

Nos. 17-3207, 17-3208, 17-3209, 17-3210, 17-3212 & 17-3213  
(consolidated appeals)

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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YASIN AHMED FARAH (17-3207), IFRAH YASSIN (17-3208),  
HAMDI ALI OSMAN (17-3209), AHMAD ABNULNASIR AHMAD (17-3210),  
BASHIR YASIN MOHAMUD (17-3212), and MOHAMED AMALLE (17-3213),

Plaintiffs-Appellees,

v.

HEATHER WEYKER,

Defendant-Appellant.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

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**BRIEF OF THE HUMAN TRAFFICKING INSTITUTE AS  
*AMICUS CURIAE* IN SUPPORT OF THE DEFENDANT-APPELLANT  
AND REVERSAL**

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## **CORPORATE DISCLOSURE STATEMENT**

The Human Trafficking Institute (Institute) is an incorporated entity. The Institute does not have a parent corporation and no publicly held corporation owns 10% or more of its stock.

### **CONSENT TO FILE UNDER FRAP 29(a)(2)**

The Human Trafficking Institute (Institute) has sought the consent of all parties in this case to file its amicus brief in support of the victim-centered approach. Plaintiffs' Counsel granted written consent to the Institute's filing of the amicus brief on March 6, 2018, provided they are granted an extension until April 1, 2018 to file their responsive briefs in this matter. Defendant's Counsel consented to the filing of this brief on March 1, 2018 and has stipulated that the Government will not object to Plaintiffs' request for additional time to file their opposition briefs in light of the filing of this amicus brief.

This brief was authored and funded solely by the Human Trafficking Institute. This brief was not authored, in whole or in part, by a party's counsel in this matter. Furthermore, a party or party's counsel did not contribute money to fund the preparation or submission of this amicus brief, nor did any person outside of the Human Trafficking Institute contribute money to fund the preparation or submission of this amicus brief.

## **IDENTITY, INTEREST, AND AUTHORITY TO FILE**

The Human Trafficking Institute (Institute) exists to decimate modern slavery at its source by empowering police and prosecutors to stop traffickers. Working inside of criminal justice systems, the Institute provides the embedded experts, world-class training, investigative resources, and evidence-based research necessary to free victims. The Institute's leadership has extensive experience as federal prosecutors in the United States Department of Justice's Human Trafficking Prosecution Unit and the Federal Bureau of Investigation's anti-human trafficking units. With over two decades of experience working victim-centered forced labor and sex trafficking cases, the Institute's leadership have investigated and prosecuted numerous human trafficking cases throughout the United States.

In addition to their extensive experience investigating and prosecuting federal human trafficking cases, the Institute's leadership has conducted domestic and international trainings on best practices for the investigation and prosecution of human trafficking cases. The Institute assisted in the creation of the advanced human trafficking course for federal law enforcements in the United States and, upon invitations from the United Nations, European Union, U.S. Department of State, and U.S. Department of Homeland Security, have conducted numerous human trafficking trainings for law enforcement officers and prosecutors in Africa, Asia, Europe, Central America, and South America. Central to these trainings was

the promotion of the victim-centered approach in trafficking investigations to ensure that those in the criminal justice system prioritize the needs and stability of trafficking victims.

Because of the Institute's work and experience in human trafficking investigations and prosecutions, the Institute is specially situated to aid the Court's consideration of the importance and acceptance of the victim-centered approach in human trafficking cases. Given the Institute's efforts to empower police and prosecutors to stop traffickers and protect victims, the Institute has a particular interest in preserving the use of the victim-centered approach. The victim-centered approach is essential to successful trafficking prosecutions, as it promotes the need to stabilize human trafficking victims and recognizes the reality of evolving statements from traumatized victims. For these reasons, the Institute respectfully requests that the Court accept this *amicus* brief.

### **SUMMARY OF ARGUMENT**

The victim-centered approach to human trafficking investigations is a proven method to care for and respect victims during the criminal justice process. By understanding the impact of trauma, and the lingering effects of a traffickers' coercive scheme to exploit their victims, law enforcement and prosecutors prioritize the stabilization of the victims through short- and long-term services. In addition to caring for the needs of survivors, the victim-centered approach also

improves the quality of credible evidence investigators gather. This approach anticipates that many victims are initially reluctant to fully disclose the nature and extent of the abuse they endured.

The victim-centered approach has been adopted both on the national and international level as the appropriate and just way to handle human trafficking cases, with bodies like the United Nations, the United States Congress, and federal law enforcement agencies in support. If this Court rejected the use of the victim-centered approach, it would create a chilling effect on human trafficking investigations for this wide array of law enforcement officials. It would also risk returning to the investigatory practices that harmed human trafficking victims by mistaking them as criminals or undocumented immigrants. Instead, the Court should embrace the established national and international norm of the victim-centered approach.

## ARGUMENT

### **I. THE VICTIM-CENTERED APPROACH IS THE JUST AND WIDELY ACCEPTED METHOD OF HANDLING HUMAN TRAFFICKING CASES.**

Human trafficking cases present unique complexities not found in other types of crime. Due to the effects of fear, shame, and trauma, many victims are initially reluctant to disclose the details of their traffickers' coercive scheme.

Layered upon this reluctance are the ongoing threats the trafficker may have made

against the victims or the victims' loved ones. The victims' own fear of law enforcement or their inability to understand the crime committed against them also benefits traffickers who work to avoid accountability for their crimes.

In crimes such as burglary, identity theft, larceny, and assault, victims have few reasons to avoid reporting their crime immediately and accurately. Indeed, victims of most crimes self-report and are eager for the authorities to intervene. Victims of human trafficking, however, share more similarities with some victims of intimate partner violence or process-based crimes where psychological coercion, threats, promises of love, and other forms of exploitive manipulations are the criminals' main tools in silencing victims.

In recognition of these difficulties and the significant challenges of collecting credible evidence about the traffickers' offenses, law enforcement officers shifted their investigation practices to a victim-centered approach. This approach instructs law enforcement to be sensitive to the victim's trauma as they attempt to learn the truth about the crime. To that end, law enforcement officers using the victim-centered approach aim to build trust with and stabilize the victim. Although the term "victim-centered" is an undefined concept in law, this practice typically includes keeping victims informed about the criminal proceedings; not prosecuting victims for unlawful conduct that resulted from being trafficked; giving victims access to survivor resources to address their short- and long-term

wellbeing; providing victims with immigration relief; ensuring mandatory restitution; giving victims the opportunity for civil suits; and allowing for the effects of trauma in case investigations. *See* Pamela K. Chen, *Innovations at the Front Lines*, 60 N.Y.L. Sch. L. Rev. 623, 626–28 (2015).

The victim-centered approach has been widely adopted as the proper human trafficking investigation practice in the United States and around the world. *See generally* Mohamed Y. Mattar, *Incorporating the Five Basic Elements of a Model Antitrafficking in Persons Legislation in Domestic Laws: From the United Nations Protocol to the European Convention*, 14 Tul. J. Int’l & Comp. L. 357 (2006).

The Federal Bureau of Investigation (FBI) has embraced this approach, stating, “The majority of human trafficking victims in our cases are U.S. citizens, and we take a victim-centered approach in investigating such cases, which means that ensuring the needs of the victims take precedence over all other considerations.”

*What We Investigate: Human Trafficking/Involuntary Servitude*, FBI,

<https://go.usa.gov/xnmBT> (last visited Feb. 16, 2018). The Department of Justice

(DOJ) Office for Victims of Crime endorsed a similar stance, instructing DOJ

employees to “focus on the needs and concerns of a victim to ensure the

compassionate and sensitive delivery of services in a nonjudgmental manner.”

Office for Victims of Crime, *Victim-Centered Approach*, <http://perma.cc/E2KV->

D6EV (last visited Feb. 16, 2018). DOJ continued, saying, “In a victim-centered

approach, the victim’s wishes, safety, and well-being take priority in all matters and procedures.” *Id.* DOJ’s Human Trafficking Prosecution Unit and the Child Exploitation and Obscenity Section also “are committed to a victim-centered and trauma-informed approach that stabilizes traumatized victims, earns their trust, and facilitates their access to legal protections and support programs to help them restore their lives and empower them to participate actively in the criminal justice process.” Hilary Axam & Jennifer Toritto Leonardo, *Human Trafficking: The Fundamentals*, 65 U.S. Attorneys’ Bulletin 3, 14 (Nov. 2017). The State Department has followed suit, ordering, “Survivors of human trafficking should have access to services that are comprehensive, survivor-centered, and culturally appropriate, including long-term care, to promote autonomy.” The Department of State, *Engaging Survivors of Human Trafficking*, <https://perma.cc/GQT6-G8BA> (last visited Feb. 16, 2018).

Congress has taken an equally strong stance in favor of the victim-centered approach. In 2000, Congress passed the Trafficking Victims Protection Act (TVPA), which recognized and emphasized the rights of human trafficking victims throughout the investigation and prosecution process. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000). The law underscored the need for law enforcement to provide victims with resources that are trauma-informed and culturally appropriate. 22 U.S.C. § 7105 (2015).

This commitment to the victim-centered approach has been reinforced with each reauthorization of the TVPA, including the most recent reauthorization bills proposed in 2017. H.R. 2200, 115th Cong. (2017); S. 178, 114th Congress (2015).

The international community has mirrored the United States' support of the victim-centered approach. The United Nations adopted the victim-centered approach in the Palermo protocols in 2000, in part "to protect and assist the victims of such trafficking, with full respect for their human rights." G.A. Res. 55/25 (Nov. 15, 2000). The Organization for Security and Cooperation in Europe (OSCE) emphasizes that it "works in combating human trafficking through prevention, prosecution, protection and partnerships in a victim-centric, human rights based approach." OSCE, *Combating Human Trafficking*, <https://perma.cc/GP6F-YUBF> (last visited Feb. 23, 2018). The European Union (EU) implemented similar directives that instruct member states to take a victim-centered approach in human trafficking investigations and prosecutions. Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (Apr. 5, 2011). Also, the International Organization for Migration (IOM) underscored the necessity of the victim-centered approach, saying:

After years of hard lessons learned, best practice now places victims at the centre [sic] of the process. Attention to the specific needs of

victims due to their gender, age or ethnicity precludes discriminatory treatment, whether or not intentional. Only when victims' rights are properly safeguarded and their immediate needs addressed can they effectively face the challenges inherent in their participation in criminal proceedings, which too frequently depend upon their testimony.

IOM, *Cross-cutting issues: Ensuring a victim-centered approach and addressing demand*, <https://perma.cc/HC42-32LH> (last visited Feb. 23, 2018).

Finally, courts have rejected similar challenges to the victim-centered approach in both human trafficking cases and other contexts. In human trafficking cases like *United States v. O'Connor*, courts have upheld the use of the victim-centered approach, rejecting a challenge to the jury's ability to hear inconsistent victim testimony, saying:

. . . [T]he jury was free to conclude that there were valid reasons for any inconsistencies in her testimony, including, but not limited to, the delay between the events and her statements, the trauma she suffered, that the victim may have been apprehensive to disclose the full details of what happened to her. . . .

No. 08-CR-77, 2008 WL 4642407, at \*2 (N.D.N.Y. Oct. 17, 2008).

Challenges to the victim-centered approach have also been dismissed in other contexts. For example, in *John Doe v. The Ohio State University, et al.*, a student accused of sexual assault challenged the school's disciplinary proceedings as violative of due process, in part because the victim-centric training materials for hearing panel members were allegedly biased against the accused. No. 2:15-CV-2830, 2016 WL 692547, at \*3, \*9 (S.D. Ohio

Feb. 22, 2016). The court stated that these claims would not rise to the level of a due process violation. *Id.* at \*10. Similarly, the Eighth Circuit has rejected evidentiary challenges to the admission of testimony regarding child sexual abuse notwithstanding the use of continued questioning despite the victim's initial denials. *United States v. Dorian*, 803 F.2d 1439 (8th Cir. 1986).

Given the unique nature of human trafficking cases and the utility of the victim-centered approach in this context, this Court should follow the lead of national and international bodies in adopting the victim-centered approach. Furthermore, this Court should not be the first court to reject this approach, as no appellate court has criticized the victim-centered approach, much less declared its application unconstitutional.

## **II. THE VICTIM-CENTERED APPROACH FOCUSES ON BUILDING TRUST WITH SURVIVORS AND PROVIDING VICTIMS WITH REHABILITATIVE SERVICES.**

The victim-centered approach focuses on stabilizing victims and recognizing their rights throughout the judicial process. Two expressions of this approach include law enforcement and prosecutors (A) building trust with survivors, and (B) supporting survivors by ensuring they have access to resources that will help them heal.

**A. Building Trust With Survivors Is Essential To Elicit Truthful Testimony.**

**1. Sex trafficking victims endure extreme trauma that often affects their ability to communicate their experiences.**

While all victims of crime deal with trauma on some level, labor and sex trafficking victims often experience extreme trauma that leaves profound emotional injuries. *Combating Modern Slavery: Reauthorization of Anti-Trafficking Programs: Hearing Before the H. Comm. on the Judiciary*, 110th Cong. (2007) (testimony of Dorchen A. Leidholdt, Director, Sanctuary for Families' Center for Battered Women Legal Services). Examples of this include posttraumatic stress disorder, rape trauma, depression, memory loss, severe shame, and suicidal thoughts. *Id.* Victims often endure this pain in multiple layers, and for some victims, it results in "pervasive mistrust of others and their motives." Heather J. Clawson, Amy Salomon, & Lisa Goldblatt Grace, *Treating the Hidden Wounds: Trauma Treatment and Mental Health Recovery for Victims of Human Trafficking*, U.S. DEP'T OF HEALTH & HUMAN SERVS., <https://aspe.hhs.gov/system/files/pdf/75356/ib.pdf> (last visited Feb. 18, 2018). This makes first responders' and prosecutors' jobs "difficult at best." *Id.*

**2. Inconsistent or evolving statements about victims' experiences are common.**

Victims' testimony is essential to investigators and prosecutors of human trafficking cases. Victims who can testify about their experiences are extremely

helpful in explaining the trafficker's coercive scheme. *A Victim-Centered Approach*, U.S. DEP'T OF HOMELAND SEC., <https://www.dhs.gov/blue-campaign/victim-centered-approach> (last visited Feb. 22, 2018). But because victims have often suffered from extreme trauma, they are frequently reluctant to cooperate with law enforcement. *Id.* They may not even recognize that they are victims for some time. *Id.* And after comprehending that they are victims of horrible exploitation, they might fear law enforcement, leave key details out of their stories, or continue to identify with or protect their traffickers. *Id.* Some victims refuse to testify against their traffickers, even if it means they will face criminal charges themselves. Chitra Raghavan & Kendra Doychak, *Trauma-coerced Bonding and Victims of Sex Trafficking: Where do we go from here?*, 17 INT'L J. OF EMERGENCY MENTAL HEALTH & HUMAN RESILIENCE 583, 584 (2015).

Further, recounting a victim's story or confronting her abuser in court may reactivate the trauma she experienced while she was trafficked. *Trafficking in Persons Report*, U.S. DEP'T OF STATE, OFFICE TO MONITOR & COMBAT TRAFFICKING IN PERSONS 4, 27 (June 2014), <https://www.state.gov/documents/organization/226844.pdf>. And in many cases, the trafficker threatens the victim or her family members against reporting to law enforcement to intimidate her and to prevent her from cooperating with law enforcement and prosecutors. *Id.*

Because of these issues, investigating a sex trafficking case requires multiple extensive interviews with suspected victims. Donna M. Hughes, *Combating Sex Trafficking: A Perpetrator-Focused Approach*, 6 U. ST. THOMAS L.J. 28, 37 (2008). Sometimes it takes weeks of work with victims before they trust law enforcement and prosecutors enough to share true accounts of their exploitation. *Id.* And it can be difficult to articulate their “complex combinations of fear, dependence, love, and loyalty that compel them to remain under a trafficker’s control.” Hilary Axam & Jennifer Toritto Leonardo, *Human Trafficking: The Fundamentals*, 65 U.S. Attorneys’ Bulletin 3, 14 (Nov. 2017). Throughout these interviews, it is common for victims to make multiple inconsistent statements. Pam Bowen, *Prosecution of Cases of Human Trafficking in a Common Law System*, in ROUTLEDGE HANDBOOK OF HUMAN TRAFFICKING (Ryszard Piotrowicz, Conny Rijken & Baerbel Heide Uhl eds., 2018). It is also common for victims to then change their testimony in court. *Id.*

Here, the district court leaned on the Sixth Circuit’s criticism of Officer Weyker to add plausibility to Osman’s claim against Weyker for witness manipulation because after Jane Doe 2 spoke with Officer Weyker, “she changed her story to include acts of prostitution and sex trafficking.” District Court MTD Order at 28 (quoting *United States v. Fahra*, 643 F. App’x 480, 482-83 (8th Cir. 2016)). But the fact that Jane Doe 2 changed her story after talking to local police

is a common result of working with sex trafficking victims. It is also a common occurrence that Jane Doe 2 then changed her testimony again at trial. *See* Record (R.) at 150-98. Instead of witness manipulation, this could be a symptom of working with a sex trafficking victim who experienced extreme trauma.

Inconsistencies in victims' testimony do not make their statements per se invalid; rather, it is merely an issue of credibility to be determined by the fact finder.

**B. Supporting Survivors By Giving Them Access To Rehabilitative Resources Is Also In Line With The Victim-Centered Approach.**

Victim stabilization is an essential component of the victim-centered approach to human trafficking investigations and prosecutions. This involves helping victims obtain access to resources that will help them heal from the trauma they experienced as a trafficking victim and successfully reintegrate into society. Human trafficking trials often last several years, and during this time, “victims often face financial difficulties—including lack of housing and employment—and continued emotional and psychological stress,” which may require long-term mental health and medical care. *Trafficking in Persons Report, Special Topics Report*, U.S. DEP’T OF STATE, OFFICE TO MONITOR & COMBAT TRAFFICKING IN PERSONS (2014), <https://www.state.gov/j/tip/rls/tiprpt/2014/226646.htm>. The U.S. Department of State promotes more than just medical care for survivors; it suggests that survivors should also have access to “vocational training, skill development courses, financial counseling, and educational scholarships.”

*Engaging Survivors of Human Trafficking*, U.S. DEP'T OF STATE, OFFICE TO MONITOR & COMBAT TRAFFICKING IN PERSONS (June 27, 2017), <https://www.state.gov/j/tip/rls/fs/2017/272009.htm>.

While a rare approach, Tennessee offers victims of sexually-oriented crimes “up to \$3,000, if it is determined that the victim experienced pain and suffering as a result of commission of the sexually-oriented crime.” *Criminal Injury*

*Compensation Benefits*, TENN. DEP'T OF TREASURY, <http://treasury.tn.gov/injury/CIC-Benefits.html> (last visited Feb. 22, 2018).

Tennessee is only one of two states that currently allow a criminal injury compensation payment for pain and suffering. *Id.*

Here, Officer Weyker helped Jane Doe 2 apply for \$3,000 from the Tennessee victims' compensation fund. AOB 36 (citing 1 App. 113-14). The plaintiffs suggest that Jane Doe 2 was biased to give false testimony in exchange for the \$3,000. *Id.* But under the facts of this case, it would be appropriate under Tennessee's standards to seek up to \$3,000 for Jane Doe 2, as she was the victim of a sexually-oriented crime. Thus, Officer Weyker's application for victim funds for Jane Doe 2 was in line with a victim-centered approach.

**C. Defendants Due Process Rights Remained Intact When Victims' Testimony Involve Inconsistent Statements.**

Defendants' due process rights are not harmed when investigators and prosecutors use the victim-centered approach. Under *Giglio v. United States*, 405

U.S. 150 (1972), all of the victims' inconsistent statements must be disclosed to the defendants, so they have knowledge of any issues. If the prosecutor does not disclose these statements, the defendants may appeal the non-disclosure or bring a civil action against the prosecutor for prosecutorial misconduct. *See id.* at 154-55; *see also United States v. Davis*, 534 F.3d 903, 914 (8th Cir. 2008).

Further, if victim-witnesses make inconsistent statements between their testimony and prior out-of-court statements, defendants have the right to impeach them by challenging the credibility of their testimony on the stand and then drawing the jury's attention to it. Indeed, in many cases, defendants have taken advantage of this opportunity, and courts have upheld the prosecution's use of the victim-centered approach.

In *United States v. O'Connor*, for example, the Northern District of New York upheld the prosecution's use of the victim-centered approach by holding that so long as the jury could have reasonably drawn an inference that the witness's testimony was true, the evidence was sufficient to establish the elements for sex trafficking beyond a reasonable doubt. No. 08-CR-77, 2008 WL 4642407, at \*2 (N.D.N.Y. Oct. 17, 2008). The court noted that the jury was free to find valid reasons for the victim-witness's inconsistencies, including "the delay between the events and her statements, the trauma she suffered, [or] that the victim may have been apprehensive to disclose the full details of what happened to her." *Id.*

On appeal, the Second Circuit affirmed the jury's verdict and rejected O'Connor's argument that the evidence was not sufficient because the victim-witness's testimony was "inconsistent, contradictory, and not credible." *United States v. O'Connor*, 650 F.3d 839, 855, 863 (2d Cir. 2011). The court reasoned that at trial, O'Connor cross-examined the witness at length regarding varying details of when she said incidents occurred and who abused her, and then highlighted the differences in her prior statements to the jury. *Id.* at 855. But the court found that the jury may fairly have concluded, despite the inconsistent testimony, that her "disclosures were merely incomplete and that her trial testimony was truthful." *Id.* at 855-56. The court reasoned that when "testimonial inconsistencies are revealed on cross-examination, the jury is entitled to weigh the evidence and decide the credibility issues for itself." *Id.* at 855. Thus, the court found no basis for reversal. *Id.* at 856; *see also United States v. Liu*, 538 F.3d 1078, 1086 (9th Cir. 2008) (allowing an FBI agent to testify in a sex trafficking case about victim-witnesses' prior consistent statements after defendants suggested they lied to obtain financial benefits from the FBI).

Here, similarly, the plaintiffs had the opportunity to cross-examine the witnesses and point to inconsistencies in their testimony to the jury. For example, when examining Jane Doe 2 about her prior phone call with Officer Weyker, the defense asked whether many of her statements were truth or lies. *See R.* at 175-95.

In this case, the district court noted that the accused traffickers, “raised serious issues of credibility, but have not shown Jane Doe's testimony to be ‘indisputably false’ that is necessary to grant the Defendants’ motions for acquittal on these claims.” *United States v. Adan*, 913 F. Supp. 2d 555, 570 (M.D. Tenn. 2012) (finding the sole ground for granting acquittal was that the government proved at most multiple conspiracies, not the single conspiracy alleged in the complaint). *See United States v. Fahra*, 643 F. App’x 480, 488-90 (6th Cir. 2016); R. at 236-38.

Additionally, as to the stabilization of victims, defendants may suggest to the jury that any resources the victims received enticed them to testify for the prosecution. Here, the plaintiffs did just that, as they argued that Officer Weyker lied on an application to get Jane Doe 2 money from the Tennessee victims’ compensation fund. AOB 36 (citing 1 App. 113-14). These examples show that the defendants were entitled to remedies where Officer Weyker used the victim-centered approach that involved Jane Doe 2’s inconsistent testimony and application for victim funds.

## **II. ABANDONING THE VICTIM-CENTERED APPROACH WOULD PRODUCE HARMFUL CONSEQUENCES FOR HUMAN TRAFFICKING VICTIMS AND LAW ENFORCEMENT OFFICERS INVESTIGATING HUMAN TRAFFICKING CASES.**

### **A. Abandoning The Victim-Centered Approach Would Harm Victims And Make Prosecuting Human Trafficking Cases More Difficult.**

Abandoning the victim-centered approach would deprive victims of many resources to help them heal, reintegrate into society, and thrive long-term. The Trafficking Victims Protection Act of 2000 built in remedies to help survivors, such as “continued presence” temporary immigration status, T-visas, derivative T-visas, access to Medicaid, and substance abuse and mental health services for qualifying victims. *See* 22 U.S.C. § 7105 (2012); *see also Services Available to Victims of Human Trafficking*, U.S. DEP’T OF HEALTH & HUMAN SERVS., [https://www.acf.hhs.gov/sites/default/files/orr/traffickingservices\\_0.pdf](https://www.acf.hhs.gov/sites/default/files/orr/traffickingservices_0.pdf) (last visited Feb. 18, 2018). Victims may also need counseling services and access to resources that will help them get back on their feet, such as education and vocational training. *See Engaging Survivors of Human Trafficking*, U.S. DEP’T OF STATE, OFFICE TO MONITOR & COMBAT TRAFFICKING IN PERSONS (June 27, 2017), <https://perma.cc/GQT6-G8BA>.

The journey from being a human trafficking victim to a survivor is more likely to become a reality for more victims if law enforcement, lawyers, non-profit organizations, and lawmakers walk alongside them. *The Journey from Victim to Survivor*, U.S. DEP’T OF STATE, OFFICE TO MONITOR & COMBAT TRAFFICKING IN PERSONS (2014), <https://www.state.gov/j/tip/rls/tiprpt/2014/226644.htm>. When many people share the burden and look toward a common goal, “more lives will be

restored, and slowly, exploitation and enslavement will give way to justice, opportunity, and freedom. *Id.*

Additionally, survivor testimony is extremely important to prosecuting human trafficking cases. Without developing trust with victims and helping them to understand that (1) they are victims who have suffered from extreme trauma, and (2) they can trust officers and share their true stories with them, prosecutors would lose extremely valuable evidence and would be at a much greater risk of losing cases and letting traffickers go free.

**B. Abandoning the Victim-Centered Approach Would Have A Chilling Effect on Law Enforcement.**

If this Court were to bar the use of the victim-centered approach or punish a law enforcement officer for employing it, such a decision would have a chilling effect on efforts to combat the lucrative crime of human trafficking. Currently, law enforcement officers are encouraged and trained to assist human trafficking victims in their stabilization process. This includes helping victims attain both short-term resources like shelter, food, and clothing, and long-term resources like counseling, immigration assistance, and job training. FBI, *What We Investigate: Human Trafficking/ Involuntary Servitude*, <https://go.usa.gov/xnmBT> (last visited Feb. 16, 2018). Notably, law enforcement officers are trained to prioritize the victim's needs over the needs of their investigation and any subsequent prosecution. *Id.* If this Court ruled that these practices constituted witness

manipulation, law enforcement officers would refrain from providing life-saving resources to human trafficking victims due to the fear of personal liability. This would leave one of the most vulnerable populations without meaningful access to justice or victim services.

Furthermore, prior to the adoption of the victim-centered approach, many human trafficking victims were mistakenly seen as criminals or illegal immigrants. Donna M. Hughes, *Combating Sex Trafficking: A Perpetrator-Focused Approach*, 6 U. ST. THOMAS L.J. 28, 37 (2008). This could lead to trafficking victims being criminally punished for their victimization, further separating them from the path to stabilization by placing legal and societal consequences of criminal activity on them. The adoption of the victim-centered approach changed the perception of victims as criminals and shifted law enforcement attention to providing victims with resources. If law enforcement officers are forced to revert to the investigative practices used before the victim-centered approach, we risk inflicting additional harms on the already abused population of trafficking victims.

Instead, the Court should endorse the victim-centered approach and recognize that the law enforcement officers who first come into contact with human trafficking victims play a critical role in providing victims the help they need to recover. This prioritization of victim needs is not only the morally proper thing to do, it is the legally proper thing to do. Justice is not limited to successfully

prosecuting traffickers; rather, it requires that the victims be made whole, and the victim-centered approach seeks to do just that.

### **CONCLUSION**

This Court should reverse the lower court decision.

Dated: March 08, 2018

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

1. The foregoing complies with Fed. R. App. P. 32(a)(7)(B)'s type-volume limitation because the brief contains 4,626 words excluding the parts of the brief that Fed. R. App. P. 32(f) exempts.

2. The foregoing complies with Fed. R. App. P. 32(a)(5)'s type-face requirements and Fed. R. App. P. 32(a)(6)'s type style requirements because the brief has been prepared in a proportionally spaced type-face using Microsoft Word 2013 in Times New Roman 14-point font.

Dated: March 08, 2018

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**CERTIFICATE OF SERVICE**

I hereby certify that, on March 08, 2018, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Eighth Circuit via the Appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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