

# Borders and Intersections: The Unique Vulnerabilities of LGBTQ<sup>1</sup> Immigrants to Trafficking<sup>2</sup>

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## Abstract

LGBTQ communities are especially vulnerable to human trafficking, however, sexual orientation and gender identity/expression are not typically considered specific vulnerability factors. Through the use of real life case examples as well as existing research, this chapter illustrates the possible reasons for these vulnerabilities by looking at family, community, and the overall societal treatment of LGBTQ individuals.

## Introduction

I was a young lawyer. And I hate to admit it but I was a little intimidated when the officers told me they wanted to speak to me alone. My client Natalie,<sup>3</sup>

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1. LGBTQ is an acronym for lesbian, gay, bisexual, transgender, and queer.

2. This chapter will focus specifically on trafficking into commercial sex, however the vulnerabilities discussed are universal and LGBTQ immigrants are trafficked into all forms of labor.

3. All of the names and certain distinguishing characteristics of my clients have been changed to protect their identity.

a young transgender woman, waited outside the room to report the multiple times she had been trafficked.

The officer looked at me. “You don’t really know your client.”

I didn’t understand. I looked at the officer confused and asked him to explain.

He gestured to a folder and opened it up. Inside held my client’s rap sheet, a document I was very familiar with. Then he said, “She’s been arrested for prostitution.”

I looked at him confused, thinking, “This is what this guy thinks I don’t know?” I told him yes, that she had been arrested for prostitution because she had been trafficked by multiple people. When people are trafficked or forced into prostitution, they often get arrested. I asked the officer, “Is that everything?”

He nodded.

I knew at that moment that the meeting wasn’t going to go well. I was right. For over two hours, my client detailed being forced to engage in prostitution repeatedly as a child, while the officers used transphobic language. I wanted to run and hide. At the end of the meeting, I asked about making a police report and the officer told me she wasn’t trafficked.

I looked at the officer, confused. She was clearly forced to engage in prostitution—at the very least a crime to report.

“No I don’t think so,” he said.

I tried another tactic. “She has criminal convictions on her record for prostitution before she turned 18. De facto, she’s a trafficking victim.”<sup>4</sup>

“That’s only federal.”

I didn’t understand. This client had been held and locked in a house, physically forced to see multiple men every day and provide sexual services to them. She was taken from one bar to another while her trafficker waited outside for her. He repeatedly threatened her if she didn’t make enough money. All of this happened before she turned 18. In my mind, if this wasn’t trafficking, what was? That day, the police left my office and refused to take a police report.

I felt defeated. After it was over, I went to apologize to Natalie. I apologized for putting her in a situation where officers used transphobic language against her and made her retell her story yet again to people who didn’t care. Natalie shrugged. “I didn’t expect anything better. Why would they believe me?”

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4. The Trafficking Victim Protection Act states a severe form a trafficking is defined as, “sex trafficking in which the person induced to perform such act has not attained 18 years of age.” 22 U.S. Code §7102.

Natalie's words haunted me for a long time. I felt helpless. I felt like I couldn't do my job. As an attorney who represents victims of human trafficking, one aspect of my job is to help survivors report their victimization to law enforcement, and if I couldn't even find a safe place for Natalie to report, I was feeling defeated. It just didn't feel fair that lesbian, gay, bisexual, and transgender people did not have a space to report being forced into prostitution and that law enforcement agencies weren't taking their experiences seriously.

Over time, that helpless feeling turned into anger. I became angry when I spoke to Assistant United States Attorneys who told me that they had never heard of trafficking of LGBTQ individuals. I became angry that so many LGBTQ people fleeing violence from other countries weren't screened by competent immigration attorneys for trafficking and therefore often ended up being deported with non-lawful immigration status. But most importantly I became angry that so few people were willing to admit that trafficking was an epidemic in certain LGBTQ communities. And then I began to ask why. Why was this issue invisible and why were LGBTQ immigrants so vulnerable to being trafficked into prostitution?

## Human Trafficking and Vulnerabilities of the LGBTQ Community

Trafficking is an issue in LGBTQ communities that has been invisible for far too long. It's time to shift the narrative and really explore the unique vulnerabilities of LGBTQ communities. This invisibility exists for many reasons. When people imagine a trafficking victim they see a white, cisgender<sup>5</sup> girl from Eastern Europe, chained to a bed and forced into prostitution. These types of images are created by the mainstream media as well as anti-trafficking organizations that don't actually work with survivors of trafficking.<sup>6</sup> These false notions of what a

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5. Cisgender (often abbreviated to simply cis) is used to describe individuals who gender identity is the same as the gender they were assigned at birth.

6. There are many anti-trafficking organizations that allege to fight trafficking through a moralistic/religious savior complex lens that do not actually work with survivors of trafficking. These organizations often impact public policy as well as local state and federal laws using only information they believe to be true by reading about it in a book or watching movies without working with and providing services for actual survivors. This causes many problems for anti-trafficking organizations that actually provide direct services to survivors.

trafficking survivor really looks like ensure that the world is unable to see anyone else as a victim of trafficking—which even includes service providers and law enforcement, who are tasked to do this exact thing.

This also means that research on trafficking in LGBTQ communities is almost nonexistent. Currently, there is only one anti-trafficking organization in the United States that has a dedicated LGBTQ anti-trafficking program for both legal and social services.<sup>7</sup> Due to the lack of research available, this chapter will be based on my personal experience as an attorney who has identified and provided services to hundreds of LGBTQ survivors of trafficking and the few studies conducted in the United States. Until we understand what makes LGBTQ communities vulnerable, governments and NGOs will not focus on prevention and identification for these communities.

Representing victims of trafficking I am often asked, “How do we prevent these atrocities from happening in the future and shield others from being trafficked?” I try to explain that we cannot address trafficking when we are not addressing vulnerability. We first need to understand how society, families, and institutions create the circumstances that make people most vulnerable. One must recognize that the person most vulnerable to trafficking is the person who has the fewest options and least control over their life; often circumstances created by poverty, family rejection, transphobia and a lack of other options are implicated.

Too often, those in the LGBTQ community lack the options that many others take for granted. If a gay child, with family support, is bullied by his teachers and classmates because of his sexual orientation, his parents could request a transfer of classes, the child could transfer schools, and if needed, the parents could sue the school for not keeping the child safe. Adding on additional challenges such as migration status or a lack of access to basic resources, those options quickly disappear. When a person fits gender norms, speaks English without an accent, and has legal permission to work in the U.S. they have a range of jobs they could apply for without concern. For someone who is undocumented, does not speak English and is of transgender identity, finding living wage employment that is affirming of their gender and where they can work without fear of being deported, even if they have valid labor compliance, can be almost impossible. This lack of options makes a person vulnerable. It forces a person to quit school, stay in a violent situation, or take a job where they may be exploited because it is the only way they can make money to survive.

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7. Even through there is only one dedicated anti-trafficking program, there are some anti-trafficking programs who will serve LGBTQ clients.

It has been well-documented that age, gender, poverty, access to education, political climate and personal safety are contributing factors to a person's vulnerability to trafficking. However, missing from that research is sexual orientation<sup>8</sup> and gender expression.<sup>9</sup> LGBTQ communities are uniquely vulnerable because of family rejection, hate, violence, and discrimination.

### *Family-Based Trafficking, Violence, and Rejection*

Trafficking often begins at home. For some LGBTQ people, I mean this phrase quite literally. The trafficking cycle starts when a parent/grandparent/family friend begins to allow people to spend time with a child in exchange for money, drugs, food, or other goods or services. LGBTQ youth are specifically vulnerable to sexual abuse and exploitation. Research shows that one-third of LGBTQ children leave home to escape sexual abuse from family members.<sup>10</sup> LGBTQ youth may fear, delay, or even never disclose sexual abuse because they may feel it will out them as LGBTQ, even though the sexual abuse was nonconsensual. Abusers will also use the child's fear, telling them that everyone will think they are gay if they come forward and that no one will believe them.

Adrian was ten years old the first time he was trafficked into prostitution by Roberto. Roberto was Adrian's neighbor who often took care of him when his parents were not around. Beginning at a young age, Roberto would comment that Adrian was different from other boys, more feminine. One day, Roberto invited Adrian and told Adrian that he could play with some dolls if he touched Roberto's penis. Confused and scared, Adrian agreed. After that day, Roberto

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8. Sexual orientation relates to "Whom a person is physically and emotionally attracted to. Sexual orientation is distinct from gender identity; transgender people may identify as heterosexual, bisexual, gay, lesbian, or any other sexual orientation." See Dank et al. 2015.

9. Gender expression is "The aspects of behavior and outward presentation that may (intentionally or unintentionally) communicate gender to others in a given culture or society. These aspects include clothing, body language, speech, hairstyles, socialization, interests, and presence in gendered spaces (e.g., restrooms, places of worship, etc.), among others. A person's gender expression may vary from the gender norms traditionally associated with the person's sex assigned at birth. Gender expression is separate from gender identity and sexual orientation (Perry and Green 2014)." See also Dank et al. 2015.

10. Nicholas Ray with Colby Berger, Susan Boyle, Mary Jo Callan, Mia White, Grace McClland & Theresa Nolan, Nat'l Gay & Lesbian Task Force Policy Inst. and Nat'l Coal. for the Homeless, Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness at 98 (2006).

told Adrian that if he didn't do what he was told, Roberto would tell his parents that Adrian was gay. A few days later, Roberto began having regular parties where Adrian would have to have sex with the people who showed up. Fearful that he would be kicked out of his house or possibly killed if his parents found out he was gay, ten-year-old Adrian was forced to attend these parties for the next four years.

For Greta, she was nine years old when she moved into her aunt's house. Her aunt commented regularly about the boys' clothing that Greta wore. To punish her for her clothing, and for acting like a boy, Greta was forced to spend several hours a day cleaning her aunt's house. When Greta didn't do a good enough job, she was beaten. Also, Greta's aunt used to invite men over to spend time with Greta in exchange for money or furniture. Greta was told this would help her get ready for being with a man in the future.

For other LGBTQ individuals, trafficking begins at home when young people experience violence and abuse because of their sexual orientation and/or gender identity/expression. This family abuse creates its own vulnerability. LGBTQ children also often face homophobic and/or transphobic name-calling by parents and siblings. Some report that parents told them things like "I would rather have a drug dealer or a murderer than a gay child." Almost all of my LGBTQ clients talk about the verbal, physical and sexual abuse they experienced on a daily basis from their families. This abuse was often couched in a push to make individuals conform to gender expectations. For example, a parent would often beat their LGBTQ child more than their other children to make them act more like traditional culture felt a man or a woman should behave. Often times, the abuse escalates and the child is kicked out of the home when there is official confirmation that the child is gay. One U.S. based study found that 39% of homeless LGBT<sup>11</sup> youth were forced to leave their homes because of their sexual orientation or gender identity. Further, 50% of gay males experienced a negative parental reaction when they came out, and 26% of those disclosures resulted in the youth being kicked out of the home.<sup>12</sup> One-third of

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11. To discuss the community, I use the acronym LGBTQ, but I wanted to reflect the methodology used in this research, therefore I will use LGBT where appropriate.

12. Nicholas Ray with Colby Berger, Susan Boyle, Mary Jo Callan, Mia White, Grace McCelland & Theresa Nolan, Nat'l Gay & Lesbian Task Force Policy Inst. and Nat'l Coal. for the Homeless, Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness at 66 (2006).

LGBT youth are assaulted by a parent or family member when the youths disclose their sexual orientation.<sup>13</sup>

Alex grew up in a violent home, often beaten by both of his parents because of his femininity or as his parents put it, “because of the way he was.” At 14 years old, Alex’s parents found a love letter in his room written from another boy. When Alex got home from school that afternoon, he was immediately kicked out of the house. His parents told him that they would kill him if they ever saw him again. He was no longer their child. Homeless at 14 in Guatemala, a local gang forced him into prostitution.

Sometimes violence is so extreme that the hatred towards one LGBTQ person extends to other members of the family. It is not uncommon for an LGBTQ child to leave home because their presence in the home makes one parent more violent to the rest of the children. Other times, the violence comes from the community, siblings, and parents because LGBTQ children are targets of this violence and stigma.

Brian left home at 16 years old to come to the United States from Mexico. Although Brian was supported and loved by his family, for years the neighborhood kids would throw rocks, beat up, and verbally harass Brian. As Brian got older, the neighborhood children also started to similarly abuse Brian’s brothers and sisters. In hopes of protecting them from this violence, Brian left home. After arriving in the United States, Brian was held by coyotes<sup>14</sup> and forced into domestic and sexual servitude.

### *Educational Discrimination*

Childhood harassment outside the family home is another factor that impacts vulnerability. School is often not safe. Repeated harassment at school impacts a child’s ability to even attend. In the United States, 55.5% of LGBT students felt unsafe at school because of their sexual orientation, and 37.8% because of their gender expression. 30.3% of LGBT students missed at least one entire day of school in the past month because they felt unsafe or uncomfortable while 71.4% of LGBT students heard “gay” used in a negative way frequently or often at school, and 64.5% heard other homophobic remarks frequently or often. Most alarmingly, 51.4% of students reported hearing homophobic remarks

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13. *Id.* at 16.

14. A coyote is a common word used to describe a person who helps smuggle a person into the United States.

from their teachers or other school staff, and 55.5% of students reported hearing negative remarks about gender expression from teachers or other school staff.

For Kyle, school was a very unsafe place. Having experienced harassment and violence beginning in first grade because students thought he was too feminine, he reached out for help from a teacher. Rather than help Kyle, the teacher began sexually abusing him and videotaping the abuse. The teacher would then encourage more violence from Kyle's classmates. Kyle was beaten, raped and almost killed by classmates before he fled into the United States.

### *Police and Community-Based Violence*

Many of my clients also fled their home country due to the community violence they experienced because of their sexual orientation and/or gender identity or gender expression. Around the world, there is a wide spectrum of treatment and laws regarding LGBTQ people. There are at least 75 countries that have criminal laws against sexual activity between people of the same gender.<sup>15</sup> There are eight countries that provide the death penalty for same-sex sexual activity.<sup>16</sup> Other countries may have laws protecting LGBTQ individuals but the laws are not always enforced and the police and government officials can be perpetrators of this violence.

I began working with Cara after she was falsely arrested for prostitution. A victim of trafficking three times over in the United States, I asked her to paint me the picture of why she fled her home country to come here. She shared how she tried to make a life for herself in her home country but was constantly beaten and raped for living openly as a transgender<sup>17</sup> woman. She shared many horrifying experiences with me and told me that after 10 years of the abuse she couldn't

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15. State Sponsored Homophobia: A World Survey of Laws: criminalization, protection and recognition of same-sex love May 2015 10th edition [http://old.ilga.org/Statehomophobia/ILGA\\_State\\_Sponsored\\_Homophobia\\_2015.pdf](http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf)

16. *Id.*

17. Transgender is defined as "People whose gender identity (internal sense of being female, male, or another gender) is incongruent with their sex assigned at birth (physical body). Transgender is also used as an umbrella term to refer to communities of people that include all whose gender identity or gender expression do not match society's expectations of how they should behave in relation to their gender (e.g., transsexual, transgender, genderqueer, gender nonconforming, and other people whose gender expressions vary from traditional gender norms)" (Perry and Green 2014).

take it anymore and came to the United States. A few months later, Cara was in my office again and we were talking about police violence here in the United States. She looked up and said, “I remember when in my home country, I was beaten by the police and it was videotaped and then put on TV.” I looked at Cara and said, you never told me about that before when I asked about police violence in your home country. She looked at me, completely serious and said, “Lynly, I can’t tell you about every time I have been beaten and abused by the police for being transgender.” At that moment, I realized that there are some levels of violence that are unfathomable until you experience it yourself. And Cara was right, there was no way for this 50-year-old transgender woman to list for me all of the violence she had experienced.

For many of my clients, police violence was a frequent occurrence in both their home country and here in the United States. This repeated violence at the hands of law enforcement creates an environment where LGBTQ people who are victimized have no safe place to turn for help. This violence is not exclusive to adults. Kristen was 11 years old when she was picked up by two police officers in her home country, taken to a deserted field and forced to provide oral sex to both officers. When Kristen was old enough to escape, Kristen left home and fled to the United States for safety.

Unfortunately, policies and practices by the police in the United States are not always LGBTQ friendly. For example, when a transgender woman is arrested in Queens, she is often pushed up against a car, forced to spread her arms and legs and have an officer lift up her skirt so that everyone around them can see her genitals. The woman is then searched while officers often make disparaging comments. These negative interactions with the police create an environment where sex trafficking victims cannot reach out for help or do not believe that they will be taken seriously.

### *Intimate Partner Violence and Trafficking*

Intimate partner violence and trafficking often go hand and hand and is not an uncommon experience for the LGBTQ community. But reaching out for police support when the violence gets life threatening can be even more dangerous than a victim’s own partner.

Ellie, a transgender undocumented woman, was forced into prostitution by her romantic partner here in the United States. He used threats of deportation and physical violence to ensure that she worked and made money for him. He forced her to take hormones and undergo surgeries to make her more marketable. On one particularly violent night, Ellie gathered the courage and reached out for help by the police. After calling 911, two officers showed up.

Ellie tried to explain that he was beating her, but she didn't speak English and the cops wouldn't get a translator. She gestured to the blood on her face, hoping the cops would understand her fear. Instead, her partner told the cops that she was crazy and hurting him. They immediately arrested her and charged her with domestic violence. An order of protection was put in place, but her partner convinced the prosecutor to give Ellie an order that still allowed them to live together but would get Ellie in a lot of trouble if he ever called the police on her. Ellie had no choice but to go back to her partner who repeatedly told her, "See? I told you no one would believe you." Ellie's partner became much more violent and forced her to make even more money. He also forced her to engage in risky sex and during that time she contracted multiple STIs including HIV.

Unfortunately, Ellie's story is quite common in LGBTQ intimate partner violence cases. Romantic partners frequently used fear of the police and the police's own response to domestic violence and other victimization of LGBTQ people to create more control over their victim. A 2013 report found that 48% of LGBT violence survivors who interacted with the police reported they experienced police misconduct, including unjustified arrest, use of excessive force, and entrapment.<sup>18</sup> Furthermore, transgender people were 3.32 times more likely to experience police violence compared to non-transgender people. These negative interactions have lasting effects.<sup>19</sup> Only 56% LGBTQ and HIV affected survivors of hate violence reported such incidents to the police. When looking at intimate partner violence the statistics are even bleaker. Forty percent of gay and bisexual men believe that contacting the police in response to a violent intimate partner incident would be unhelpful or very unhelpful. Police assistance in sex trafficking situations is limited by this history of violence, resulting in distrust of police officers.

### *Lack of Immigration Status and Fear of Deportation*

LGBTQ undocumented immigrants are also vulnerable by the sheer fact they do not have legal immigration status in this country. To understand this vulnerability, one must first understand how the immigration system is not

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18. Discrimination and Harassment by Law Enforcement Officers in the LGBT Community Williams Institute, March 2015 By Christy Mallory, Amira Hasenbush, and Brad Sears the Williams Institute.

19. National Report on Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities Released Today Media release June 4, 2013.

set up to truly protect people who are fleeing from violence and persecution in their home country. Many people think asylum is a great option for LGBTQ individuals who have been persecuted in their home country. However, to be eligible for asylum, a person must have a well-founded fear of persecution based on past persecution or risk of persecution in the future if returned to the country of origin because of their membership in a particular social group.<sup>20</sup> At first glance, this seems like a perfect option for LGBTQ individuals and for some time it was a good option. Unfortunately, in 1996 the US government added new requirements to applying for asylum.<sup>21</sup> The new requirements stated that a person applying for asylum must apply within one year of entering the United States unless there have been changes or extraordinary circumstances. Technically what was created was a one-year bar and many LGBTQ individuals, when fleeing persecution, miss this deadline for a variety of reasons including not actually knowing applying for asylum is even an option. Further, if one applies for asylum and is denied, there is a high likelihood they will be deported back to their home country where they experienced violence and persecution. Due to this risk of being deported, many LGBTQ individuals, who are eligible, never apply out of fear. A person's undocumented status creates the perfect leverage for a trafficker. "I'm going to call immigration on you if you don't..." This is the number one coercive tactic traffickers use on LGBTQ individuals. Every LGBTQ client I have worked with has been threatened with those words.

A threat of deportation for LGBTQ individuals escaping persecution fits squarely within the definition of coercion because it is a threat of serious harm.<sup>22</sup> This is part of the reason we need to shift the narrative because the image of a person shackled to a bed doesn't come close to representing the full picture of trafficking victimization. A trafficker never has to be violent to a victim in order to ensure their compliance, when a trafficker is threatening to send them back to a place where they believe they will be killed. Another form of coercion and traffickers' control occurs when traffickers have children with their victim, and then hold the children hostage while the mother is sent off to the United

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20. INA § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A)(2005).

21. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (codified in various sections of 8 U.S.C. and 18 U.S.C.).

22. Coercion is further defined as the following:

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

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

(C) the abuse or threatened abuse of the legal process. 22 US Code § 7102.

States to work in prostitution. In those cases, a trafficker doesn't even need to live in the same location as the victim; all the trafficker needs to do is threaten the victim's children in order to induce a mother to work.

### *Employment Discrimination and Informal Economies*

Employment discrimination based on sexual orientation and gender identity create additional vulnerability, and often push LGBTQ individuals into informal economies. In the United States, only 17 states protect people from being fired because of their sexual orientation or their gender identity/expression and three additional states only protect people based on sexual orientation. That means in more than half of the US, it is legal to fire someone after finding out they are LGBTQ. A recent study showed that ninety percent (90%) of transgender individuals experienced harassment, mistreatment or discrimination at their jobs and forty-seven percent (47%) of transgender individuals said they had experienced an adverse job outcome, such as being fired, not hired or denied a promotion because of being transgender or gender non-conforming.<sup>23</sup> This type of discrimination can lead people to engage in informal economies such as sex work, domestic work or drug trades to survive.

What is sex work? Sex work is the exchange of sexual or erotic labor for resources. There are a lot of different types of sex work people may engage in including pornography, stripping, and peep shows, but I am going to focus on prostitution. Prostitution can be defined in many different ways, but the generally accepted definition is a person who exchanges sex for resources/material goods.

## **The Criminalization of Sex Work and Its Impact on LGBTQ Trafficking Victims**

People engage in sex work for a variety of reasons. Some engage in sex work by choice, others by the circumstances they are living in, and others have been trafficked into it at different points of their life, illustrating the fluidity of these "categories." What's difficult for some people to understand is that a person can willingly engage in sex work one day and then end up in a trafficking

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23. Injustice at Every Turn: A Report of the National Transgender Discrimination Survey; The National Gay and Lesbian Taskforce and National Center for Transgender Equality (2011).

situation the next day. Sometimes it is easier to understand this concept by thinking about other forms of labor rather than just sexual labor. Let's look at farm work. A person can make a decision to work on a farm and pick vegetables. The situation is going well and the person is being paid. However, after two months, the person stops being paid and the owner of the farm threatens them if they do not continue to pick vegetables. In another scenario, a person is picked up at the border and forced to work in a hotel doing laundry. They are threatened if they don't work and are not paid. The person eventually escapes from the hotel and is free. However, a short time later, they use the skills they learned while they were trafficked and get a paying job doing laundry at another hotel. It can be the same for sex work. A person can be trafficked into it one day, escape and then continue to engage in sex work. It is incredibly common for victims of trafficking to continue to engage in sex work after they escape the trafficking situation.

Prostitution is highly stigmatized whether someone is trafficked into it or is engaging in it by choice or circumstance. Prostitution is criminalized in all states, with a few exceptions, within the United States.<sup>24</sup> By making prostitution illegal and criminalizing the acts, people who engage in prostitution are often told through law enforcement, media, and the general public that they are less than human and do not deserve basic human rights. Sex work is real work and a way many people in the United States survive. To consider it anything but real work dehumanizes and stigmatizes workers and makes it more difficult for victims of sex trafficking to escape and reach out for help. Further, for marginalized communities, specifically LGBTQ communities, engaging in prostitution may be the best available option to make money and meet basic human needs.

Janet Mock, an American writer, transgender rights activist, author and the former staff editor of *People* magazine's website, touches on this very issue in her book, *Redefining Realness*. "I do not believe using your body—often marginalized people's only asset, especially in poor, low-income, communities of color—to care after yourself is shameful. What I find shameful is a culture that exiles, stigmatizes and criminalizes those engaged in underground economies like sex work as a means to move past struggle to survival."<sup>25</sup> Amongst the negative comments about sex work, absent from the conversation is a discussion about access to other jobs, basic survival needs and urgent medical

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24. Prostitution is legal in certain counties in Nevada.

25. Janet Mock, *My Experiences as a Young Trans Woman Engaged in Survival Sex Work*, (2014).

care. Fifty percent of black, 34% of Latin@, and 16% of Asian transgendered people have made a living in underground economies, including sex work, in order to survive.<sup>26</sup>

Homelessness is one of the central reasons youth engage in sex work.<sup>27</sup> Nationally between 10 to 50% of homeless youth engage in survival sex. One study shows that homeless youth will often exchange sex for a place to stay. This study makes sense because over 500,000 young people experience homelessness every year throughout the United States, yet there are only 4,000 youth shelter beds available every night across the country.<sup>28</sup> With only 4,000 shelter beds available, where are the rest of homeless youth expected to sleep?<sup>29</sup>

Due to the criminalization of prostitution, traffickers often take advantage of LGBTQ people who have or who are engaged in sex work as way to identify potential victims. My client Gemma met her trafficker while she was working on the street. He promised her a safe place to sleep and charmed her into believing he wanted to help her. After entering his home, he held her in a room for days with very little food and water. She was forced to go to the bathroom in a bucket. After a week of this treatment, he began bringing men to her room. She was forced to have sex with at least 20 men a day. Her trafficker, through physical and sexual violence, repeatedly brutalized her. Eventually, he allowed Gemma to work on the street but she was required to bring home a certain amount of money each day. Believing he would find her if she escaped, she engaged in prostitution and brought him money. One day, she was arrested and she used that moment to escape from him. Two years later, I met Gemma at my office. She came in and told me that she was involved in prostitution and wanted some help with immigration. After hearing her horrific story, I asked why she didn't report that she was being forced into prostitution to the police. She told me that she had engaged in prostitution by choice initially and she didn't think anyone would believe her that someone was forcing her to work. She also told me that she knew prostitution was illegal and she couldn't go to the police and admit that she was working because she feared she would be arrested. Gemma's statement that she didn't believe she could report that she was being forced into prostitution to the police, because prostitution is illegal, is a common theme for most of my clients.

Another impact of stigmatization of prostitution is the need for all trafficked people to play the role of "victim." For some trafficking survivors, being forced

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26. Injustice at Every Turn: A Report of the National Transgender Discrimination Survey.

27. Institute of Medicine and National Research Council 2013; Wber et al. 2004.

28. <http://nationalhomeless.org/campaigns/national-campaign-youth-shelter/>

29. It is also estimated that LGBTQ youth make up about over 40% of all homeless youth.

into prostitution wasn't the worst part of their lives. The persecution and violence they experienced in their home country and at the hands of their loved ones may have been significantly worse. Their inability to cry and fall apart when discussing the trafficking has made some service providers unable to actually believe they were trafficked.

My client Harris was forced out of his home at 11 and kidnapped and raped for weeks in his home country. During his border crossing, he witnessed the murder of a friend of his after he tried to defend him against the coyote. He was trafficked by a boyfriend in the United States for a year. When I explained to Harris that I was going to apply for a visa for him because of the time he was forced to work for his boyfriend, he was shocked. He told me that even though he was being forced into prostitution at 16 years old by someone he thought loved him, he was still safer in that situation than he had been in years. He couldn't understand why out of all of the horrors he experienced, being forced to do prostitution was grounds for vacating prostitution convictions and for getting him immigration status.

The criminalization and stigma attached to prostitution has created biases for some law enforcement and creates blinders when LGBTQ individuals are being trafficked. Many LGBTQ victims have been repeatedly arrested while they were being trafficked but were never screened for signs of trafficking. One client was arrested after receiving T nonimmigrant status.<sup>30</sup> When she explained she was a victim of trafficking, the officer laughed at her, made transphobic comments, and told her she was going to be deported. Another client was arrested at the house where she was being held after an anonymous tip was sent to the police. My client is a transgender woman and she was covered in blood after being beaten and starved for a week. Her trafficker answered the door but only she was arrested.

Another way this bias has played out historically is in the prostitution/human trafficking courts in New York City. These courts were created to connect those arrested for prostitution to counseling and social services in lieu of jail-time. For almost ten years in Queens, NY, only cisgender women were sent to the prostitution courts while transgender women and gay men were denied any types of services when they were arrested for prostitution. Why, if people who engage in prostitution deserve services rather than punishment, did my

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30. T Nonimmigrant Status (T visa) is immigration relief set aside for those who are or have been victims of human trafficking, protects victims of human trafficking and allows victims to remain in the United States to assist in an investigation or prosecution of human trafficking.

transgender clients keep getting arrested and forced to plead guilty, while my cisgender clients were sent to treatment?

## Moving Towards LGBTQ-Inclusive Human Trafficking Victim Services

Trafficking is a legal concept that was created when the Trafficking Victims Protection Act became law in 2001. However, the memo still hasn't gone out to victims about what trafficking is and how it is defined. Very few victims of trafficking know that what is happening to them is against the law, which can make it amazingly difficult to seek help when a person doesn't know they are a victim in the first place. Working at a place called the Sex Workers Project, one of the oldest anti-trafficking programs in the United States, I regularly get asked if our name makes it more difficult for victims of trafficking to come receive help here. But the reality is, our name is one of our biggest assets. Most people do not know that what is happening to them is illegal and therefore identify as a person who has done sex work or engaged in prostitution. People know there will be no judgment walking into my office and that people can feel safe coming to me and telling me about their lives. It is only through talking with my clients that I learned their real experiences. Then it's my job to see if experiences fit within the legal definition to see if they are eligible for immigration status or to vacate convictions on their record. I haven't had one client who came to me and told me that they were a trafficking victim unless the person was a referral from the Federal Bureau of Investigations or Homeland Security Investigations.

One barrier LGBTQ trafficking victims face when coming forward is the fact that prostitution is criminalized. And just like Gemma, victims know if they go report to the police, there is a high likelihood they will be arrested. If we want to make trafficking victims less vulnerable, we need to create a space where they can safely report crimes. Decriminalization of prostitution in New Zealand resulted in sex workers being able to work under the same legal and labor rights as all other professions, which in turn makes them less vulnerable to exploitation. Imagine if we created an environment where victims, and the people who help victims escape, can come forward to report the crime without fear of prosecution.<sup>31</sup>

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31. From my clients' experience, two of the main ways, trafficking victims escape from their trafficker is through sex workers working by choice and through help from the client who paid to have sex with them.

I'm not the same attorney I was the day I walked out of the meeting with the police. But that day sparked something in me. And just as my helplessness turned into anger so many years ago, my anger eventually turned into a desire to shift the conversation. I began to look for vulnerability and trends amongst LGBTQ trafficking survivors in hopes to also identify possible ways of preventing trafficking. I learned that the majority of transgender women trafficking victims are trafficked 3–5 times throughout their life and that LGBTQ trafficking victims experience higher levels and more brutal violence from their traffickers compared to non-LGBTQ victims. I began working with federal law enforcement and have watched as federal agencies reach out to request trainings on working with LGBTQ trafficking victims. The US Attorney's office, the FBI and Homeland Security Investigations in New York and New Jersey regularly meet with my clients and take their experiences seriously. And I also have watched trafficking prevention start from the ground up. Community organizations and community members have acknowledged the unique vulnerabilities of LGBTQ communities and have created systems of prevention as well as systems to help trafficking victims escape. But we still need to focus on prevention and utilize the experiences of victims and service providers who work with survivors every day. We need to change our asylum policy to ensure that all people who fear persecution can safely apply, which ultimately means we need to eliminate the one-year deadline. We need to train police officers and federal agents to treat LGBTQ people with dignity and respect. We need to protect LGBTQ individuals from discrimination in the workplace and ensure the many different types of jobs available. And most importantly, we need to abolish any types of barriers victims experience when trying to escape trafficking situations, which includes the decriminalization of prostitution. We need this conversation to continue to shift to ensure that LGBTQ people are not left out of it and their unique vulnerabilities are not ignored.

