing “extremely high levels of victimization of prostitutes related to their work,” including 70% who were “victimized by customer rape or clients similarly going beyond the prostitution contract”). These rapes are in addition to the rapes at the hands of their traffickers. Pimps typically also exploit at least some of their victims for their own sexual enjoyment. See *United States v. Pipkins*, 378 F.3d 1281, 1286 (11th Cir. 2004). Indeed, one “rule” that pimps typically enforce is that a girl must have sex with anyone the pimp chooses. Most gangs follow the same practice. Indeed, sex with victims is a “fringe benefit” of some gangs. That is, beyond using victims to generate revenue for the gang and its members, gangs also typically use victims for the gang members’ sexual gratification and entertainment. So, after a long day of servicing paying clients, victims are then frequently required to submit to sex with at least their immediate supervisors. In MS-13 cases, some cliques also permitted fellow clique members to have sex with their victims, usually free of charge or at a reduced cost. Many cliques also have a “homeboys fuck for free” policy that allows any member of MS-13 to have sex with their victims. Needless to say, the desires or protestations of the victims are of little to no concern for gang members. To induce compliance, victims are often numbed with drugs and alcohol, so objections from the victims may be uncommon.

<sup>223</sup> See Potterat, *supra* note 184, at 784.

<sup>224</sup> *Pipkins*, 378 F.3d at 1285 (“Both pimps and prostitutes generally referred to their activities as ‘the game.’”).



services that some victims are unwilling to provide.<sup>225</sup> Indeed, “[c]lients perpetrate a large proportion of the lethal and nonlethal violence experienced by prostitutes . . . .”<sup>226</sup>

Many victims also encounter customers who steal their prostitution proceeds, typically at gunpoint.<sup>227</sup> In stealing these funds, the thieves usually are not shy about harming victims, especially those who resist or are too slow in handing over the cash.<sup>228</sup> From the traffickers’ perspective, such robberies are worse than the victims being beaten or raped. After all, the traffickers do not care about the pain suffered by victims—unless it prevents the victim from working—but robberies deny the traffickers the very purpose of their pimping: the profits. Many traffickers, therefore, will beat victims who “allowed” themselves to be robbed. Indeed, because most traffickers impose a quota that victims must meet, any robbery of a victim will usually cause the victim not to meet the quota, and therefore subject the victim to punishment—usually a beating—at the hands of the trafficker.<sup>229</sup> Because gangs have the necessary force to prevent such robberies from occurring, a victim who is prostituted by a gang may be able to avoid beatings resulting from robberies.

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<sup>225</sup> Silbert & Pines, *supra* note 222, at 397.

<sup>226</sup> Potterat, *supra* note 184, at 784.

<sup>227</sup> See, e.g., *Fields v. Brown*, 503 F.3d 755, 762 (9th Cir. 2007) (noting that the defendant raped and robbed prostitutes and would hit women for not swiftly obeying his commands); *Rouleau v. Meachum*, 974 F.2d 8, 9 (2d Cir. 1992) (discussing how a group raped and robbed a prostitute).

<sup>228</sup> See, e.g., *Fields*, 503 F.3d at 762; *Rouleau*, 974 F.2d at 9.

<sup>229</sup> See *United States v. Hornbuckle*, Nos. 12–10541, 12–10615, 2015 WL 1783073, at \*1 (9th Cir. Apr. 21, 2015) (noting that the traffickers imposed daily quotas on the victims); *Pipkins*, 378 F.3d at 1286 (“Some pimps gave their prostitutes a ‘quota’ to earn over \$1,000 a night.”); *United States v. Maes*, No. 1:05-CR-443-2, 2009 WL 5064621, at \*1 (M.D. Pa. Dec. 23, 2009) (“Women were beaten if they failed to make their financial quota of earnings for the night . . . .”); see also *United States v. Campbell*, 764 F.3d 880, 882 (8th Cir. 2014) (noting that the defendant beat victims whenever he “believed money was missing” from the prostitution proceeds).

Rival pimps also sometimes attempt to “steal” victims so that they, in turn, can prostitute these victims themselves.<sup>230</sup> From the traffickers’ perspective, the only thing worse than losing a day’s profits is losing a stream of income. The loss of even one victim can substantially reduce profits, so trafficking organizations that can prevent such losses will be able to maintain a higher level of profitability than rivals who cannot.

Nevertheless, the fact that victims are typically afraid of the police or choose to avoid any entanglements with law enforcement—in conjunction with the fact that the gangs and pimps who prostitute these victims similarly do not want attention from the police—means that many of these crimes go unreported. Indeed, that is one of the reasons why thieves and violent customers target these victims: they know that there is only a small chance that these crimes will be reported to the police. Because pimps and gangs cannot obtain police protection of their victims and prostitution proceeds without revealing that they are intimately involved in criminal conduct, they must fend for themselves. Gangs are well situated to perform these “customer relation” tasks. Given that gang members’ reputations for violence typically precede them, customers who see gang members around—or who know that they are connected to the victims—will be unlikely to rob, attack, or rape the victims.<sup>231</sup> For this reason, some gangs intentionally post intimidating gang members outside of the hotel rooms where victims are prostituted.<sup>232</sup> This practice of posting a guard serves multiple important functions in that it: prevents and discourages victims from escaping; keeps customers from raping or beating victims; prevents customers from stealing the prostitution proceeds; keeps customers from leaving without paying; and, prevents rival pimps from stealing victims. The intimidation that a gang can bring

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<sup>230</sup> See, e.g., Barcus Statement of Facts, *supra* note 30, at 13–14.

<sup>231</sup> Lane & Meeker, *supra* note 90, at 501.

<sup>232</sup> See, e.g., *United States v. Amaya*, 519 F. App’x 784, 785 (4th Cir. 2013) (“[The defendant] served as the ‘muscle’ in the conspiracy, using force and intimidation to ensure that the victims complied with the rules of the organization and carrying weapons to ensure that clients behaved appropriately.”).

to bear on customers gives gangs a substantial advantage over autonomous pimps.

#### E. THE SPECIALIZATION OF LABOR AND STRENGTH IN NUMBERS

Concerted criminal activity has long been recognized as more dangerous to society than crimes committed by autonomous actors.<sup>233</sup> As the Supreme Court has explained, agreements by groups to engage in criminal activity “pose a threat to the public over and above the threat of the commission of the relevant substantive crime—both because the combination in crime makes more likely the commission of other crimes and because it decreases the probability that the individuals involved will depart from their path of criminality.”<sup>234</sup> Concerted criminal activity also makes detection by the police “harder by enabling members to be assigned different duties, including preventing detection,” as discussed above.<sup>235</sup>

Specialization of labor is another advantage of conspiratorial organizations such as gangs; different actors can be assigned different tasks based on their expertise and acumen.<sup>236</sup> “Given the same amount of resources, a specialist will always outperform a generalist at the task on which the specialist is focused.”<sup>237</sup> Gangs capitalize on the efficiency that

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<sup>233</sup> See *United States v. Shi*, 317 F.3d 715, 717 (7th Cir. 2003) (“Conspiracies are punished separately from single-offender criminal acts, and often as severely even if the conspiracy fails to achieve its aim, because a group having an illegal purpose is more dangerous than an individual who has the same purpose.”).

<sup>234</sup> *United States v. Jiminez Recio*, 537 U.S. 270, 275 (2003).

<sup>235</sup> *United States v. LeFevour*, 798 F.2d 977, 982 (7th Cir. 1986).

<sup>236</sup> See, e.g., *United States v. Santos-Rivera*, 726 F.3d 17, 22 (1st Cir. 2013) (noting that a narcotics-distribution “operation was sufficiently organized so that each co-conspirator had a prescribed, specialized role within the operation”); *United States v. Carrazana*, 921 F.2d 1557, 1566 (11th Cir. 1991) (“The affidavit alleged the existence of a complex, continuing narcotics conspiracy involving many persons, each performing specialized tasks within the criminal organization.”).

<sup>237</sup> Gautam Mukunda & William J. Troy, *Caught in the Net: Lessons from the Financial Crisis for a Networked Future*, 39 *PARAMETERS* 63, 67 (2009). Specialization also entails vulnerabilities: “[t]he more specialized any organization is, however, the less

can be derived from specialization. For example, a large gang member may be adept at violence, while a more diminutive figure may prove better at reconnaissance and intelligence gathering. Specialization “and the division of labor yield enormous economic benefits,”<sup>238</sup> in both legitimate and criminal ventures.<sup>239</sup> The division of labor allows gangs to commit crimes more efficiently and, therefore, provides a greater chance of success, particularly if the gang members are starting out with only minimal resources.<sup>240</sup>

For example, as the authors have seen in various cases they have prosecuted, one gang member may have only a car and a little money for gas. Another may have a cellular telephone and a consumption quantity of the drug “ecstasy,” but no car. Two others may lack even these resources, but they may possess an ability to intimidate, have some skills in employing violence, and have access to enough money to rent a hotel room for one night. A fifth person might have neither these skills nor assets, but may enjoy access to a teenage girl who needs money and is susceptible to manipulation or know of a woman who is addicted to drugs and is in daily need of her poison. Separately, these five individuals would be hard-pressed to put together a successful sex trafficking venture. In combination, however, they could operate a formidable enterprise that

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slack capacity it will have to deal with unanticipated contingencies, and the more it will have to transform itself when unpredicted events occur.” *Id.* at 69.

<sup>238</sup> *The Evolution of Everyday Life*, ECONOMIST, Aug. 14, 2004, at 69.

<sup>239</sup> Adam Smith was one of the first to recognize the economic value of labor specialization. *See* 2 ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSE OF THE WEALTH OF NATIONS, bk. V, at 219 (Methuen 1961) (1776) (“Into other arts the division of labour is naturally introduced by the prudence of individuals, who find that they promote their private interest better by confining themselves to a particular trade, than by exercising a great number.”).

<sup>240</sup> Criminal gangs typically form and operate conspiracies, or agreements, to commit at least one crime. Such conspiracies are “more dangerous in being able to commit crimes more efficiently (in a private, not social, sense) by being able to take advantage of the division of labor—e.g., posting one man as a sentinel, another to drive the getaway car, another to fence the goods stolen, etc. Their costs thus are lower . . .” POSNER, *supra* note 48, at 254.

might go on to prostitute multiple victims for an extended period of time.<sup>241</sup> Together, they could also enjoy a greater ability to evade law enforcement, for example, by using their different surnames to rent hotel rooms, thus drawing less suspicion than if the same person repeatedly rented a room. They might also use their gang monikers to ensure that even the victims do not know their real names, which could further inhibit victims and witnesses from identifying the traffickers to the police. Gangs also have the ability to post a lookout to warn when the police are around, and they typically make use of their numbers to perform counter-surveillance.<sup>242</sup> All of this helps to ensure that they are never caught and prosecuted.<sup>243</sup> Furthermore, once operational, the venture could even afford to lose a member or two to prison, all the while knowing that other

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<sup>241</sup> Because cooperation entails many advantages for sex traffickers—including increased profits—even “autonomous pimps” have been known to form confederations that could fairly be characterized as gangs:

While all the pimps did not pool their profits from prostitution, some did. And the pimps generally aided each other. Pimps bailed each other’s prostitutes out of jail; mentored younger pimps; swapped prostitutes with each other to get a better “fit;” warned other pimps and their prostitutes of the presence of police; provided condoms, rides and rooms for each other’s prostitutes; jointly organized private prostitution parties; recruited juvenile prostitutes for each other; divided the track geographically to reduce competition; and traveled out of town together to prostitute females in other cities. Pimps also operated a price-fixing cartel to regulate the prices that their prostitutes charged for different sexual services.

United States v. Pipkins, 378 F.3d 1281, 1286 (11th Cir. 2004).

<sup>242</sup> See, e.g., United States v. Alviar, 573 F.3d 526, 532 (7th Cir. 2009) (noting that gang members acted as lookouts for drug distribution conducted by fellow gang members); Ramos v. Barnes, No. CV 11–8735–CJC, 2012 WL 7071239, at \*4 (C.D. Cal. Oct. 17, 2012) (“In general, gang crimes are committed by two or more members because ‘there’s strength in numbers,’ and one person can act as a ‘backup,’ ‘lookout,’ or get-away driver.”).

<sup>243</sup> Thus, gangs “are also more likely to be effective both in completing the crime and in avoiding being caught.” POSNER, *supra* note 48, at 254.

gang members could be brought in to pick up the slack. As this example shows, “the strength, opportunities and resources of many is obviously more dangerous and more difficult to police than the efforts of a lone wrongdoer.”<sup>244</sup>

Specialization of labor also allows gangs to make full use of the various strengths and talents that particular gang members bring to the table. A solo pimp is stuck with whatever limited talents he himself possesses to recruit, maintain, advertise, and protect from theft the victims he prostitutes. His “gorilla” demeanor may be great for scaring girls into not running away, but he may not be able to play the part of a Romeo pimp when that role is called for. He may also lack the business acumen necessary to reduce costs, increase profits, and become truly successful. The gang, however, is not dependent on one person for recruitment. It can tap the resources of all of its members such that the Romeo pimp can continue to recruit victims while the “enforcer” members guard the victims and the profits.

This division of labor allows each member to build upon their strengths and improve their efficacy. For example, a recruiter can hone his skills by learning from experience which lines tend to generate interest from potential victims and which ones tend to fall flat. Those assigned surveillance duties may find particularly good locations affording a wide field of view but which also preclude effective counter-surveillance efforts by law enforcement. With sufficient experience, they may also become familiar with the limited number of unmarked police vehicles assigned to vice units. Armed with this familiarity, they may be able to raise the alarm to prevent the arrest and prosecution of other gang members. This knowledge could result in the alarm being sounded perhaps as little as thirty seconds sooner, but those thirty seconds may be all that is necessary to save the sex trafficking operation from being discovered and dismantled.

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<sup>244</sup> *Krulewitch v. United States*, 336 U.S. 440, 448–49 (1949) (Jackson, J., concurring).

Additionally, there is strength in numbers, so conspiracies and gangs have a greater chance of succeeding than criminals acting alone:<sup>245</sup> “[a] multiplicity of actors united to accomplish the same crime is deemed to present a special set of dangers . . . .”<sup>246</sup> As discussed above, the more surveillance that gangs can conduct, the better the chances that the gang can escape detection and prosecution. Similarly, the more gang members that are present as a show of force, the less likely a customer will become violent with a victim or rob her. A strong showing of gang strength will also prevent rival pimps from “stealing” victims or even attempting to entice them away. At the same time, a gang’s strength may also be employed in stealing victims from weaker traffickers, which would help the gang increase profits. Sex trafficking gives the term “cutthroat competition” a new meaning, and gangs have the ability to ensure that nobody slits their throats while taking a blade to the competition.

Of course, having multiple actors involved in criminal activity can also have some drawbacks. The more individuals involved in a crime, the more planning that must go into the crime. The more members of the gang who must participate in the venture, the more likely it is that there will be disagreement among the group and the less likely it is that the gang will be able to successfully agree on a plan of action.<sup>247</sup> There is also a greater chance of friction and personality conflicts, which have the potential to derail the whole venture. Furthermore, the more members involved in a crime, the more individuals that could attract police attention.<sup>248</sup> Likewise,

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<sup>245</sup> See *Ianelli v. United States*, 420 U.S. 770, 778 (1975) (discussing how the formation of a conspiracy increases the likelihood of success); *United States v. Moran*, 984 F.2d 1299, 1302–03 (1st Cir. 1993) (noting that one of the dangers of a conspiracy is the increased likelihood of succeeding with the criminal venture).

<sup>246</sup> *Moran*, 984 F.2d at 1302–03 (citing *Callanan v. United States*, 364 U.S. 587, 593 (1961); *United States v. Rabinowich*, 238 U.S. 78, 88 (1915)).

<sup>247</sup> See Stewart J. Schwab, *Collective Bargaining and the Coase Theorem*, 72 CORNELL L. REV. 245, 267 (1987) (“The largest impediment to reaching an efficient agreement, according to many scholars, is coordinating the desires of multiple parties.”).

<sup>248</sup> See William P. Jennings, Jr., *A Note on the Economics of Organized Crime*, 10 E. ECON. J. 315, 316 (1984) (“While group-based production may be advantageous in some circumstances, it creates . . . potential disadvantages. . . . [B]y employing numerous

the more people with detailed knowledge of a crime, the more people that the police can arrest and seek to turn into witnesses for the prosecution.<sup>249</sup> Also, gang members are not above petty jealousies and internal squabbles. Infrequently, these lead to a gang member retaliating against the gang by providing anonymous tips to the police or, less frequently, by cooperating with the police. As discussed below, however, gangs have implemented rules and mechanisms to streamline leadership and to discourage potential turncoats from cooperating with law enforcement agencies.

#### F. COLLECTIVE COURAGE AND COLLECTIVE DEPRAVITY

Beyond the fact that concerted activity greatly increases the probability that gangs will become successful sex traffickers, another danger of gang-controlled trafficking may be the “collective courage” that is engendered by gangs. That is, closely connected groups of criminals are much more dangerous than an equal number of solo criminals because of the “evil synergy” that group activity engenders. There are many evil deeds that even the consciences of criminals find repugnant; when acting alone, criminals would never commit some of these crimes or would at least utilize less violence in doing so. When joined with a group of other depraved individuals, however, a collective courage or collective depravity is sometimes formed, causing the group to undertake crimes they likely would never have committed independently. That is, merely by coming together as a group, the gang catalyzes crimes that otherwise would never have been committed. Gang members “do collectively what few of them would dare to do individually.”<sup>250</sup>

One need look no further than the brutal jumping-in and initiation rituals of street gangs to have proof positive of the depravity and violence

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workers, group-based crime may make it easier to detect a crime in progress, as when the police observe several men suspiciously stationed around a warehouse late at night.”)

<sup>249</sup> *See id.* at 316 (“[G]roup-based production faces peril of an arrested, or otherwise compromised member aiding the police.”).

<sup>250</sup> JACKSON & MCBRIDE, *supra* note 16, at 1.



that accompanies the mob mentality of street gangs.<sup>251</sup> Whether it is the thirteen second onslaught of fists and feet for MS-13 initiates or the eighteen second assaults that greet 18th Street recruits, these initiation rituals are indicative of the brutal beatings that the gang members will inflict upon any who get in their way or are caught in their grasp.<sup>252</sup> It is not an accident that many gangs have initiation rites that entail violence. This is a means of grooming members for depravity and is a tiny taste of things to come.<sup>253</sup>

In the sex trafficking context, this collective depravity takes the form of sexual assaults, gang rape, and general physical abuse of the victims.<sup>254</sup> Oftentimes, the concerted action of multiple gang members is a prerequisite to the most brutal assaults and exploitation of juvenile victims; one to three gang members restrain the victim while multiple other gang members forcibly penetrate the victim.<sup>255</sup> Gang rapes are simply one example of heinous assaults that could not be accomplished by

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<sup>251</sup> See Edsel Erickson et al., *A Gang Initiation*, in *GANGS* 19–21 (J.D. Loyd ed.) (2002); Scott H. Decker, *Collective and Normative Features of Gang Violence*, 13 *JUST. Q.* 243, 244 (1996) (“Threats of violence are important because they have consequences for future violence. Threat plays a role in the origin and growth of gangs, their daily activities, and their belief systems.”).

<sup>252</sup> See, e.g., Trial Transcript of Jul. 20–21, 2009, vol. 1 at 54, *United States v. Bernardez*, No. 1:09-CR-216 (E.D. Va. Jan. 29, 2010).

<sup>253</sup> See Kristy N. Matsuda et al., *Gang Membership and Adherence to the “Code of the Street”*, 30 *JUST. Q.* 440, 443 (2013) (“[G]ang membership may heighten violence among its members through exposure to peers that model violent behavior and reinforce values favorable toward violence . . .”).

<sup>254</sup> See Trial Transcript of Feb. 21, 2012 at 251–52, *United States v. Amaya*, No. 1:11-CR-556 (E.D. Va. Nov. 6, 2012) [hereinafter *Amaya Transcript of Feb. 21*] (detailing the testimony of a witness describing how an MS-13 member sexually assaulted a juvenile trafficking victim); Barcus Statement of Facts, *supra* note 30, at 10.

<sup>255</sup> See, e.g., Joy Powell, *Gang Rape of St. Paul Girl Brings Heavy Sentence*, *STARTRIBUNE* (Mar. 27, 2013), <http://www.startribune.com/local/stpaul/200291561.html> (discussing the brutal rape of a fifteen-year-old girl at the hands of nine gang members, and noting that, even after the victim broke free at one point, none of the nine would assist her).

a single individual.<sup>256</sup> In addition to the physical advantage of deploying a small army of thugs, the mere presence of multiple gang members, each of whom is engaging in the physical and mental exploitation of the same vulnerable victims, creates the illusion amongst the gang members that their behavior is normal.<sup>257</sup> Gang members in this position are cognizant that their conduct is not lawful, but perceive it to be at least acceptable according to the morality of the gang.<sup>258</sup> When selling a fourteen-year-old girl to scores of men for sex becomes commonplace—and your true blood brothers and “family” are all doing the same thing—this horrific conduct becomes normal for these traffickers and those who seek to emulate them.<sup>259</sup> As the traffickers necessarily isolate themselves further from mainstream society in an effort to avoid detection and conflict, self-awareness regarding their unconscionable behavior further decreases.<sup>260</sup> The gang creates its own morality or “code of the street,” which is far

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<sup>256</sup> See, e.g., Trial Transcript of Feb. 22, 2012 at 147, *United States v. Amaya*, No. 1:11-CR-556 (E.D. Va. Nov. 6, 2012) [hereinafter *Amaya* Transcript of Feb. 22] (describing how gang members would run “trains” on a trafficking victim, which entailed multiple gang members performing sexual acts on the victim, either one at a time or simultaneously). MS-13, among other gangs, sometimes also run a “trencito” or “little train” on a girl. This is sometimes used as a form of punishment, but it is also a gang ritual. In a trencito, a victim is required to submit to sex with as many gang members as are present and willing to participate. Needless to say, this is highly degrading and painful for the victims such that the mere threat of a trencito will induce compliance with the gang’s demands. Furthermore, the trencito displays to victims the power that the gang has over the victim and the futility of resistance. Just as the machete is MS-13’s traditional weapon for gang warfare, the trencito is MS-13’s most feared tool to induce submission by victims.

<sup>257</sup> See *Matsuda et al.*, *supra* note 253, at 443.

<sup>258</sup> See *Decker*, *supra* note 251, at 246–47 (“[C]ollective behavior processes operated within the gang, and could be used to account for the emergence of collective violence. Such processes included games, fights, meetings, and defining common enemies.”).

<sup>259</sup> See *Matsuda et al.*, *supra* note 253, at 443.

<sup>260</sup> *Id.* at 446.

removed from the moral conduct that society requires through the enactment and execution of its laws.<sup>261</sup>

Adding another noxious element to this already lethal brew, gang members are also notoriously obsessed with both their own machismo and sexual prowess, as well as that of other gang members.<sup>262</sup> This emphasis on sexual conquest, when combined with the peer pressure and collective depravity of the group, creates a completely toxic environment where the repeated rape of trafficking victims becomes commonplace.<sup>263</sup> Aggressive notions of masculinity go hand-in-hand with gang membership, which results in an increased emphasis on and applauding of violent acts by gang members.<sup>264</sup> As the rapes become increasingly more aggressive and routine, it further dehumanizes the victims, both in their own minds, and in the minds of the traffickers.<sup>265</sup> As the gang members reduce the trafficking victims to mere property or, even more barbarically, a profit-

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<sup>261</sup> All laws are based on some conception of morality or the way society believes things ought to be. *See* BENJAMIN N. CARDOZO, *THE PARADOXES OF LEGAL SCIENCE* 37 (1928) (“Law accepts as the pattern of its justice the morality of the community whose conduct it assumes to regulate. . . . Morality is not merely different in different communities. Its level is not the same for all the component groups within the same community.”); OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 44 (Dover Publications, Inc. 1991) (1881) (“[T]he rules of law are or should be based upon a morality which is generally accepted.”). As the Supreme Court noted, the first legislative attempt to prohibit sex trafficking—the Mann Act, also known as the White Slave Act—is an example of legislative power that “was exercised in aid of social morality.” *Bell v. United States*, 349 U.S. 81, 83 (1955).

<sup>262</sup> *See, e.g.*, JODY GLITTENBERG, *VIOLENCE AND HOPE IN A U.S.-MEXICO BORDER TOWN* 36 (Waveland Press, Inc. 2008).

<sup>263</sup> Hagedorn, *supra* note 4, at 376; Eduardo L. Portillos et al., *Machismo and Chicano/a Gangs: Symbolic Resistance or Oppression?*, 24 *FREE INQUIRY* 175, 175 (1996) (“Adolescent peer groups [such as gangs] provide an avenue for young Chicanos to prove their masculinity through drinking, fighting, demonstrating sexual prowess, and protecting younger relatives.”).

<sup>264</sup> Hagedorn, *supra* note 4, at 398 (“But what all types of male gang violence appear to have in common, both today and yesterday, are aggressive notions of masculinity.”).

<sup>265</sup> *See, e.g.*, Amaya Transcript of Feb. 22, *supra* note 256, at 146 (discussing how gang members forced trafficking victims to have sex with both their traffickers and other gang members “to let [the victims] know who was in control and to keep them in line”).

generating machine, the exploitation of the trafficking victims truly has no limits. Nowhere is this more apparent than when victims are subjected to ten to twenty sex customers per day.<sup>266</sup>

Interestingly, there are reported instances where the collective depravity of the gang reaches such depths that certain gang members are actually put off by the actions of their comrades.<sup>267</sup> These conscientious gang members typically stop short of interfering with fellow gang members for fear of reprisal, but sometimes might attempt to direct the gang members' attention elsewhere or deescalate the building sexual furor. More frequently, they simply decline to participate.<sup>268</sup> Even this entails the risk that these "conscientious" members will typically become marginalized by the gang and subject to everything from jokes to threats and beatings.<sup>269</sup>

The groupthink that accompanies gang-controlled sex trafficking results in the severe and prolonged exploitation of victims. The more emboldened the gang traffickers feel—each feeding off of the depravity of others—the more brutal the sex trafficking scheme becomes. In this way, the gang members collectively destroy each other's consciences. This is evidenced by routine and unprovoked beatings of the victims; the withholding of basic necessities; the reduction of victims to property—complete with a tattoos clearly indicating that the victims are property—

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<sup>266</sup> See Amaya Transcript of Feb. 21, *supra* note 254, at 152–53 (detailing the testimony of a victim, who testified that, the gang subjected her to between ten and twelve sexual customers on her birthday); Hernandez Statement of Facts, *supra* note 29, at 4 (“The females prostituted by Sanchez Hernandez would have sexual relations with approximately 20 customers per day, usually 6 days per week.”).

<sup>267</sup> See Amaya Transcript of Feb. 21, *supra* note 254, at 132–33 (detailing the testimony of a gang member, who stated that he was disgusted by the trafficking of the juvenile girls and refused to have sex with the victims despite it being his “right” to do so for free and at his pleasure as a homeboy); Decker, *supra* note 251, at 263 (“When gang violence exceeds tolerable limits, [another] function [of gang violence] may be evident: the splintering of gangs into subgroups and the decision by some individuals to leave the gang.”).

<sup>268</sup> See, e.g., Amaya Transcript of Feb. 21, *supra* note 254, at 132–33.

<sup>269</sup> *Id.*

and, ultimately, the discarding of an individual who is so broken, beaten, and used that the gang no longer views her as able to generate even a meager profit.<sup>270</sup> It is this collective depravity that allows a group of individuals to so brutally violate and discard a human being, who is generally much smaller and weaker than her captors and represents very little threat to them.<sup>271</sup> The normalization of this sadistic behavior is one of the reasons that gang-controlled sex trafficking is so brutal and results in complete physical and mental devastation for the victims.

Many gang members, including traffickers, are not even able to comprehend the horror of their actions until they are separated from the gang and the gang's morality, usually as a result of arrest.<sup>272</sup> Until they are removed from the gang and left to ponder what they did in the isolation of prison or are forced to read about their conduct in plain English as part of a charging document or plea agreement, they do not grasp the life-altering pain they have inflicted upon other human beings.<sup>273</sup> Similar to the cowardly onlooker that only feels confident enough to throw a punch once the throngs have thrown their quarry to the ground and begun pummeling him, traffickers could not do alone what they are capable of in a group, with each member pushing the next in a quest to quench their insatiable thirst for power and money. Put simply, "gang membership itself increases both the frequency and severity of offending."<sup>274</sup>

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<sup>270</sup> See, e.g., Swinney Statement of Facts, *supra* note 32, at 4–8.

<sup>271</sup> Harmeet S. Sing et al., *Court Sentences 4 Men to Death in New Delhi Gang Rape Case*, CNN (Sept. 14, 2013), <http://www.cnn.com/2013/09/13/world/asia/india-gang-rape-sentence/> (describing how four men brutally attacked a woman and her male companion on a public bus, repeatedly raped the woman over the course of an hour, and violated her with metal rods as a further means of torture and assault).

<sup>272</sup> Michael Walsh, *Gang Violence Took Boy to the Edge and Back*, in *GANGS* 73, 76–77 (J.D. Loyd ed., 2002).

<sup>273</sup> James Willwerth, *Lessons Learned on Death Row*, in *GANGS* 84, 85–87 (J.D. Loyd ed., 2002) (discussing the purported transformation of notoriously violent Stanley "Tookie" Williams, who founded the Crips gang, from hardcore gang leader to anti-gang activist).

<sup>274</sup> Jody Miller & Scott H. Decker, *Young Women and Gang Violence: Gender, Street Offending, and Violent Victimization in Gangs*, 18 *JUST. Q.* 115, 116 (2001).

### G. THE TRAFFICKING PROCEEDS

Although various phenomena attract individuals to gangs, money is what motivates gangs and pimps to engage in sex trafficking. If sex trafficking were not profitable, the gangs would have little interest in running sex trafficking ventures. The gangs' focus on profit generation—rather than territorial violence—has continued to increase as a lack of work and a failing economy make illicit profits seem like a necessity, where it might formerly have been seen as simply an attractive option.<sup>275</sup> As indicated above, various gang attributes help make gangs' sex trafficking substantially profitable. Some gangs require their victims to turn over to the gang all of their earnings, a practice which is also typical of traditional pimps.<sup>276</sup> Indeed, many pimps have a rule that all prostitution proceeds belong to the pimp, and thus they require their victims to surrender all proceeds.<sup>277</sup> Some gangs, however, permit some victims to keep some of the proceeds, at times as much as half of their earnings. Those victims who are not allowed to keep money often “skim” some of the profits and try to hide or “stash” them. If they are caught, however, they are usually beaten severely.<sup>278</sup>

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<sup>275</sup> See Hagedorn, *supra* note 4, at 390.

<sup>276</sup> See, e.g., *United States v. Madison*, 477 F.3d 1312, 1314 (11th Cir. 2007) (“All the money Jane Doe #2 received was transferred to Madison . . . .”); *United States v. Evans*, 476 F.3d 1176, 1177 (11th Cir. 2007) (noting that the victim turned over all of her money to the defendant); *United States v. Pipkins*, 378 F.3d 1281, 1286 (11th Cir. 2004). (“A prostitute charged thirty to eighty dollars for each trick, and was required to turn over all of this money to her pimp.”).

<sup>277</sup> See *United States v. Hornbuckle*, Nos. 12–10541, 12–10615, 2015 WL 1783073, at \*1 (9th Cir. Apr. 21, 2015) (noting that the victims provided all of their proceeds to the sex traffickers); Barcus Statement of Facts, *supra* note 30, at 9–10 (noting that all of the prostitution proceeds were to be turned over to the leader of the enterprise); Swinney Statement of Facts, *supra* note 32, at 2, 4 (describing how the defendant used force and violence to compel the victims he prostituted to provide him with all of their prostitution proceeds).

<sup>278</sup> See, e.g., *People v. McFarland*, No. B171999, 2005 WL 713815, at \*6 (Cal. Ct. App. Mar. 30, 2005) (discussing how the victim had “skimmed” \$1300 from her

For most gangs, money is the life-blood of the gang.<sup>279</sup> This money is almost always earned through one type of illicit activity or another. In the early days of the Italian Mafia, the illicit activity was loan sharking, bookmaking, securing lucrative municipal contracts through bribes, and stealing goods by the truckload. Through the years, many gangs have turned to narcotics distribution, extortion, robbery, smuggling, kidnapping, and arms trafficking to earn money for their criminal group. Now, in the twenty-first century, multiple, established gangs have turned to sex trafficking as a major source of illicit income.<sup>280</sup>

Sex trafficking has very little startup cost; involves a resource that can be secured within one's own community; and, consists of a commodity that can be sold repeatedly without diminishing in value; in short, it has a high revenue-to-risk ratio.<sup>281</sup> In addition to being highly profitable, these attributes make sex trafficking an attractive racket for gangs. The money generated from sex trafficking—which typically involves an amount equal to the number of victims being exploited, multiplied by the number of customers serviced per day—can be quite substantial.

This amount of income is incredibly valuable to the gangs. Consider, for example, a gang like MS-13, which has gang members to support in Central America. Money generated by MS-13's sex trafficking schemes in Northern Virginia is being sent to support gang members in El

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prostitution earnings, and how her pimp beat her for stealing "his money" when he discovered this).

<sup>279</sup> See Hagedorn, *supra* note 4, at 365.

<sup>280</sup> See RAY WALSER ET AL., THE HUMAN TRAGEDY OF ILLEGAL IMMIGRATION: GREATER EFFORTS NEEDED TO COMBAT SMUGGLING AND VIOLENCE 2 (2011), available at <http://www.heritage.org/research/reports/2011/06/the-human-tragedy-of-illegal-immigration-greater-efforts-needed-to-combat-smuggling-and-violence> ("[I]ncreasingly multifaceted criminal organizations turn to other sources of income, such as human smuggling and sex trafficking.").

<sup>281</sup> Kathleen Kim, *Psychological Coercion in the Context of Modern-Day Involuntary Labor: Revisiting United States v. Kozminski and Understanding Human Trafficking*, 38 U. TOL. L. REV. 941, 956 (2007).

Salvador.<sup>282</sup> In El Salvador—a country of great poverty—hundreds, let alone thousands, of dollars can make a huge difference in the success and strength of a gang. The minimum monthly wage in El Salvador is \$113 per month for agricultural work and \$237 per month for industrial work.<sup>283</sup> A meal at a modest Salvadoran restaurant can be purchased for as little as \$3.00.<sup>284</sup> Given that their fellow gang members in Central America earn \$100 to \$200 per month, even sending modest sums of trafficking proceeds south can immediately impact gang operations in Central America. Multiple MS-13 members arrested and convicted for human trafficking have acknowledged wiring money to their “homies” in El Salvador.<sup>285</sup> These funds keep the Central American tentacles of the gang armed, fed, and protected. The gang’s need for greenbacks is one of the driving forces behind the continued trafficking occurring on American streets.<sup>286</sup>

In addition to supporting gang members abroad, the trafficking proceeds also support the domestic cliques and members. For some gang members, the trafficking enterprise is their only employment and source of income.<sup>287</sup> As one gang member recounted, the defendant trafficker did not work; rather, he made his living by working the girls he was exploiting.<sup>288</sup> In this sense, the trafficking proceeds are used to finance the gang lifestyle. Specifically, the trafficking proceeds are used to purchase drugs, weapons, clothes, vehicles, and motel rooms.<sup>289</sup> These funds allow

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<sup>282</sup> Amaya Transcript of Feb. 21, *supra* note 254, at 249–50.

<sup>283</sup> MINIMUM WAGES IN EL SALVADOR WITH EFFECT FROM 01-01-2015 TO 31-12-2014, <http://www.wageindicator.org/main/salary/minimum-wage/elsalvador> (last visited Feb. 21, 2015).

<sup>284</sup> COST OF LIVING IN EL SALVADOR, [http://www.numbeo.com/cost-of-living/country\\_result.jsp?country=El+Salvador](http://www.numbeo.com/cost-of-living/country_result.jsp?country=El+Salvador) (last visited Feb. 21, 2015).

<sup>285</sup> Amaya Transcript of Feb. 22, *supra* note 256, at 249–50.

<sup>286</sup> *See, e.g.*, Amaya Transcript of Feb. 21, *supra* note 254, at 151.

<sup>287</sup> *See, e.g.*, Dumas Statement of Facts, *supra* note 36, at 2 (discussing how trafficking of juveniles represented the defendant’s primary means of financial support).

<sup>288</sup> *See, e.g.*, Amaya Transcript of Feb. 22, *supra* note 256, at 17.

<sup>289</sup> *See, e.g.*, Amaya Transcript of Feb. 21, *supra* note 254, at 249.



the gang members to eschew legitimate employment and simply drink, smoke, and snort their way through the day until it is time to transport the girls to appointments or party with the “homeboys” in a motel.<sup>290</sup>

Finally, the trafficking proceeds are used to perpetuate the trafficking scheme. The money is “re-invested” into the operation by purchasing condoms, lubricant, “the morning-after-pill,” drugs and alcohol, abortions, motel rooms, advertising space, cellular phones and minutes, clothes, and meager amounts of food.<sup>291</sup> The bottom line is that in any organization—criminal or legitimate—the more resources it has, the greater the impact the organization can have. Sex trafficking has infused ruthless street gangs with capital. This money has permitted the gangs to operate farther, wider, and with greater strength.

#### H. ENFORCED SECRECY AND LOYALTY

“Secrecy and concealment are essential features of a successful conspiracy. The more completely they are achieved, the more successful the crime is.”<sup>292</sup> That certainly holds true with respect to gang-controlled sex trafficking. Gangs are particularly well situated to maintaining secrecy and preventing infiltration by law enforcement personnel. The leaders of gangs know that secrecy and loyalty are the only things that separate gang members from prison cells.

Many gangs have in place rules that must be followed by the gang members. Minor violations of these rules are often punished by a simple beating,<sup>293</sup> but serious infractions can result in a death sentence. Gang rules generally include a requirement that members maintain secrecy

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<sup>290</sup> See, e.g., Amaya Transcript of Feb. 22, *supra* note 256, at 230–33.

<sup>291</sup> See, e.g., Barcus Statement of Facts, *supra* note 30, at 13.

<sup>292</sup> *Blumenthal v. United States*, 332 U.S. 539, 557 (1947).

<sup>293</sup> See, e.g., *United States v. Garcia*, 754 F.3d 460, 468 (7th Cir. 2014) (describing how a leader of the Latin Kings gang ordered the members to smash the hands of two other members who disobeyed the gang’s rules).

about the gang's activities and membership.<sup>294</sup> Gangs typically prohibit their members from speaking with—much less cooperating with—members of law enforcement.<sup>295</sup> Gangs have been known to enforce these rules meticulously.<sup>296</sup> For example, most gangs have a rule that their members may never cooperate with law enforcement in the prosecution of fellow gang members; violations of this rule are punishable by death.<sup>297</sup> “A traditional gang member will never inform or turn rata (‘rat’) on his fellow gang members, even if faced with death or prison. Loyalty is given at any price. A gang member will seldom disgrace himself or his family by turning informant.”<sup>298</sup> Some gangs even require gang members to commit perjury and deny the existence of the gang.<sup>299</sup>

Fortunately, some former gang members have ignored the threats and scorn that cooperation with the prosecution entails. It is probable, however, that these threats of death—or at least serious injury—inhibit many who would otherwise cooperate. It certainly makes gang members more formidable criminals and more dangerous sex traffickers, because it is much more difficult to obtain the evidence to arrest and prosecute them. Prosecution and incarceration are currently the only mechanisms available to disable sex traffickers temporarily.

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<sup>294</sup> See David Skarbek, *Governance and Prison Gangs*, 105 AM. POL. SCI. REV. 702, 703 (2011) (“[G]angs attempt to (and often do) kill former members who cooperate with authorities . . .”).

<sup>295</sup> Nevertheless, there is always a risk that a gang member will cooperate with law enforcement efforts. To prevent this, complex gangs operate in cells that are relatively isolated from one another. See *United States v. Duff*, 76 F.3d 122, 125 (7th Cir. 1996) (“Many complex criminal operations will be organized into cells, to cut down on the damage one turncoat can do . . .”).

<sup>296</sup> Prosecutors can usually obtain some cooperation from gang members in exchange for lenience in sentencing, but even this can be quite difficult to accomplish. Many gang members would rather face long terms of imprisonment than be labeled a “snitch.”

<sup>297</sup> See David Skarbek, *supra* note 294, at 703.

<sup>298</sup> JACKSON & MCBRIDE, *supra* note 16, at 36.

<sup>299</sup> See, e.g., *United States v. Abel*, 469 U.S. 45, 47 (1984) (noting that one gang “required its members always to deny the existence of the organization and to commit perjury, theft, and murder on each member’s behalf”).

To ensure secrecy, some gangs have a rule that “once a member, always a member,” sometimes also expressed as “blood in, blood out.”<sup>300</sup> That is, many gangs require lifetime membership in the gang and forbid members from quitting the gang, with very few exceptions.<sup>301</sup> Lifetime membership means that there is “less risk of members informing law enforcement or rival criminal organizations about sensitive material after they leave the gang.”<sup>302</sup> Likewise, life membership ties each member to the gang. It helps ensure that each member has a strong incentive not to cooperate with law enforcement, and an even stronger incentive to prevent other members from doing so.

Because some gangs operate in insular communities in which it is difficult to fade into the background, it can sometimes be difficult for gang members who desire to leave to actually break free of gang ties.<sup>303</sup>

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<sup>300</sup> See, e.g., PARKS, *supra* note 10, at 20 (“[M]any people say that joining a gang is a lifetime commitment . . .”); Skarbek, *Putting the “Con” into Constitutions: The Economics of Prison Gangs*, *supra* note 9, at 189.

<sup>301</sup> See Skarbek, *Putting the “Con” into Constitutions: The Economics of Prison Gangs*, *supra* note 9, at 189 (“[T]he only way for most members to leave [a] gang is death.”).

<sup>302</sup> *Id.* at 189 n.7.

<sup>303</sup> The homogeneity among a gang’s membership helps to ensure a common identity and loyalty to the gang. It also helps the gang to enforce such loyalty:

Restricting access to particular ethnicities and geographic regions yields several benefits, primarily from homogeneity among members. Homogeneous members who share a similar socio-economic and cultural background have lower communication costs. . . . [M]embers can more easily monitor each other and ensure fulfillment of gang responsibilities. Geographic proximity and social connections lower the costs of obtaining information while recruiting potential members. Members who violate the gang’s rules can less easily return to familiar communities to take advantage of family ties and the social capital accumulated in legal and illegal occupations . . . . This increases the relative cost of deserting or betraying the gang.

*Id.* at 189.

Although it is possible to leave many gangs, a number of gangs make it challenging to do so, and even those who leave the gang proper still remain affiliated with active gang members.<sup>304</sup> Their loyalty, therefore, still remains with the gang even after departure.

The gang structure and bylaws help promote loyalty to fellow gang members, which is absolutely essential to the operation of a sex trafficking venture. Oftentimes, loyalty “outweighs personal interests” for gang members.<sup>305</sup> For example, many times when a gang member is arrested and facing substantial prison time, cooperating with the investigation and prosecution of other gang members is the course of action most beneficial to the arrested gang member. Many times, however, gang members allow their loyalty to the gang to trump their interests in shortening their terms

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<sup>304</sup> See Dena C. Carson et al., *Youth Gang Desistance: An Examination of the Effect of Different Operational Definitions of Desistance on the Motivations, Methods, and Consequences Associated with Leaving the Gang*, 38 CRIM. JUST. REV. 510, 512 (2013) (“[W]hile the gang may serve a variety of functions for youth at particular points in their lives, for most, the situation is temporary.”). The idea that gang membership is largely permanent is a myth, but it is also worthwhile to note that ties to gangs remain strong even after a member departs. *Id.* at 530 (“Even after de-identifying as a gang member, youth may still associate, fight, or do business with their former gang members who may be their childhood friends, neighbors, classmates, or even family members.”); *but see id.* at 516 (noting that the findings of the study were based on surveys of sixth- and seventh-grade students at thirty-one middle schools). Gang-controlled sex trafficking is usually conducted by older gang members who may have more substantial ties to their gangs than sixth- and seventh-graders, for whom departing a gang they only recently joined may be much easier. Furthermore, entrenched gang members—and formerly entrenched members—would presumably be less likely to self-report current or former gang membership. See Skarbek, *Putting the “Con” into Constitutions: The Economics of Prison Gangs*, *supra* note 9, at 185 (“Naturally, criminals are hesitant to provide incriminating information to researchers that could subsequently become available to law enforcement officials.”). Suffice it to say, however, that while some gang members leave their gangs, some committed gang members remain in the gang for years, or even for life. Carson et al., *supra*, at 512 (“[T]here are individuals who maintain their gang involvement for extended periods or for life . . . .”); *see also id.* at 514 (“Gang leaving may differ depending upon how entrenched members are in the gang culture and gang identity.”).

<sup>305</sup> JACKSON & MCBRIDE, *supra* note 16, at 25.

of incarceration. By cooperating with the government, a defendant can “qualify for more favorable sentencing treatment.”<sup>306</sup> Indeed, federal sex trafficking offenses entail mandatory minimum terms of imprisonment—ten years of imprisonment when a juvenile is trafficked and fifteen years of imprisonment when force and coercion are used on the victim.<sup>307</sup> The only way a defendant can reduce his sentence once a mandatory minimum term is imposed is to cooperate with the government.<sup>308</sup> Despite the obvious advantages to pleading guilty and cooperating, many gang defendants still reject this opportunity and refuse to cooperate. For some gang members, this may be due in part to the gang members’ ignorance of post-incarceration options. Often, they may believe that, once they are released from prison, they will need to rely on the gang and, consequently, that it would be foolish to cross the gang.

Without trusted partners in crime, sex trafficking becomes more difficult, especially when there are multiple victims being prostituted. Theoretically, a pimp could contract with private parties to provide the services needed to successfully run a prostitution venture. For example, he could contract with a transportation company to transport the pimp and victims to the various hotels or private residences where commercial sex acts take place. He also could have a neighbor purchase the condoms; have a friend acquire the requisite cellular telephones; and, pay recruiters a finder’s fee to recruit victims to be prostituted. But such a scheme presents at least two dangers. First, if one of the parties breaches the contract with the pimp or elects to form his own prostitution business—for example, if the transportation provider or a recruiter elected to “steal” the victims and prostitute them himself—the pimp has no remedy at law.<sup>309</sup> Of course, the

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<sup>306</sup> *United States v. Shepherd*, 102 F.3d 558, 563 (D.C. Cir. 1996).

<sup>307</sup> 18 U.S.C.A. § 1591(b)(1)–(2) (West 2008).

<sup>308</sup> *Shepard*, 102 F.3d at 563 (“Only by assisting the government would *Shepherd* have been eligible for a departure below the mandatory minimum.”).

<sup>309</sup> POSNER, *supra* note 48, at 264 (“The unavailability of legal sanctions for breach of illegal contracts also implies that organized crime depends more on trust than do parties to legal contracts.”); Skarbek, *Putting the “Con” into Constitutions: The Economics of Prison Gangs*, *supra* note 9, at 183 (“Criminal enterprises face

pimp could seek to enforce his “contracts” through violence. But that entails its own costs and risk of detection. Even in such situations, however, gangs are better situated than solo pimps, as gangs are typically adept at the use of violence, usually have the necessary weapons, and may even have designated “enforcers” who are particularly skilled at using force.

Second, each person with whom the pimp seeks to contract could inform the police of the pimp’s sex trafficking scheme, thereby resulting in the prosecution and imprisonment of the pimp. Thus, loyalty and trust are particularly important in sex trafficking ventures. While anybody could perform some of the mundane tasks that are part of sex trafficking, not just anybody is worthy of the trust that is essential to make such ventures successful. The loyalty of gang members to their gang is, therefore, another reason why gang-controlled trafficking is so pernicious. Even former gang members often retain strong ties to gangs—and an aversion to the police—such that they are unlikely to rat on their former colleagues.<sup>310</sup> Loyalty is so important to such ventures that, even in gang-controlled cases, the traffickers will sometimes rely on a second layer of loyalty—family members—to assist with the trafficking.<sup>311</sup>

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organizational problems that legitimate firms do not. Most important, due to the illegal nature of their activities, organized crime cannot rely on state enforcement of contracts and protection of property rights.”).

<sup>310</sup> See Carson et al., *supra* note 304, at 530.

<sup>311</sup> See *United States v. Zapata*, 546 F.3d 1179, 1186 (10th Cir. 2008) (noting how the conspiracy at issue included “close knit family members”); *United States v. Murray*, 474 F.3d 938, 941 (7th Cir. 2007) (“[I]t is common to bring family members into a conspiracy; they are more trustworthy than strangers. Trust substitutes for law, the tie of blood for the tie forged by the availability of legal remedies to make whole and deter.”); *United States v. Booker*, 334 F.3d 406, 410 (5th Cir. 2003) (discussing how the conspiracy at issue consisted primarily of family members); *United States v. Knox*, 124 F.3d 1360, 1362 (10th Cir. 1997) (“The alleged conspiracy was something of a family affair.”); *United States v. Askew*, 958 F.2d 806, 809 (8th Cir. 1992) (“Many of the alleged conspirators were family members.”); Brief of the United States, *supra* note 119, at 3 (describing how the Cold Blooded Cartel gang was composed of brothers, cousins, and the girlfriend of one of the family members and how some gang members relied on

## I. PREVENTING PROSECUTION AND WITNESS INTIMIDATION

Quitting a gang can sometimes be difficult for gang members. For victims who are being prostituted, escape is frequently only accomplished with some outside assistance or by several victims uniting to assist each other. But even those victims and former members who have broken away from gangs frequently do not feel as though they are free of the gang's influence. When these individuals continue to reside in the neighborhoods in which the gangs operate—or perhaps have family members who are still involved in the gangs—they continue to fear the gangs and often decline to reach out to law enforcement because of this fear.<sup>312</sup> Without the cooperation of victims, however, it is nearly impossible to prosecute sex traffickers.<sup>313</sup>

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their parents and siblings to provide incidental assistance—such as the use of vehicles and transportation—in furtherance of the venture); POSNER, *supra* note 48, at 264 (noting that, in light of the need for trust in criminal ventures, one would “therefore expect family relationships to be more common in criminal than in noncriminal organizations”).

<sup>312</sup> Aliens—and especially illegal aliens—can be vulnerable to sex traffickers because of their fear of the police and lack of English-language skills, among other reasons. *See* United States v. Sadr, 465 F. App'x 278, 280 (4th Cir. 2012) (“In this case, a lack of familiarity with ‘non-conversational English’ disadvantaged many of Sadr’s victims by making them less able to understand the suspicious nature of Sadr’s sales pitch . . . .”); United States v. Monsalve, 342 F. App'x 451, 458 (11th Cir. 2009) (noting that aliens, especially illegal aliens, are less likely to report crimes to the police); United States v. Ademi, 439 F.3d 964, 967 (8th Cir. 2006) (noting that illegal aliens are particularly vulnerable because of their reluctance to report crimes to law enforcement); Lu v. Ashcroft, 259 F.3d 127, 132 (3d Cir. 2001) (noting the vulnerability of aliens because “aliens often do not speak English and are usually unfamiliar with our laws and procedures”) Traffickers are happy to exploit these vulnerabilities. *See* Statement of Facts at 2, United States v. Ruth Antuanet Miller, No. 1:13-CR-175 (E.D. Va. Nov. 19, 2013) (noting that the defendant falsely claimed affiliation with United States Immigration and Customs Enforcement and threatened victims with removal from the United States if they did not engage in prostitution).

<sup>313</sup> ROSCOE POUND, CRIMINAL JUSTICE IN AMERICA 63 (Harvard Univ. Press 1945) (1930) (“[L]aws will not enforce themselves. We must rely upon individuals to set the legal machinery in motion.”).

Most gangs have a reputation for utilizing violence. Thus, it not surprising that victims and witnesses are easily intimidated by gangs.<sup>314</sup> This makes victims and potential witnesses reticent to contact the police or to even agree to speak with the police should the police contact them.<sup>315</sup> Although some gangs may be no more violent than autonomous pimps—many of whom are extremely violent—many gangs have created such a perception of omnipresence and omniscience that witnesses and victims believe that any cooperation with the police will result in retaliation from the gang.<sup>316</sup> Detectives and prosecutors face an uphill battle in trying to convince these victims and witnesses to provide evidence that incriminates the gangs. “The very integrity of the judicial system and public confidence in the system depend on a full disclosure of all the facts . . . .”<sup>317</sup> But as long as witnesses are intimidated, the facts will always remain hidden. This is one of the reasons why human trafficking “can be hidden in plain sight.”<sup>318</sup>

Because of their reputations for violence, many gangs do not need to take any further steps toward intimidating victims and witnesses: they are already intimidated. But when that inherent intimidation fails, gangs are not opposed to using overt intimidation and even murder to silence

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<sup>314</sup> See *Vasquez v. Rackauckas*, 734 F.3d 1025, 1073 (9th Cir. 2013) (Tallman, J., concurring) (“Many citizens are also reluctant to cooperate with police for understandable fear of retaliation, which undoubtedly hinders police efforts to effectively curb gang violence through traditional criminal prosecution.”).

<sup>315</sup> For various reasons, victims of sex trafficking are frequently reluctant to speak to the police, provide information, and testify against their traffickers. See Coonan, *supra* note 55, at 325 (noting that the sex trafficking victims “did not want to cooperate in an investigation”). Victims of gang-controlled sex trafficking typically display even greater reluctance to assist in the prosecution of traffickers.

<sup>316</sup> See Lane & Meeker, *supra* note 90, at 501.

<sup>317</sup> *United States v. Nixon*, 418 U.S. 683, 709 (1974); see also *United States v. Bryan*, 339 U.S. 323, 331 (1949) (“[T]he public . . . has a right to every man’s evidence.”).

<sup>318</sup> KEVIN BALES, *ENDING SLAVERY: HOW WE FREE TODAY’S SLAVES* 133 (Univ. of California Press 2007).



witnesses.<sup>319</sup> Initially, the gangs often start with threats;<sup>320</sup> “[g]ang members threaten victims and witnesses if they report incidents to the authorities.”<sup>321</sup> If threats fail to do the trick, however, gangs are not opposed to committing acts of violence and murder to keep witnesses from testifying.<sup>322</sup> For example, in Virginia, an MS-13 member “green-lighted,” or ordered, the murder of his pregnant girlfriend, Brenda Paz, after gang members discovered that Paz had provided information to the government and was going to testify against her ex-boyfriend.<sup>323</sup> The gang enticed Paz into leaving the Witness Protection Program and lured her to a remote location where she was stabbed sixteen times.<sup>324</sup>

In cases involving transnational gangs, it can often be even more difficult to persuade victims and witnesses to cooperate with law

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<sup>319</sup> See POUND, *supra* note 313, at 74 (“Getting witnesses out of the way, or silencing them, or modifying their testimony by importunity, social pressure, intimidation, appeals to race solidarity, or sympathy, are matters thoroughly familiar to the observer of criminal justice in action.”).

<sup>320</sup> See PARKS, *supra* note 10, at 24 (describing how gang members robbed a Houston beauty salon at gunpoint, sexually assaulted an employee, and then threatened the “salon owner, telling her that they would kill her if she reported the incident”). “Threats” are statements or acts “where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003); *see also* *United States v. Calimlim*, 538 F.3d 706, 713 (7th Cir. 2008) (“A statement is a threat if a reasonable person would believe that the intended audience would receive it as a threat, regardless of whether the statement was intended to be carried out.”); *United States v. Worrell*, 313 F.3d 867, 874 (4th Cir. 2002) (holding that the standard for determining whether a statement is a true threat is whether a reasonable recipient, familiar with the context, would find it to be a threat, irrespective of the defendant’s subjective mindset).

<sup>321</sup> JACKSON & MCBRIDE, *supra* note 16, at 20.

<sup>322</sup> *See* *Rivera v. United States*, 494 F. Supp. 2d 383, 385 (E.D. Va. 2007).

<sup>323</sup> *Id.* at 385 (“[T]he government established by a preponderance of the evidence that Rivera had caused [Brenda] Paz’s murder by giving fellow gang members the ‘green light’ to kill Paz.”); *see also* SAMUEL LOGAN, *THIS IS FOR THE MARA SALVATRUCHA* 233 (Hachette Books 2009) (discussing the murder of Brenda Paz).

<sup>324</sup> *See* *United States v. Rivera*, 412 F.3d 562, 565 (4th Cir. 2005) (“Paz was subsequently placed in the Federal Witness Protection Program, but voluntarily left the program and was murdered shortly thereafter.”).

enforcement agents. Frequently, these victims and witnesses have relatives in countries where these gangs have tentacles, such as El Salvador and Honduras. Even if prosecutors and agents can arrange for the protection of U.S.-based family members, it is much more difficult—and sometimes impossible—to arrange for the protection of individuals in foreign nations. Witness intimidation is part of the standard operating procedure of such gangs because it is a highly effective means of insulating the gang from prosecution.<sup>325</sup>

The fact that there are multiple gang members capable of intimidating witnesses—as opposed to a solo pimp or two pimp partners—also makes gangs much more dangerous sex traffickers. When an autonomous pimp is arrested, he typically will have at most a handful of friends or family members willing to terrorize witnesses. That greatly limits his ability to scare victims into silence. The size of many gangs, however, makes it nearly impossible to arrest and detain more than a small fraction of the gang. Furthermore, arrests are only possible when the police are in possession of evidence demonstrating probable cause to believe that a crime has been committed.<sup>326</sup> Often, victims are able to identify only the gang members who were immediately involved in their prostitution, not gang members who were tasked with ancillary duties,

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<sup>325</sup> See, e.g., *United States v. Zelaya*, 336 F. App'x 355, 358 (4th Cir. 2009) (holding that the district court properly declined to allow the defendants to learn the names and addresses of witnesses who testified against MS-13 gang members because the government established that sharing this information could result in retaliation against these witnesses).

<sup>326</sup> See *Tennessee v. Garner*, 471 U.S. 1, 7 (1985) (“A police officer may arrest a person if he has probable cause to believe that person committed a crime.”); *Michigan v. Summers*, 452 U.S. 692, 700 (1981) (“[E]very arrest, and every seizure having the essential attributes of a formal arrest, is unreasonable unless it is supported by probable cause”); *Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979) (“‘[P]robable cause’ to justify an arrest means facts and circumstances within the officer’s knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense.”); *Beck v. Ohio*, 379 U.S. 89, 91 (1964) (noting that before arresting a suspect, the police must first possess “probable cause” to believe that the individual “had committed or was committing an offense”).

such as acting as a lookout or recruiting. This further insulates gang members from prosecution.<sup>327</sup>

#### J. CONTINUITY OF OPERATIONS

Finally, another advantage that gangs have over autonomous pimps is their ability to continue operating even when various members—including leaders—are arrested and incarcerated for long periods.<sup>328</sup> Despite the challenges faced by law enforcement personnel in investigating and prosecuting gang sex traffickers, sometimes they are successfully prosecuted and imprisoned. Usually this is accomplished only after victims have been recovered and have agreed to provide information about their ordeals at the hands of the gang. Normally, this would devastate an autonomous pimp's operations and put him out of business for at least the term of his incarceration.

Not so with gang-controlled sex trafficking. From within prison walls, gang leaders can still effectively operate the enterprise.<sup>329</sup> With their leadership structure intact—even if imprisoned—and their ability to recruit new members unharmed, gang sex traffickers are largely replaceable. Imprison a few members and more will step in to take their places:

If authorities find a way to imprison the leader, or if the leader is killed in a dispute with a rival gang, the gang does not dissolve. Someone within the ranks of the gang takes

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<sup>327</sup> Fortunately, dedicated law enforcement officers have been able to overcome many of the difficulties and challenges previously mentioned. Although gangs have many advantages when they turn to sex trafficking, they are not invincible. Once law enforcement agents have broken through the gang's protective shell, there is still the task of proving the case to the jury beyond a reasonable doubt.

<sup>328</sup> See Hagedorn, *supra* note 4, at 367 (noting that gangs have the ability to reproduce themselves).

<sup>329</sup> See PARKS, *supra* note 10, at 27 (“Incarcerated gang members are every bit as threatening as those who are on the streets because gang members who are behind bars often control crimes that are committed outside prison.”).

command. A member of the Gangster Disciples compared the group's staying power to the operation of a circus: "We're going to miss him, but we still must go on."<sup>330</sup>

#### IV. CONCLUSION

Autonomous sex traffickers—particularly those who are well-organized and violent—pose substantial dangers to communities. On average, however, gang-controlled trafficking poses even greater dangers. Gangs usually have a ready supply of assets—including personnel, access to narcotics and weapons, skills with violence, and networks—that they can utilize in sex trafficking. But perhaps their most potent weapon is their ability to attract and retain victims, either through finesse, inherent threats of violence, or the use of violence. Sex trafficking is an easy and efficient way for gangs to generate revenue, and now that gangs have seen the amount of capital they can accrue from trafficking, it is likely they will expand their trafficking endeavors.<sup>331</sup> For this reason, investigators and prosecutors must be vigilant in their pursuit of criminal gangs and their various schemes, and political leaders must ensure that the police have the tools necessary to address gang-controlled sex trafficking.<sup>332</sup> They must be

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<sup>330</sup> HAL MARCOVITZ, *GANGS* 26–27 (ABDO Publishing Co. 2010).

<sup>331</sup> Given that it was the prospect of easy profits that motivated gangs to begin sex trafficking in the first place, the only way to reduce the amount of sex trafficking is to increase the costs of trafficking for gangs and customers alike. See RONALD H. COASE, *THE FIRM, THE MARKET, AND THE LAW* 4 (Univ. of Chicago Press 1988) (“[F]or groups of human beings, in almost all circumstances, a higher (relative) price for anything will lead to a reduction in the amount demanded. This does not only refer to a money price but to price in its widest sense.”). Most gang members, however, know that it is easy to hide sex trafficking and that the chances of being punished are minimal. See JACKSON & MCBRIDE, *supra* note 16, at 13 (“[T]he chances of a convicted gang member being severely punished are minimal.”).

<sup>332</sup> Some communities deny that they have gangs present in their neighborhood or that the gangs are a problem. See Finn-Aage Esbensen et al., *Youth Gangs and Definitional Issues: When Is a Gang a Gang, and Why Does it Matter?*, 47 *CRIME & DELINQUENCY* 105, 106 (2001) (“[M]any jurisdictions deny, often for political and image reasons, that there is a [gang] problem . . .”). To admit to the presence of gangs would

cognizant that numerous gangs have demonstrated substantial skill in sex trafficking and that it is likely that even those gangs which have not pursued this means of generating revenue will soon learn of the substantial advantages that sex trafficking entails. However, for society, “[t]he human costs exacted by criminal street gangs are inestimable.”<sup>333</sup> As more gangs wade into sex trafficking, those costs are bound to increase, especially in light of the influx of unsupervised and vulnerable minors from Central America arriving in the United States daily.<sup>334</sup> Undoubtedly, a number of these teenagers bereft of parental supervision and support will become part of the next generation of gang members and sex trafficking victims.<sup>335</sup>

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be to acknowledge a blight on the community and doing so would require politicians to take remedial action. It is therefore easier for some politicians to simply ignore the problem. *See also* Hagedorn, *supra* note 4, at 377 (“[I]n some jurisdictions, it is not politically acceptable to admit the existence of gangs.”).

<sup>333</sup> *City of Chicago v. Morales*, 527 U.S. 41, 98 (1999) (Thomas, J., dissenting).

<sup>334</sup> *See* Scott W. Johnson, *Disorder at the Border*, WKLY. STANDARD, July 21, 2014, at 10, available at [http://www.weeklystandard.com/articles/disorder-border\\_796395.html](http://www.weeklystandard.com/articles/disorder-border_796395.html); *see also* Laura Meckler, *Influx Pressures Immigration Review*, WALL ST. J., June 28, 2014, at A4 (“Thousands of unaccompanied minors have been arriving this year at the border . . .”); Michael Scherer, *Children at the Border: An Exodus from Central America Tests the U.S.*, TIME, June 19, 2014, at 17 (noting that criminal cartels are smuggling large numbers of children from Central America into the United States).

<sup>335</sup> *See* PARKS, *supra* note 10, at 22 (“One reason gangs continue to grow larger and more powerful is that they are fostering criminal relationships with criminal organizations . . . [which] has led to “an influx of illegal aliens who join gangs”).