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**WHEN YOUR COLONIZERS ARE HYPOCRITES:
FEDERAL POVERTY “SOLUTIONS” AND INDIGENOUS
SURVIVAL OF SEX TRAFFICKING IN INDIAN COUNTRY**

Introduction

In the last four years, there has been a veritable explosion of media attention on the problem of human trafficking in Indian country.¹ The rate of missing and murdered Indigenous women in the United States has always been high, but with more attention being paid to it not only by mainstream media outlets but by both the federal government and the public at large, the U.S. seems to have “discovered” a new, horrific display of domestic trafficking in its own backyard.² Human trafficking is by its nature covert, which makes statistics and crime rates almost impossible to track; depending on the organization, the study, and the year, numbers of people being trafficked varies between thousands and millions—vastly different numbers, covering vastly different definitions of human trafficking itself.³ For Indigenous people in the U.S., that number is even more difficult to pin down, especially considering that most of the agencies that investigate crimes in Indian country⁴ do not record the race of trafficking survivors, and, frequently, do not record instances of labor trafficking of Indigenous people at all.⁵ Despite the newfound national awareness of the rate of human trafficking in Indigenous communities, it is not, as Sarah Deer points out, an *epidemic* of trafficked Native women; that is, it is not a sudden, natural occurrence with a predictable end date.⁶ Instead, the extreme poverty in Indian country—enforced in many ways by the federal government over the centuries—has resulted in a perfect storm.⁷ Entire underground economies have developed in Indian country around human trafficking activity.⁸ Even more dangerously, the impact of the Alaska Native Claims Settlement Act (“ANCSA”)⁹ has effectively extinguished all Indigenous land claims in Alaska in favor of providing land to Alaska Native corporations, resulting in no “Indian country” in which government programs can be implemented.¹⁰ While in some ways this has led to Alaska Native communities gaining more control over their economic destinies, it has also resulted in extreme

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underfunding and enormous poverty levels.

Through the conjunction of faulty, flawed welfare and workfare programs implemented in tribal jurisdictions, and the impact of Adverse Childhood Events ("ACEs")—traumatic events which can grievously impact the psychological and physical health of children in poverty—Indigenous peoples become highly susceptible to human trafficking.¹¹ (Examples of ACEs include physical, emotional, or sexual abuse; substance abuse in the household; neglect; domestic or intimate partner violence ("DV/IPV"), and other factors.¹²) The federal government has effectively created a human trafficking economy in poverty-stricken tribal reservations via these flawed welfare/workfare programs, in coordination with ACEs brought about by ongoing poverty and intergenerational trauma. This economy thrives through lack of funding, governmental inefficiency, and a toxic overlap of Supreme Court decisions and federal law which prevents any kind of prosecution of human traffickers—or the necessary policy work required to combat the causes of human trafficking itself. Part I of this paper provides an overview of jurisdictional confusion and poverty in Indian territory, focusing primarily on the reservations of South Dakota and North Dakota, and Native villages in Alaska, as well as examining the welfare programs that have been developed to combat the problem. Part II examines the impact of poverty on vulnerable populations, provides an overview of human trafficking of Indigenous peoples, and correlates the ACEs experienced by Native youth with the increased risk of human trafficking, focusing particularly on sex crimes in Anchorage and so-called "man camps" around fracking sites. Part III discusses the basis of human trafficking law in the United States, on international, federal, and state levels; the relative inefficiencies of each level in effectively combating the societal problem of human trafficking; and the jurisdictional complexities preventing any kind of prosecutorial solution for the issue. It also provides an overview of how this affects sex trafficking in Indigenous communities. Part IV discusses how the combination of extreme poverty and inefficient human trafficking laws has created human trafficking economies in Indigenous communities. Part V describes a series of policy recommendations, beginning with the immediate allowance for self-determination and self-rule for Native communities, to provide relief and an ending to this crisis of the human trafficking economy.

Poverty in Indian Country: Laws, Statistics, and Results

A. What It Means To Be In "Indian Country"

Vine Deloria, Jr., and Clifford Lyle argue that "[a]ny examination of Indians and the judicial process must confront, at the very beginning, certain legal concepts that have taken on a status of primacy in the field of federal

Indian law. 'Indian Country' is such a concept."¹³ "Indian country" as a legal term-of-art has shifted in a variety of ways over the long and contentious relationship between the federal government and Indigenous communities around the United States.¹⁴ After the Indian Reorganization Act provided tribes the ability to return to or recreate their own tribal governments in 1935, the term "Indian country" was established to mean land in any Native reservation remaining under the jurisdiction of the federal government, including roads and rights-of-way in those territories; allotments with titles still in Indigenous hands; and "all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof."¹⁵ Today, Indian country—whether supervised by a tribe or by state government—is still generally a federal dominion, thus creating complex intersecting jurisdictional problems, and lacunae, with respect to both tribal governance and the prosecution of crimes including most problematically sex trafficking and sexual abuse crimes.¹⁶

What Indigenous people do or do not have control of within their own territory is questionable.¹⁷ While the legal terrain is frequently murky, what *is* clear is that poverty in Indian country is rampant.¹⁸ One in four Indigenous people in the United States lives in poverty, and on reservations that number is yet higher, with almost 27.4% of people living on reservations living in poverty between 2006 and 2010.¹⁹ Studies demonstrate that 78% of Indigenous people live off the reservation, where studies show they are twice as likely to live in poverty as white people.²⁰

Poverty-stricken reservations are not solely a modern phenomenon; Indigenous people forced to live on reservations, frequently hundreds of miles away from their ancestral lands, have had high rates of poverty since their initial relocation.²¹ In many cases, their relocation was deliberately done in order to allow American theft of Indigenous wealth.²² The image of the poverty-stricken reservation, and of Indigenous peoples living in extreme, debilitating poverty, predates the concept of Reagan's "welfare queen" by a few centuries and continues to persist today with well-meaning but frequently voyeuristic investigations, case studies, and anthropological treatises written by non-Indigenous peoples.²³

The "othering" of Native Americans has been evolving since pre-colonial times, transforming from a colonialist perspective on the "savages" of North America, completed by the infantilization, exotification, or outright destruction of other genders, to the placement of Indigenous peoples into that special, highly racialized category of *undeserving poor*; by the development of the welfare state.²⁴ Indigenous people were mainly known by popularized images of sexually avaricious women and lazy men.²⁵ Native peoples in the United States have been shunted from one piece of land to another

for centuries, being ripped from ancestral communities and crushed into pieces of territory that, at the time of the inception of reservations, often (and still, in some cases) did not appear to have any particular arability or wealth associated with them.²⁶ Indigenous peoples were heavily associated with savagery; “Indian livelihood in this discourse [of 18th and 19th century politics] represented a form of poverty that white Americans could and should avoid.”²⁷ (In the twenty-first century, the policies of extermination or relocation have continued; on November 7, 2018, the Department of the Interior (“DOI”) officially announced its intention to revoke the trust status of 321 acres of what had been the Mashpee Wampanoag reservation, as the Mashpee had not been included in the Indian Reorganization Act of 1934.²⁸) Treaties were purposefully violated and allotments deliberately distributed to cut out Indigenous peoples from their own economies and the wealth of their own land—which, in many Indigenous societies, was the least important aspect of their ancestral communities and the culture surrounding it.²⁹ Economically speaking, manipulation of both the image and the reality of Indigenous poverty has continued, as “free-market fundamentalist economists and politicians [have] identified the communally owned Indigenous reservation lands as an asset to be exploited and, under the guise of helping to end Indigenous poverty on those reservations, call for doing away with them—a new extermination and termination initiative.”³⁰ In 2002, a report by the Government Accountability Office (“GAO”) to Congress stated that “tribes have used various strategies to stimulate economic development; but despite these efforts, unemployment and poverty on reservations remain high.”³¹ When poverty is deliberately cultivated, it is incredibly difficult to weed out.

B. The Dakotas: Poverty On and Off The Reservation

In 2013, South Dakota was number one in the nation for Native Americans living below the poverty line.³² For the 65,000 Indigenous people living in the state in 2013, more than 48% of them were living below the poverty line, which at that time was \$11,170 per individual per year.³³ Most of the poverty in South Dakota is “concentrated on the state’s nine Indian reservations,” and even those fleeing the extreme poverty in Indian territory generally wind up in similar poverty in Rapid City or other major metropolitan areas in the state.³⁴ In 2017, more than 90% of Lakota residents on the Pine Ridge Lakota Reservation—the second largest Native reservation in South Dakota, run by the Oglala Sioux Tribal Council—were living below the federal poverty level.³⁵ Most homes are shacks or trailers; few are connected to electricity or running water; and the suicide rate is four times the national average for teenagers.³⁶

North Dakota has the second highest levels of impoverishment for In-

digenous Peoples. It has five Indian reservations (one of them, Standing Rock, stretches over the border between North and South Dakota); over 39,000 people, or over 5%, of the North Dakota population identifies as Indigenous, making North Dakota a state with one of the highest American Indian populations in the country.³⁷ More than 2 out of 5 of Native Peoples (41.6%) live in poverty.³⁸ Altogether, North and South Dakota have over 104,000 people who identify as Indigenous, with roughly 68,000 of them living on reservations.³⁹

C. The ANCSA and Alaska Native Poverty

Alaska has had a different relationship with the federal government for many years, and thus a different trajectory for the introduction of Indigenous poverty into the state.⁴⁰ Initially, management of Alaska Native peoples was placed in the hands of the Bureau of Indian Affairs (“BIA”) in 1931, after the 1867 Treaty of Cession stated that “[t]he uncivilized tribes [of Alaska] will be subject to such laws and regulations as the United States may, from time to time adopt in regard to aboriginals of that country.”⁴¹ Alaska became a state in 1959.⁴² Officially, Alaska’s statehood placed all Native territories at that time under the jurisdiction of the state government, due to the implementation of Public Law 280, which we discuss further below.⁴³ It also meant confusion for Native peoples, as throughout the 1950s and 1960s, decisions on the state level chipped away at Native land claims.⁴⁴ Eventually, Alaska Natives and Native corporations negotiated with the state to formally extinguish all aboriginal land claims in Alaska in exchange for forty-five million acres to the corporations and about \$1 billion.⁴⁵

The ANCSA officially ended the idea of “Indian country” in Alaska—and did not include a provision for any kind of federal services for the Natives still living in villages in the state.⁴⁶ Many Alaska Native villages remain—more than 200 separate villages have been recognized as “Native entities” by the BIA—but few have any land, and where they do, it is not “Indian country.”⁴⁷ Initially, ANCSA was meant to raise the economic mobility of Alaskan Natives; instead, it has fed into a de-valuation of Alaska Native governments and autonomy.⁴⁸ The Kusilvak Census Area, which is not federally recognized by the BIA as an Indigenous community but is still primarily populated by Alaska Natives, is one of the poorest regions in the United States, with an unemployment rate of more than 21%, a per-capita income of just over \$11,000, and a 37.8% poverty level in 2017.⁴⁹

D. Welfare Programs in Indigenous Communities

The relationship between Native populations and the federal government has been fraught, complicated, and difficult to characterize. The BIA, established in 1824,⁵⁰ was supposedly meant to assist Indigenous peoples

in the United States; this far precedes any kind of welfare program put forward in the U.S., and its prescribed intention fulfills the basic elements of welfare: the establishment of a government agency or system intended to aid or provide succor to poor or poverty-stricken communities, including health care, education, and monetary assistance.⁵¹

However, characterizing the BIA as a welfare program would be both offensive and highly misleading. The BIA often operated with the clear, if unexpressed, purpose of wiping out Native populations either through assimilation or extermination, and for many years functioned exactly as it was intended.⁵² Not only that, but the BIA was formed not to liaise with poor communities or provide assistance, but rather to coordinate interactions between the federal government and Indian tribal governments, which it also destroyed with a systematic, racialized kind of paternalism that completely excluded Indigenous governments and Indigenous leaders.⁵³ As described by Wilkinson:

The Bureau of Indian Affairs exercised a nearly unfathomable degree of authority. The local superintendents, selected by the BIA without consulting the tribes, controlled the tribal budgets and manipulated tribal chairmen by disbursing or withholding dollars. Tribal ordinances were subject to BIA approval. . . . In addition to governor, the BIA was banker, educator, doctor, and land manager. It controlled most reservation jobs, ran the schools, the hospitals, administered tribal and individual bank accounts and leased, and sometimes sold, Indian land.⁵⁴

Native peoples in the mid-twentieth century U.S. experienced (and some continue to experience) the most racialized form of welfare directed at those who are supposedly the “undeserving” poor, leading to invasive and unwelcome interventionism, completely undercutting personal and tribal autonomy in both legal and moral senses.⁵⁵ Stereotypical imagery of Indigenous Peoples has been used to mischaracterize and villainize welfare programs in the U.S. for decades.⁵⁶ Notably:

The sharp distinction between social insurance and public assistance and harsh stigma attached to government aid, in what Michael Katz calls the “semi-welfare state” of the United States, evolved from behaviorist explanations of poverty closely related to attitudes towards American Indians. Emphasis on moral and intellectual weakness among the poor was frequently bolstered by images of American Indian life. Movements to reform the poor occasionally intersected with measures to assimilate Indians. Characterization of welfare programs as wasteful and counterproductive was also reinforced by widely publicized evidence of corruption and incompetence in the administration of Indian affairs.⁵⁷

Indigenous peoples in the United States, then, were either “depraved indigents [or] pampered wards,” overdrawing on government resources or turning their backs on “society” entirely; either way, they were to blame for their own poverty.⁵⁸ It was only with the 1975 American Indian Self-Determination and Education Assistance Act that Indigenous communities began to take greater control over their own welfare and education; prior to that point, many state governments had excluded Indigenous people from welfare programs entirely.⁵⁹ Like African-American/black communities during the New Deal era, Indigenous peoples have been suffering the consequences of welfare reform as a tool to force what Pickering and Harvey describe as “racialized rural minorities” far away from the economically dominant white majority.⁶⁰

In more recent times, the relationship of Native peoples with U.S. state and federal welfare or workfare programs—whether those people live on tribal reservations or not—has become highly diverse. Every three years, federally recognized tribes can submit an application under the Tribal Temporary Assistance for Needy Families (“TANF”) program to the U.S. Department of Health and Human Services (“HHS”); if these programs are approved, HHS will then ensure that the tribe receives part of the TANF fund set aside for the state in which the tribe is located.⁶¹ In 2015, there were 70 approved Tribal TANF programs, which collectively served 284 recognized tribes or villages; that year, there were 566 federally recognized tribes served by the BIA.⁶² Thus, in 2015, Tribal TANF only covered roughly half the recognized Indigenous communities in the United States.⁶³ The other half were covered in a patchwork of state or municipal welfare systems, which for reasons detailed below have their own difficulties in being properly implemented.

Workfare, a welfare program which forces unemployed adults to work for welfare benefits, also applies to Native Peoples through the Native Employment Works program. This provides funding to support education; job readiness, placement, and retention; and other work-related activities.⁶⁴ There are currently 78 tribal grantees in this program.⁶⁵

Today, seven Alaska Native villages have Tribal TANF programs (the Association of Village Council Presidents in Bethel; the Bristol Bay Native Association; the Cook Inlet Tribal Council; the Kodiak Area Native Association; the Maniilaq Association; the Tanana Chiefs Conference; and the Tlingit and Haida communities). Most North Dakota tribes (including the Spirit Lake Sioux Tribe, the Standing Rock Sioux, the Three Affiliated Tribes of Ft. Berthold, and the Turtle Mountain Band of Chippewa) are covered under Native Employment Works.⁶⁶ Tribes in South Dakota are covered both by Tribal TANF and Native Employment Works (“NEW”), with the Cheyenne River Sioux, Lower Brule Sioux, Oglala Sioux, Rosebud

Sioux, and Sisseton-Wahpeton Oyate tribes being enrolled in NEW and only the Sisseton-Wahpeton Oyate tribe operating its own TANF program.⁶⁷

However, even tribes with TANF and NEW programs continue to suffer from poverty, due to uneven implementation and conflicts between tribal and state governments. Pickering, in her five-year sociological study of the Oglala Sioux of Pine Ridge after the destruction of the Aid to Dependent Children program and the new implementation of TANF, notes:

[The state government] used the discretion granted [to it] under devolution to implement workfare programs that resulted in the transfer of federal resources from poor minority communities to areas where labor markets were more robust and service infrastructures more developed . . . [T]he accomplishment of these putatively non-racial goals were, in fact, predicated upon a racially regressive redistribution of resources.⁶⁸

She also noted that:

No one agency or organization can meet all these needs. Unfortunately, the experience in Pine Ridge over [1999-2004] has been just the opposite. Given the special relationship between the federal government and the Oglala [Sioux], and the sovereignty of the tribe over the lands within the reservation boundaries, the state has consistently tried to limit its economic obligations towards the residents of the reservation . . . commitments on the part of the state to help . . . are tied to waivers either of sovereign immunity or of tribal jurisdiction in favor of the state.⁶⁹

Essentially, at least in this case, states that do not already have jurisdiction over tribal matters blame tribal sovereignty and lack of trust between state and tribal governments for the continuing poverty of Indigenous nations.⁷⁰ This tactic is both hypocritical and callously indifferent to the needs of Native Peoples. It is a way for states to use welfare as a means of attempting to obtain jurisdiction over tribal nations and their lands while neglecting to assist in the process of TANF recipients shifting from welfare to working lives.⁷¹ It leaves Indigenous people in a double bind, in danger of losing sovereignty and independence, while receiving little understanding and even less aid.

Adverse Childhood Events and Human Trafficking: A System Set to Fail

A. Health, Wealth, and Psychology: How Minds Impact Poverty and How Poverty Impacts Minds

It is impossible to analyze poverty and its causes in a legal vacuum; legal issues are informed by economic and social policies, and vice-versa. Any fair discussion of the causes and results of poverty in any community in the

United States must examine all aspects of the issue. One of the most popular psychosocial understandings of poverty and its intergenerational endurance in spite of supposed solutions presented by the federal government are ACEs, incidents which impact the psychological and physical health of children raised in poverty.⁷² Well-known examples include abuse (physical, emotional, psychological, or sexual); some kind of household dysfunction, such as substance abuse, mental illness, intimate partner violence ("IPV"), or criminal behavior; and emotional or physical neglect, among others.⁷³ Children who experience between four and ten ACEs are more likely to develop physical health issues later in life, including cardiovascular disease, diabetes, STIs, and autoimmune diseases; they are also more likely to be handling mental health conditions (post-traumatic stress disorder, depression, or anxiety are particularly common) or displaying high risk behaviors (such as smoking, alcohol or drug abuse, or high risk sexual behavior).⁷⁴ Similarly, the risk for unemployment for people who experienced four or more ACEs was 3.6 times higher for men, and 1.6 times higher for women.⁷⁵

Indigenous peoples in the United States have experienced debilitating poverty for generations.⁷⁶ There have been a few notable exceptions; the Osage people in Oklahoma in the early 1900s experienced a wealth boom due to oil reserves on their land but were eventually murdered for it; in more recent decades, the Shakopee Mdewakanton Sioux Community of Minnesota are rumored to be making over \$1 million per tribe member via their popular casino.⁷⁷ In many ways, this intergenerational delivery of poverty in Indigenous communities has been a function of welfare and welfare reform, but the continuance of it is due in some large part to the generational trauma and associated ACEs which frequently impact Indigenous peoples in the United States.⁷⁸ Intergenerational trauma has been described as "a traumatic event that began years prior to the current generation and has impacted the ways in which individuals within a family understand, cope with, and heal from trauma."⁷⁹ It has been noted in communities impacted by the Holocaust (Jewish and Romani peoples, particularly where intergenerational trauma was initially described as *concentration camp syndrome* or *survivor syndrome*⁸⁰). While psychological and sociological research into the phenomenon of generational trauma is still in its early stages, there is extensive evidence that the transmission of trauma intergenerationally results in detrimental impacts on the psychological and the socioeconomic status of cultures and communities.⁸¹ Indigenous peoples of North America are no different in this regard. As described by Walter R. Echo-Hawk,

Social science researchers describe the chronic aftereffects of severe trauma observed in human survivor populations . . . as *Posttraumatic Stress Disorder* (PTSD). In the American Indian population, PTSD is

classified by mental health and social science researchers into a distinct subcategory variously denominated as *Postcolonial Stress Disorder* (PCSD), *Historical Trauma*, or *Historical Unresolved Grief*. . . The impact of that traumatic history upon their social pathology is seen in the appalling life and mental health statistics that mark tribal communities today.⁸²

The tactics used by the conquering Europeans against Native Americans—extended relocation, infection with epidemic diseases, enslavement for both labor and sex, forced assimilation, culturally insensitive, debilitating, and often cruel “Indian schools,” together with the concerted efforts by the federal government to assimilate, or exterminate all Native cultures, societies, governments, and territories—have instilled PCSD/historical trauma in Native communities across the entirety of the United States.⁸³ It is impossible to find any Native tribe, out of the over 540 still present in America, whose members are not suffering from PTSD.⁸⁴ “Generational trauma has been identified as a major contributor to Native communities’ extremely high rates of poverty, violent victimization, depression, suicide, substance abuse, and child abuse.”⁸⁵ A free report by Mary Annette Pember, links the vicious alcoholism of her grandfather to her grandmother’s abandonment of her children—such as Pember’s mother. She writes that:

[Grandmother] Cele’s actions were the beginning of yet another cycle of abandonment. It seems more than coincidental that she was the first generation to attend Sister School and to hear their messages of Indian racial, cultural and spiritual inferiority. Did she come to believe that she and Native people were unfit to parent their own children?⁸⁶

In a horrific negative cycle, historical trauma feeds into the proliferation of ACEs in Indigenous communities, fueling the cycle of poverty, which is then compounded by the creation of *more* ACEs due to extreme federally-induced poverty levels in Indigenous communities across the nation (including Alaskan Native villages), which feeds into further trauma—and compounds the vulnerability of Native peoples to human trafficking.⁸⁷

B. “Whip Her Well . . . Then She Will Stay”: A Socio-Legal History of Native Peoples in Trafficking⁸⁸

The concept of Native and Indigenous women being pressured or captured into sex trafficking has a long, ugly history in the United States.⁸⁹ Beginning with Christopher Columbus capturing and selling young girls in the Caribbean for his sailors’ sexual gratification in the misnamed “New World,” Indigenous women have been particularly vulnerable to human

trafficking—particularly sex trafficking.⁹⁰ The exploitation and sale of Indigenous women is an industry which has its roots in colonization and the establishment of the United States. This has fed into extensive, overlapping traumas for Native communities for generations.⁹¹ Today, human trafficking of Indigenous peoples is primarily portrayed as an issue of sex trafficking. It is likely that Indigenous men are also being caught in situations of labor trafficking. However, due to the long-term fetishization and sexualization of Indigenous women,⁹² the sex trafficking of Indigenous women and girls is much more prevalent in the media. For decades, Indigenous women in the U.S. have been portrayed as either sexually aggressive “Poca-Hotties” or the erotic, available “rez girl” in fetish porn.⁹³ As Sarah Deer describes, “Colonial legal systems historically protected (and rewarded) the exploiters of Native women and girls and therefore encouraged the institutionalization of sexual subjugation.”⁹⁴

The U.S. has long preferred to ignore its own history of domestic human trafficking, but “[f]ocusing on foreign governments as the force of the [trafficking] problem erases the brutality Native women have experienced as a result of actions within the United States.”⁹⁵ Settler colonial rape and sexual assault on Indigenous peoples has often accompanied and was a means to accomplish the overthrow of Indigenous nations.⁹⁶ Today some goals have changed but the assaults and sexual violence continues. In the U.S. the rate of sexual violence against Indigenous women remains far higher than for any other ethnic group in the country.⁹⁷ The Centers for Disease Control and Prevention in the 2010 *National Intimate Partner and Sexual Violence Survey*, estimates that 49% of all Indigenous women in the United States experiencing some kind of sexual violence in their lifetime.⁹⁸ However, due to the low rates of reporting of sexual violence or assault, the number is probably much higher.⁹⁹

It is no coincidence that ACEs also play a big role in the determination of at-risk populations for human trafficking. The Alaska Sex Trafficking Task Force report lists common identifiers of survivors of trafficking or people who are vulnerable to being trafficked; these include poverty, previous sexual abuse, current or former drug or alcohol addiction, physical, mental, or emotional health difficulties, PTSD, and STD/STIs.¹⁰⁰ ACEs have been connected scientifically to higher vulnerabilities to human trafficking, especially for minors; those who have been sexually abused were anywhere from 2.52 to 8.21 times more likely to be trafficked than those minors who were not.¹⁰¹ “Generational trauma in combination with prior physical and/or sexual victimization can further intensify Native women’s and youths’ vulnerability to traffickers, especially traffickers that portray the sex trade as a quick path to empowerment and financial independence.”¹⁰² Statistics for labor trafficking are scanty; while it is generally believed labor trafficking

is occurring in and being inflicted on Indigenous American communities, it is not nearly so recognizable, nor as easily documented, as sex trafficking, regardless of the social context and geographical location in which it occurs.¹⁰³

When placed into conversation with the impact that intergenerational trauma has had on poverty levels in Indigenous communities, and the compounding of that trauma through ACEs induced by extreme poverty levels, the catastrophic levels of sex trafficking of Indigenous women in the United States seem less surprising.¹⁰⁴ Rather, it is inevitable.

Human Trafficking in the United States and Proposed Legal Solutions

A. International, Federal, and State Definitions of Human Trafficking

In 2000, the United Nations established the Protocol to Prevent, Suppress, and Punish Trafficking in Persons (“the Trafficking Protocol” or “the Protocol”), which defines human trafficking as:

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or other practices similar to slavery, servitude or the removal of organs.¹⁰⁵

The United States, a key negotiator in the proceedings, ratified the Protocol, and continues to be an enormous voice in anti-trafficking communities around the world.¹⁰⁶ The same year, a month before the TIP Protocol was signed and ratified, the U.S. passed its own form of the Protocol, the Trafficking Victims Protection Act (“TVPA”).¹⁰⁷ Historically speaking, the U.S. has always focused more closely on the phenomenon of sex trafficking than labor trafficking, and this is generally exemplified by the policies undertaken by various presidents since the enactment of the TVPA.¹⁰⁸ More specifically, the TVPA describes human trafficking as:

(1) sex trafficking involving the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for a commercial sex act through force, fraud, or coercion, or where the victim has not attained 18 years of age; or (2) labor trafficking involving the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.¹⁰⁹

Another pre-eminent federal statute handling trafficking (at least, sex trafficking) in the United States is the Violence Against Women Act ("VAWA").¹¹⁰ Initially enacted in 1994, VAWA's original intention was to address the concerns and demands of grassroots campaigns regarding domestic violence, especially against women, in the United States.¹¹¹ VAWA has since been re-authorized three separate times (in 2000, 2005, and 2013) but is currently sitting, after being re-authorized by the House of Representatives, without Senate re-authorization.¹¹² Sections of VAWA have been dedicated to the safety and empowerment of Native women since its inception, but the 2005 reauthorization included newfound purposes for what was entitled the (perhaps inelegantly named) "Safety for Indian Women Title." The National Indigenous Women's Resource Center characterizes this title as a recognition of the "unique legal relationship of the United States to Indian tribes and women;" it states that:

The purposes of this title are:

- (1) to decrease the incidence of violent crimes against Indian women;
- (2) to strengthen the capacity of Indian tribes to exercise their sovereign authority to respond to violent crimes committed against Indian women; and
- (3) to ensure that perpetrators of violent crimes committed against Indian women are held accountable for their criminal behavior.¹¹³

In spite of a semi-auspicious inauguration, VAWA has not fully enabled Indigenous women to be able to "exercise their sovereign authority" to respond to violent crimes, such as domestic abuse, rape, sexual assault, or sex trafficking.¹¹⁴ In 2013, VAWA was reauthorized again; the 2013 Reauthorization Act provided tribal authority to condemn or prosecute non-Indian peoples "committing certain acts of domestic violence or dating violence . . . in the Indian country of the tribe . . . and added sex trafficking for Indian tribes as a purpose area."¹¹⁵

One of the fundamental flaws of VAWA has been widely acknowledged to be the definition of sexual assault through the overlap between "domestic violence" and "dating violence" under Title IX of the 2013 Reauthorization.¹¹⁶ Due to the Supreme Court decision of *Oliphant v. Suquamish Indian Tribe*, discussed further below, no non-Indigenous person who sexually assaults an Indigenous person can be prosecuted in tribal courts if the two were not already in a long-term relationship.¹¹⁷ The definition of "domestic violence" ("DV") categorizes DV/IPV as:

Any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is

cohabitating with or has cohabitated with the victim as a spouse or intimate partner¹¹⁸

In conjunction with *Oliphant*, VAWA at once both allows and disallows human traffickers who are strangers, and not intimate partners of the trafficking survivor, from being prosecuted in Indian country.¹¹⁹ Theoretically, state or federal courts could take the case on, but rates of prosecution of human trafficking on the federal level, while rising, remain low, and states have comparable rates depending on the year.¹²⁰

After the implementation of the TVPA in U.S. federal law, states individually constructed their own human trafficking laws, which may or may not fit into the framework developed by the TVPA and the Trafficking Protocol. State laws regarding anti-trafficking frameworks have been previously regarded to fall into one of two options: those meant as immigration regulations, and those focused on criminalization of sex work.¹²¹ The three states listed below primarily script their laws into the criminalization of sex work, and thus focus more primarily on combating sex trafficking. As of 2012, Alaska's human trafficking statutes classified sex trafficking in the first degree as an incident where an individual:

(1) induces or causes a person to engage in prostitution through the use of force; or (2) as other than a patron of a prostitute, induces or causes a person under 20 years of age to engage in prostitution; or (3) induces or causes a person in that person's legal custody to engage in prostitution.¹²²

Lesser counts of sex trafficking include the management, control, or ownership of a prostitution enterprise, the procurement or solicitation of a patron for prostitution, or the use of commercial sexual conduct as an enticement for travel through advertisements, promotions, facilitation, sale, or offers.¹²³

Alaska's sex trafficking statute, unlike either the international definition put forward in the Protocol or the federal definition included in the TVPA, does not include force, fraud, or coercion in its elements for determining whether an individual has been trafficked for sex; it boosts the minimum age for a survivor of non-forcible sex trafficking from 18 to 20, and includes a custodial element to the statute in order to cover victims and survivors of sex trafficking who are differently abled, neurodivergent, or have psychiatric disabilities.¹²⁴ Due to both the ANCSA and PL-280, Alaska's statutes about sex trafficking are uniformly applied to Native villages in the state, without the consent of the Indigenous communities themselves.¹²⁵

The South Dakota statute, which, like the Alaska statute, supplants any tribal laws which could be applied to circumstances of human trafficking, classifies the crime of human trafficking as:

22-49-1. Human trafficking prohibited. No person may recruit, harbor, transport, provide, receive, or obtain, by any means, another person knowing that force, fraud, or coercion will be used to cause the person to engage in prostitution, forced labor, or involuntary servitude. No person may benefit financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in this section. Any violation of this section constitutes the crime of human trafficking. If the victim is under eighteen years of age, the crime of human trafficking need not involve force, fraud, or coercion.¹²⁶

Different forms of human trafficking are defined in South Dakota legislation, but the primary form legislated against and the one that is most particularly focused on by the statutes themselves is sex trafficking.¹²⁷ While forced labor and involuntary servitude are both mentioned, it is sex trafficking which is most frequently the interest of state legislatures when developing legal language about human trafficking, due perhaps in part to the distinctly white Christian American phobia to consensual sex work.¹²⁸ (There has been constant ideological conflict regarding the definition of sex work and whether it can ever be consensual, or if it is all simply human trafficking; many people can, do, and have participated in sex work voluntarily, but this is rarely recognized by U.S. legislatures, with only Nevada legalizing some forms of consensual sex work.¹²⁹ Frequently this results in laws which scoop consensual sex workers and label them as victims of trafficking, or as traffickers themselves.¹³⁰)

First degree human trafficking in South Dakota solely deals with sex trafficking of minors, as stated in 22-49-2:

22-49-2. First degree human trafficking—Felony—Attempt against minor. If a person guilty of human trafficking under 22-49-1, and the act:

- 1) Involves committing or attempting to commit kidnapping;
- 2) Involves a victim under the age of eighteen years;
- 3) Involves prostitution or procurement for prostitution; or
- 4) Results in the death of a victim;

The person has committed human trafficking in the first degree.¹³¹

By contrast, a person is guilty of second degree human trafficking under 22-49-3 if that person:

- 1) Recruits, harbors, transports, provides, or obtains, by any means, another person knowing that force, fraud, or coercion will be used to cause the person to engage in prostitution, forced labor, or involuntary servitude; or

2) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in this section.¹³²

22-49-4. Hiring person forced to engage in sexual activity—Felony. It is a Class 6 felony for a person to hire or attempt to hire another person for a fee to engage in sexual activity, as defined in 22-23-1.1, if the person knew or should have known the other person was being forced to engage in the activity through human trafficking.¹³³

Finally, North Dakota—a state in which PL-280 does not apply and so is only relevant to Indigenous people who are not physically on a reservation—has one of the most recently redrafted human trafficking laws in the country, with an updated version being voted into place in 2017.¹³⁴ Separate charges exist for human trafficking (split between forced labor and sexual servitude) as well as an entirely new set of statutes for patronizing a victim of sexual servitude (with a secondary statute for patronizing a minor for commercial sexual activity).¹³⁵ Broadly speaking, the definition of human trafficking in North Dakota is:

1. A person commits the offense of trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:

a) Forced labor in violation of section 12.1-41-03; or

b) Sexual servitude in violation of section 12.1-41-04.

2. Trafficking an individual who is an adult is a class A felony.

3. Trafficking an individual who is a minor is a class AA felony.¹³⁶

In 2015, the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota passed an anti-human trafficking law on the tribal level to combat human trafficking on the reservation. Entitled Loren's Law, it allows tribal courts to prosecute those human trafficking cases which "don't rise to the level of being charged in U.S. District Court" and requires defendants to "pay for any expenses incurred by the victim."¹³⁷ In addition to force, fraud, and coercion as elements in the law, Loren's Law also provides that sex trafficking is:

The recruitment, transportation, transfer, harboring, enticement, providing, obtaining, or receipt of any sexual act (sexual intercourse or contact) from a person over the age of 18 by any means (including electronic/telephonic), for the purpose of prostitution or practices similar to prostitution. A person is guilty of sex trafficking if the individual commits or benefits from any one or more of the following:

- 1) Benefits financially or receives anything of value from knowing participation in the sex trafficking of a person over the age of 18, knowing or having reason to know it is derived from an act of sex trafficking.
- 2) Promotes, recruits, entices, harbors, transports, provides, or obtains by any means another person over the age of 18, knowing that person may be subjected to sex trafficking.
- 3) Attempts or conspires, or has the intent to promote, recruit, entice[,] harbor, transport, provide or obtain by any means another person over the age of 18, knowing that person will be subjected to sex trafficking.¹³⁸

Loren's Law also has an extensive definition of labor trafficking, as well as of debt bondage, forced labor, and sex trafficking of a minor.¹³⁹ Additionally, Loren's Law states that there is no statute of limitations on filing or prosecution of any offense listed which involves a victim under 18 at the time of the offense, and provides that criminal complaints may be filed against a John or Jane Doe when "there is physical evidence (forensic interview/examination, DNA, fingerprints, false name given, etc[.]) that a child is a victim of a human trafficking crime but where the perpetrator is unknown."¹⁴⁰

B. Sex Trafficking in Indigenous Communities: The Impact of the Three Ps

1. A Jurisdictional Hellscape: Public Law 280 and *Oliphant v. Suquamish Indian Tribe*

Prior to 1953, criminal jurisdiction in Indian country was, if not completely uniform, very nearly so; crimes committed in tribal jurisdictions were investigated and prosecuted by the federal government and the tribes themselves, as until Congress declared the states to have authority over tribal jurisdiction, they lacked the ability to interfere at all.¹⁴¹ The federal government handled most crimes, with tribes only having the jurisdiction OVER crimes by Native peoples that were victimless, or minor crimes committed by Indigenous people against Indigenous people; later, due to the passage of the Indian Civil Rights Act (which also empowered Native communities with what was essentially the Bill of Rights, almost 180 years after the initial Bill of Rights was signed for white America), tribal jurisdiction was restricted to only being able to hand out punishments limited to fines up to \$5000, one year in jail, or both.¹⁴² After the Obama administration passed the Tribal Law and Order Act in 2010, tribal nations could sentence offenders within their jurisdiction (i.e. Indigenous peoples committing crimes against Indigenous peoples) to up to three years' incarceration per offence.¹⁴³ The Tribal Law and Order Act, however, also stipulates that "[n]othing in this

Act confers on an Indian tribe criminal jurisdiction over non-Indians," regardless of whether that crime took place in Indian country.¹⁴⁴

Congress's passing of PL-280 passed jurisdiction of criminal matters from tribes to state jurisdiction.¹⁴⁵ Initially after enactment, only five states were immediately affected (Alaska, when it became a state in 1959, as well as California, Minnesota, Nebraska, Oregon, and Wisconsin). Tribal entities in these states were not asked for consent and the law was imposed over any objections that they may have had. However, PL-280 has since been expanded to other optional states, where the consent of Native peoples within those respective territories is required before the law can apply to them.¹⁴⁶ The primary practical effect of PL-280 was the cessation of all tribal jurisdiction over criminal matters within tribal territory in the five mandatory states, including Alaska; this change was implemented without the necessary funding being set aside to support the new system accompanying it.¹⁴⁷ In 1968, with the passing of the Indian Civil Rights Act, PL-280 was amended, not only to allow for Native consent before its implementation by state governments, but also—relevant to the discussion of human trafficking—granting states criminal jurisdiction "over any or all ... offenses."¹⁴⁸ In the state of Alaska, especially in conjunction with ANCSA, all criminal offenses against Alaska Native peoples are effectively investigated by state law enforcement agencies.¹⁴⁹ Village and Tribal law enforcement officials, especially those in remote areas, often receive no training; state law enforcement frequently need to fly in to northern villages, and it can take days for crimes scenes to even be processed, let alone for crimes to be investigated.¹⁵⁰

Further confusing this jurisdictional quagmire is the Supreme Court's 1978 decision in *Oliphant v. Suquamish Indian Tribe*. The 1970s were not particularly progressive years for Supreme Court decisions. In the post-*Brown* era, the pendulum of the Court's conscience swung from liberal to decidedly conservative, and *Oliphant* resulted in one of the most restrictive decisions on tribal criminal jurisdiction ever.¹⁵¹

The history of tribal criminal jurisdiction over non-tribal members was, in the Supreme Court's eyes, not much of an issue prior to 1978.¹⁵² The passing of the (admittedly not perfect) Indian Civil Rights Act of 1968 and, prior to that, the Indian Reorganization Act of 1934, had constructed Indian territory with tribal governments where prior the federal government had been managing tribal "allotments"—that is, land that had been set aside for Indians who had been removed from their native territories.¹⁵³ According to Rehnquist's opinion in *Oliphant*, Indigenous tribes had been "divested of [criminal prosecution as a] sovereign power of self-government by their 'incorporation' into the United States by operation of the doctrine of discovery."¹⁵⁴ Drawing on the inherently racist rhetoric of *Johnson v. M'Intosh*, Indigenous territorial rights had taken a step forward with the

IRA, and three back with *Oliphant*.¹⁵⁵ At this point in American history, no tribal government can prosecute a non-tribal member for committing crimes in Indian country, with very few exceptions. This means that when (not if) a case of human trafficking occurs in North Dakota, South Dakota, or Alaska, the process of filing a case against a trafficker—who oftentimes is not Indigenous and has no relationship with the reservation at all—is functionally impossible. Unfortunately for Indigenous peoples, federal or state prosecution, not tribal, is pretty much the only legal option they have if they wish to get justice for survivors, due to the prosecutorial restrictions placed upon them by the Tribal Law and Order Act.¹⁵⁶ State prosecution is only available to those states where PL 280 is applicable; if it is not, then Indigenous survivors of trafficking must rely on federal courts.¹⁵⁷

2. The Three Ps and the Inadequacies of Human Trafficking Law in the United States

At this point in the jurisprudence surrounding human trafficking, it is generally accepted that the legal framework in combating the issue is centered around the Three P approach: *prosecution* of traffickers, *protection* of trafficking survivors, and *prevention* of trafficking itself.¹⁵⁸ Out of the three, the U.S. has focused primarily on prosecution, and through the implementation of the *Trafficking in Persons Report* (in which the U.S. ranks countries around the world on different tier levels based on their ability to combat human trafficking within their countries, mainly through the number of successful prosecutions of human traffickers within the last 365-day period) ensures the rest of the world performs similarly.¹⁵⁹ The Three P method is in line with both the text of the Trafficking Protocol, as the Protocol was developed as a supplement to the United Nations Convention against Transnational Organized Crime (“Palermo Protocol”), and the TVPA, which mirrors the Protocol almost exactly.¹⁶⁰ However, the Three P framework means that human trafficking is examined and discussed as if it were a solitary criminal act to be handled on a case-by-case basis, rather than a criminal *phenomenon* inspired by country and community conditions, economic inequality, capitalism, racism, and misogyny.¹⁶¹ This means that the combating of human trafficking is a slow process of one-by-one case management—when cases are brought at all.¹⁶²

In the case of Indigenous peoples, occurrences of human trafficking are as much the result of larger societal and criminal phenomena as they are of individual criminal acts. Historically, American social morals have always been much more frightened by the concept of the luring of young, virginal white women into instances of sex slavery than they have been of the impoverishment, enslavement, criminalization, and abuse of black, Latinx, Indigenous, queer, and neurodivergent communities.¹⁶³ Even with newfound

focus on the impact trafficking has on minority groups, that phenomenon continues today, in part due to the history of American blindness to the abuse of minority communities, including (and particularly) Indigenous peoples.¹⁶⁴

3. Chasing Ghosts: Prosecuting Instances of Human Trafficking and IPV in Indian Country

To further complicate matters regarding the *prosecution* arm of the Three P format for combating human trafficking in the United States, investigations and prosecutions of perpetrators of human trafficking or IPV (often interlinked, as frequently intimate partners will become someone's trafficker) are varied depending on the reservation and the relevant jurisdictions. Several different organizations have investigatory and prosecutorial power in Indian country, but the two biggest are the BIA and the Federal Bureau of Investigation ("FBI"). The latter assigned "more than 100 agents and 40 victim assistance staff, located in 19 of its 56 field offices, to work Indian country cases full time" in 2017.¹⁶⁵ That is roughly 150 people, to investigate cases in 362 federally administered "Indian land areas" in the U.S. They are understaffed by anyone's standards.¹⁶⁶ Additionally, the BIA provides law enforcement services to 40 tribes directly, and to others indirectly, and still more tribes have their own, independent tribal law enforcement.¹⁶⁷

Setting aside employment numbers, rates of prosecution of either human trafficking or cases of IPV are in a historic downswing. From 2013 to 2015, there were more than 6,100 human trafficking investigations conducted federally; about 1,000 of those, or 1/6th, were prosecuted.¹⁶⁸ Out of that 1/6th, between 2013 and 2016, there were only fourteen investigations and two prosecutions of human trafficking in Indian country.¹⁶⁹ Tribal law enforcement agencies ("LEA") in roughly the same time period (2014 to 2016) reported "a total of 70 human trafficking cases . . . ranging from 0 to 8 investigations for each tribal LEA in a year."¹⁷⁰ While this survey by the GAO only received answers from 27 tribal LEAs in total, with 24 reporting on their human trafficking statistics, these numbers are incredibly low—especially when you consider that Indigenous women are so likely to be trafficked.

Bringing charges against human traffickers in Indian country depends on the satisfaction of jurisdictional requirements (such as Loren's Law). If those requirements are satisfied, and if both the trafficking survivor and the trafficker are Indigenous people, then tribal governments, wishing to retain jurisdiction over the case, must bring a minor enough charge under the definition of human trafficking that the consequences are less than three years' imprisonment or a fine between \$5,000 and \$15,000 (as required by the Tribal Law and Order Act),¹⁷¹ If it is investigated by the BIA or by the

FBI, it becomes a federal crime, charged under federal law by a federal prosecutor, and the sentencing guidelines, financial consequences, and community repercussions can be much more powerful—which isn't always a good thing. Most notably, federal prosecutors who handle crimes committed in Indian country, outside of PL 280 states, are often socially and cognitively divorced from the community in which the crime was committed and the socioeconomic status of those involved. As stated by Washburn:

Unlike a narcotics distribution offense, which is subject to federal jurisdiction wherever it occurs . . . the federal prosecutor has jurisdiction over Indian country offenses only if the offense occurred in Indian country. Yet the federal prosecutor is unaccountable to the relevant community and has no particular motivation to address community interests. The Indian country regime thus imposes an important responsibility on federal prosecutors without imposing any accountability.¹⁷²

Native reservations have good reason not to trust federal prosecutors to serve their interests, and frequently federal prosecutors have no concept of how to deal with or function in reservation cultures.¹⁷³

Trafficking in Indian Country: A Perpetuation of an Old Standard

Through uneven implementation of welfare, economic disenfranchisement, and deliberate impoverishment of Indigenous communities, the federal government of the United States has implemented policies that foster (as it has always implemented such policies) human trafficking economies in Indian country.¹⁷⁴ Human trafficking economies endure through continued victimization of Indigenous peoples by the federal government, which has been a long-standing tradition of the U.S. as a nation, as discussed above.

It is critical to note that I am not arguing that *Native people* are currently—or willingly—participating a human trafficking economy. In the cases cited below, primarily in Alaska and North Dakota, it is *non-Native people* who are trafficking Indigenous women. However, the federally enforced poverty in Indian country (in the colloquial sense of the term, to include Alaska Natives), in combination with the complete prohibition of Native Peoples to prosecute crimes committed by non-Natives against Native peoples, means that *other* populations have taken advantage of the economically desperate, and funneled them into criminal sex-slave trafficking organizations.¹⁷⁵

A. “Traffickers Know Who To Target”: Sex Trafficking of Indigenous Women in Alaska and the Dakotas

The statistics on human trafficking are shadowy and indistinct, due to the underground nature of the crime of human trafficking, and the difficulty in proving human trafficking occurs in criminal court.¹⁷⁶ The biggest study on human trafficking of Indigenous women was conducted in the state of

Minnesota, which by its locality impacts the available statistics for sex trafficking of Indigenous women in North and South Dakota.¹⁷⁷ However, some data is still available, which provides a picture that the legal realm can work with.

1. Alaska

In a study conducted at four separate sites in both the U.S. and Canada, it was established that “an average of 40% of women involved in sex trafficking identified as an AI/AN or First Nations.”¹⁷⁸ In one of those locations surveyed, Anchorage, Alaska, Native Peoples comprised 33% of the women arrested for prostitution. Because of the lack of understanding of the difference between voluntary sex work, sex trafficking, and sex for survival, prostitution is often conflated with sex trafficking.¹⁷⁹ The federal response to sex trafficking of Alaska Natives is made difficult not only by the incoherent jurisdictional mess created by Congress and PL-280, but lack of funding combined with the inaccessibility. Some of the poorest, most rural Native communities in Alaska require a plane to access, and response to a call for law enforcement can take hours or days to occur.¹⁸⁰ Eighty-two percent of law enforcement agencies in the state of Alaska who were interviewed by the Alaska Human Trafficking task force “do not believe that they have the resources to identify and investigate trafficking cases when there are higher priority cases”¹⁸¹

Anchorage is the largest place in Alaska. We call it the largest village because you have thousands of Native people who live there. And on top of that, we move all the time We’re always going from place to place because of family, or because of our tribal obligations, or our work. You go to town to shop, and too often that’s where things happen.¹⁸²

Native women and girls will have IDs or money stolen, to prevent them from returning to their rural communities, and to make it easier to shove them into sex work.¹⁸³ According to FBI agents posted in Anchorage:

[Traffickers have] told us that they will recruit Alaska Native girls because they feel that they are easier to turn out. They may have come from rural Alaska where there were drug and alcohol issues, and they’re easier to get addicted to chemicals. They may have had a history of sexual abuse and they view that as well as something that makes [the girls] much more vulnerable and easy to traffic. Traffickers specifically target Alaska Native girls because they can advertise them as Alaska Native, as Asian, as Polynesian . . . [w]ith the boom of the internet and social media, it is easier for these traffickers to communicate and start that recruitment process. So you might be somebody that...that lives in a small village, and yet a trafficker can still reach you now.¹⁸⁴

It is primarily underage girls who are being targeted, with the average age of survivors being between 15 and 17 years old at the time of their victimization.¹⁸⁵ Notably, traffickers target young Indigenous women who are “attending Alaska Federation of Natives conventions and other Native events in Anchorage.”¹⁸⁶ Often, traffickers will implement the “lover boy” method of grooming underage girls via dating or romantic/sexual intimacy, and then forcing their “partner” into involuntary sex work once the emotional bond has been created.¹⁸⁷ Frequently, drug addiction is also involved.¹⁸⁸ Many trafficking survivors in Alaska have experienced homelessness, sexual abuse, or both before being trafficked.¹⁸⁹ In 2012, 32 cases were referred for prosecution under AS 11.66.110; 27 were prosecuted, and 19 were convicted.¹⁹⁰ The U.S. as a whole prosecuted 282 federal human trafficking cases in 2017; the level of investigations collectively dropped.¹⁹¹

Alaska is the site of what was possibly the largest restitution awarded in any sex trafficking case in the United States prior to 2009.¹⁹² Don Arthur Webster, Jr. was ordered to pay \$3,615,750 to the eleven women and girls who Webster forced into commercial sex; Webster, who ran fake escort services, would addict the women and girls to crack cocaine and then force them to work at his businesses, frequently physically and sexually abusing them.¹⁹³ After a jury convicted Webster of trafficking on February 5, 2008, he was sentenced to 360 months in prison and placed on lifetime supervised release.¹⁹⁴

2. North and South Dakota

North Dakota and South Dakota are some of the premiere centers in the United States for the fracking industry.¹⁹⁵ In 2012, the state of North Dakota saw a 7.2% increase in overall crime, with a total of 23,647 arrests for sexual assault, prostitution, drug abuse, and other violent offenses.¹⁹⁶ In 2014, prior to the end of the oil boomlet in North Dakota—one of many, and frequently recurring depending on the inconsistency of the oil market—incidents of domestic violence had quadrupled in the area around Williston, North Dakota.¹⁹⁷ Housing camps for male workers who rushed to profit from fracking became known as “man camps,” and in North Dakota they were sometimes positioned on reservation land.¹⁹⁸ Rape and assault incidents skyrocketed, and the number of Native women and girls in North Dakota trafficked into the camps to sate the demand for sex expanded rapidly.¹⁹⁹ Not coincidentally, the reservations in North Dakota are some of the poorest in the nation, making Indigenous women and girls easily victimized by the influx of non-Native men into the area.²⁰⁰ In 2016, several women were “recruited” from the Turtle Mountain Reservation and forced into sex trafficking; the trafficker made the women ingest methamphetamine to keep them under control and frequently threatened them with Tasers and BB

guns.²⁰¹ Survivors were also frequently trafficked from surrounding states, including South Dakota and Minnesota.²⁰² After the sale of oil dropped sharply in 2017, and with the federal government intervening to approve the DAPL pipeline (since rescinded) the oil industry in North Dakota is looking to rise again; fracking companies have dumped more than \$30 billion into the work and drawing workers from all over the country once more.²⁰³

South Dakota is also known for its fracking fields and man camps.²⁰⁴ Additionally, rural South Dakota is particularly known for its pheasant hunting, which results in a wave of sportsmen attending events in the state every autumn.²⁰⁵ The Wiconi Wawokiya (“Helping Families”) shelter on the Crow Creek Reservation has seen a spike of Indigenous women and girls being trafficked and sold to the sportsmen and to men who work the oil fields.²⁰⁶ The “gentleman’s clubs” opened during hunting season are primary locations for the trafficking of Indigenous women in South Dakota.²⁰⁷ Outside of the hunting season, Indigenous people continue to be trafficked for sex:

We’re also seeing traffickers coming into the reservation and selling drugs . . . Sometimes they get these young women to sell for them, and then if they end up owing these guys money, then the guys trafficking them out for sex to get money back from them. If the girls resist, the perpetrator will beat them up, threaten them or their families, rape them, or in some cases, have them gang raped.²⁰⁸

In 2015, the U.S. Attorney’s Office in South Dakota prosecuted sex trafficking cases that frequently involved Indigenous women and girls, many of whom left the reservations to travel to Sioux Falls.²⁰⁹ Victimization of Indigenous women occurred not on the reservation, but more frequently in cities, particularly Sioux Falls, where Indigenous people frequently shift to when they attempt to escape the poverty of the reservations. The *Garden of Truth* study focused mainly in Indigenous women who were born and raised in Minnesota, with 44% of them coming from reservations. Of the women who grew up on reservations, 14% moved to Minnesota from reservations in South Dakota, particularly Pine Ridge, Rosebud, or Cheyenne River; some of these women were trafficked to Minnesota, and others simply moved to the state.²¹⁰ For those who were recruited, recruitment methods included “enticement at schools or bars, recruitment as dancers, hitchhiking, gang coercion, and enticement into [trafficking] via the Internet.”²¹¹ Forty-six percent of the women had been in foster care, four percent of those from South Dakota; some of those women lived on reservations prior to being fostered.²¹² Only one woman who had been fostered was fostered on a reservation.²¹³ More specialized statistics on human trafficking of Indigenous people in South Dakota are unknown.

B. What Do the Statistics Mean?: How Federally Enforced Impoverishment Facilitates Sex Trafficking of Indigenous People

How a person becomes trafficked is rarely clear, but the overall pattern for the ensnarement of Indigenous women into sex trafficking has recognizable tracks.²¹⁴ The first is unemployment. Indigenous women and girls who are not able to find employment opportunities on the reservation or in the surrounding area (primary examples being Standing Rock, Pine Ridge, or the Kustilvak Census Area) look to opportunities offered by outsiders or Native people on the reservation.²¹⁵ The women are then either brutalized or forced into performing as a sex worker, usually by a trafficker who uses violence, drugs, or both in order to gain control.²¹⁶

The second is the "lover boy tactic."²¹⁷ Indigenous women and girls will be lured into meeting with or trusting a man who then turns into their trafficker, again through either brutalization, emotional manipulation, violence, drugs, or a combination of all four to keep them controlled.²¹⁸ Frequently, women will not recognize that they have been trafficked. Also, frequently, they will be overrepresented in the population of those arrested for prostitution in the area in which they are trafficked.²¹⁹

The federally enforced impoverishment of Indigenous communities on reservations has created a mechanism which funnels Indigenous peoples into circumstances of human trafficking.²²⁰ The lack of economic empowerment and opportunity on reservations and the ineffective welfare/workfare programs available even through Tribal TANF mean that Indigenous people, especially women, seek employment opportunities elsewhere.²²¹ The impact of that enforced poverty on Indigenous women makes them vulnerable to being ensnared by traffickers.²²² The more economically independent a person is, and the fewer ACEs they experience, the less likely they are to be trafficked.²²³ Due to the federal neglect of reservations, the racialized impact of welfare on rural populations (especially of Indigenous peoples), the impact of generational trauma as inflicted by the federal government, and the deliberate disempowerment of Indigenous populations by the United States, the U.S. has created, and continues to facilitate, a human trafficking economy on Native land and in Indigenous communities.²²⁴

Further, the U.S. government has crafted a system in which Indigenous people are trafficked without any form of recourse. There is no efficient prosecutorial option for tribal jurisdictions to take on trafficking on their own terms. Due to PL-280, the Tribal Law and Order Act, and *Oliphant v. Suquamish*, trafficking cases—if and when they are prosecuted—are frequently referred to state prosecutors. The low prosecutorial rates of crimes committed in Indian country are bad enough; however, the sheer level of complexity and aggregate transgenerational trauma of Indigenous

peoples when it comes to the federal government leads to distrust and re-traumatization of survivors if they come forward.

Given the long history of federal-tribal relations, the federal prosecutor simply may not be anyone whom the community has any reason to trust. The result is that the child victim [of sexual assault] is victimized anew by a political dynamic that aligns the victim with the United States and against the community and the defendant. This dynamic may well cause further psychological injuries to the child victim of sexual assault [a common ACE] and lead to the victim's alienation and estrangement from family members. In that respect, a new harm is done to the child that might not have occurred in the absence of the federal prosecutor . . . [which] often has psychological ramifications that are even more serious than the harm done by the perpetrator of the sex offense.²²⁵

Effectively, prosecuting human trafficking cases within federal court frequently retraumatizes the trafficking survivor. In the case of children, this adds further ACEs to the pile, heightening their further vulnerability to being trafficked again in future.

This will not be news to Indigenous people. The victimization of Indigenous communities by the U.S. government has a long history which still goes unacknowledged in popular discourse.²²⁶ The concept of federally enforced poverty (whether deliberate or accidental) in facilitating and creating human trafficking economies has been studied in other countries, but not yet examined in the United States.²²⁷ There must be further examination of both the sociological and legal implications of federally facilitated criminal phenomena on Indigenous land, and immediate action must be taken to empower and enable Indigenous people to respond to these crimes.²²⁸

Indigenous Empowerment, Indigenous Solutions

The extensive sex trafficking of Native women and girls has not been occurring without notice. After further awareness was brought to the issue by the Obama administration throughout President Obama's second term, state and federal lawmakers have begun work on trying to combat the problem through persecutorial means.²²⁹ In 2017, Senator Heidi Heitkamp (D-ND) introduced Savanna's Act into Congress, intending to streamline and simplify information sharing about human trafficking cases by expanding tribal access to federal crime databases.²³⁰ Another bill, the End Trafficking of Native Americans Act, which was coauthored by Heitkamp, Senator Lisa Murkowski (R-AK), and Senator Catherine Cortez Masto (D-NV), would "expand efforts to combat human trafficking among Native Americans and Alaska Natives . . . [by establishing] an advisory committee to make recommendations to the Justice and Interior departments and a coordinator within

the [BIA] to organize prevention efforts across federal agencies.”²³¹ Both of these bills are currently in committee, with no indication as to if or when they will be passed.²³² A third bill, the SURVIVE Act (Securing Urgent Resources Vital to Indian Victim Empowerment) would funnel money into the problem by carving out 5% of a federal crime victims’ fund to be used solely for Indigenous survivors of violent crimes, including rape, domestic violence, human trafficking, and others.²³³ Rather than funneling money into the community, it would be tabbed for use in programs and services, including crisis centers and shelters.²³⁴ Currently, the SURVIVE Act is on the legislative calendar as Number 368.²³⁵

All three of these proposed laws tackle the same problem in the same way as it has always been tackled. Savanna’s Act points out the same problems which have always existed in Indian country when it comes to laws, law enforcement, and survival: a lack of necessary training, necessary equipment, interagency cooperation, and “appropriate laws” to confront the problem. It even acknowledges that:

(7) The complicated jurisdictional scheme that exists in Indian country—

(A) has a significant negative impact on the ability to provide public safety to Indian communities;

(B) has been increasingly exploited by criminals; and

(C) requires a high degree of commitment and cooperation among Tribal, Federal, and State law enforcement officials.²³⁶

National attention—especially federal attention—being paid to the issue of sex trafficking in Indian country may provide a salve, but not a solution. Not only that, but Savanna’s Act and the End Trafficking of Native Americans Act feed further into the federal government’s obsession with the prosecution of traffickers rather than the total prevention of trafficking.²³⁷ While updating the law is critical and ensures protection of vulnerable Indigenous populations in the short-term, the long-term problem of enduring Indigenous poverty and cultural othering can’t be solved through more prosecutorial action.²³⁸ Through an application of the U.N.’s Declaration of the Rights of Indigenous Peoples, and proper establishment of true tribal sovereignty, poverty-driven trafficking in Indigenous communities might actually decrease.²³⁹

A. Prosecuting Traffickers, Limiting Solutions

As has already been discussed, the federal and international focus on the prosecution arm of the three branches of anti-human trafficking law has led to a dangerous oversimplification of an international problem.²⁴⁰ The traf-

ficking of human beings is an international issue which, from a combination of NIMBY-ism (Not In My Backyard-ism, as many people cannot believe trafficking happens in their immediate community), monetary pressure, and cultural misunderstandings, has continuously evaded a simple solution.²⁴¹ However, one thing has become clear over the two decades that the Protocol was initially ratified: focusing solely on the prosecution of individual traffickers, and not on the untangling of poverty, racism, misogyny, and colonialism that feeds into the phenomenon of trafficking itself, is dooming vulnerable communities to continued victimization.²⁴²

Even when the U.S. government chooses to prosecute traffickers of Indigenous people, removing traffickers from society calls to mind the image of the boy with his finger in the dike. Without repairing the structural issues which promote and prompt human trafficking, human trafficking will continue.²⁴³

B. Tribal Sovereignty and the Ending of Infantilization

One of the largest obstacles in Indigenous communities effectively combating human trafficking on their own land is the overly-complicated, inherently infantilizing limitations of tribal jurisdiction on tribal lands.²⁴⁴ When law enforcement agencies cannot coordinate, the government does not provide enough funding for proper trafficking prevention programs, education and employment are low, and people leave the community in an attempt to escape rampant poverty, there cannot be impactful work done to eliminate trafficking entirely.²⁴⁵

It has already been projected by major thinkers in federal Indian law that self-determination and tribal jurisdiction will go a long way to undoing the impact of intergenerational trauma on Indigenous communities in the United States.²⁴⁶ The impacts of PL-280, VAWA, *Oliphant*, and *Johnson* have made their mark in blood in the history of Indigenous peoples of the United States; removing tribal lands from the impact of those laws and decisions would mean a chance for Indigenous communities to rebuild, and define life for themselves.²⁴⁷ A return to tribal jurisdiction, with Congressional support of tribal infrastructures and tribal communities *on the terms of the tribes*, will deliver a greater impact and a greater blow to traffickers taking advantage of Indigenous communities than proposed federal laws ever could.²⁴⁸

As impossible and unlikely as it seems that Congress will give up control and jurisdiction over Indian country, it would be a harkening back to the initial treaties made with Native peoples of North America—ones that the federal government broke, repeatedly.²⁴⁹ As terrifying as the word “reparations” is to white Americans, self-determination and tribal sovereignty would push for that end.²⁵⁰ At the very least, it would enable poverty-stricken

communities to be able to take the lead in their own economic development. As Wilkinson states:

The underpinning for the revivals would be a working tribal sovereignty, true self-rule, not a false-front version where the BIA or the state had the final say. Experience in Indian economic development, for example, has shown that strong and effective tribal governments, anchored in tribal culture, are critical for economic success. Professor Joseph Kalt . . . reported: "We cannot find a single case of sustained economic development where the tribe is not in the driver's seat . . . The only thing that is working is self-determination—that is, *de facto* sovereignty."²⁵¹

C. The U.N. Declaration on the Rights of Indigenous Peoples

Perhaps the most distant—and yet the brightest—option for transforming poverty in Indigenous nations is the U.N. Declaration on the Rights of Indigenous Peoples. The United States does not like to follow international law or precepts.²⁵² However, as pointed out by Walter R. Echo-Hawk, implementing the precepts of the U.N. Declaration of the Rights of Indigenous Peoples might be the key, or at least a major part, of empowering Indigenous people in the United States to be able to function as fully socially and economically independent societies, separate from the control and confusing tangles of federal, state, and local jurisdictions.²⁵³ Even without a full implementation of tribal sovereignty, which many in Congress would object to, the empowerment of Indigenous peoples as prescribed by the Declaration would facilitate greater flexibility and capabilities in combating human trafficking at its root—not necessarily in individual crimes, but in fighting the abusive social conditions which create the vulnerability in the first place.²⁵⁴ The Declaration states that:

Article 1. Indigenous peoples have the right to the full enjoyment . . . of all human rights and fundamental freedoms as recognized in . . . international human rights law.

Article 4. Indigenous people have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.

Article 5. Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.²⁵⁵

Most notably:

Article 22. 1. Particular attention shall be paid to the rights and special needs of Indigenous elders, women, youth, children, and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with Indigenous peoples, to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.²⁵⁶

Conclusion

While the relationship between reservation poverty and federal action (or inaction) has long been established, and the connection between poverty and human trafficking has also been frequently discussed in sociological materials, the connection between U.S. paternalism, jurisdictional enforcement of poverty, and the proliferation of sex trafficking of Native women and girls must be as thoroughly documented. The ongoing racist implementation of workfare and welfare programs, in conjunction with the infantilization and disenfranchisement of Native populations by Congress, and the continuing generational trauma which impacts almost every aspect of Native life, has created a flawless (though perhaps unintentional) mechanism for the funneling of Indigenous peoples into economies of human trafficking. The federal government of the United States must acknowledge its own culpability in the further traumatization of Native Americans, and provide the recognition and respect promised and denied to independent, Indigenous nations which have existed in North America for thousands of years. As stated by Vine Deloria Jr.: "Sovereignty is not only political but a matter of survival, and the denial of sacred lands and sites is a form of genocide."²⁵⁷

NOTES

- 1 See generally Proclamation No. 9688, 83 Fed. Reg. 587 (Dec. 29, 2017); see also *Trafficking of American Indian and Alaska Natives*, INDIAN LAW RESOURCE CTR. (Oct. 6, 2017), <https://indianlaw.org/safewomen/trafficking-american-indian-and-alaska-natives>; see also Suzette Brewer, *Sold for Sex: Senate Committee Investigates Human Trafficking of Native Women and Children*, REWIRE NEWS (Sept. 28, 2017), <https://rewire.news/article/2017/09/28/sold-sex-senate-committee-investigates-human-trafficking-native-women-children/>; see also Victoria Sweet, *Disproportionate Impacts of Human Trafficking in Native Communities*, HUMAN TRAFFICKING CENTER (Feb. 14, 2017), <http://humantraffickingcenter.org/disproportionate-impacts-human-trafficking-native-communities/>.
- 2 See *Trafficking in Native Communities*, INDIAN COUNTRY TODAY (May 24, 2015), <https://newsmaven.io/indiancountrytoday/archive/trafficking-in-native-communities-JGKqWdmCQ0-6BCi-rN-X9w/>; see also Suzette Brewer, *Sold for Sex: Senate Committee Investigates Human Trafficking of Native Women and Children*, REWIRE NEWS (Sept. 28, 2017), <https://rewire.news/article/2017/09/28/sold-sex-senate-committee-investigates-human-trafficking-native-women-children/>.
- 3 The Global Slavery Index (questionable for its statistical analysis methods, but also one of the most frequently cited) estimates that there were roughly 403,000 people in “modern slavery” in the United States in 2016. *United States (Country Studies)*, GLOBAL SLAVERY INDEX, <https://www.globalslaveryindex.org/2018/findings/country-studies/united-states/>. The International Labour Office estimated that globally, there were over 40 million people in “modern slavery” conditions. International Labour Office & Walk Free Foundation, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, INT’L LABOUR OFF. 5 (2017).
- 4 In legal parlance, “American Indian” is the most common term for a broad scope of over 540 separate tribes and communities in the lower United States; “Alaska Native” refers to Native peoples in the state of Alaska. The terms “American Indian,” “Native peoples,” and “indigenous” will be used interchangeably with the names of specific tribes as is necessary.
- 5 See generally U.S. GOV’T ACCOUNTABILITY OFF., GAO-17-325, HUMAN TRAFFICKING: ACTION NEEDED TO IDENTIFY THE NUMBER OF NATIVE AMERICAN VICTIMS RECEIVING FEDERALLY-FUNDED SERVICES (2017).
- 6 See generally U.S. GOV’T ACCOUNTABILITY OFF., GAO-17-325, HUMAN TRAFFICKING: ACTION NEEDED TO IDENTIFY THE NUMBER OF NATIVE AMERICAN VICTIMS RECEIVING FEDERALLY-FUNDED SERVICES (2017); see also SARAH DEER, THE BEGINNING AND THE END OF RAPE 13 (2005) (describing an “epidemic” as a natural phenomenon with a probable end; domestic violence and sexual assault of Native women, as described by Deer, is instead a protracted phenomenon deliberately implemented by the U.S. government throughout its history, continuing today).
- 7 See generally DEER at 13.
- 8 See *infra* Part II.
- 9 See generally DAVID S. CASE & DAVID A. VOLUCK, ALASKA NATIVES AND AMERICAN LAWS 33-40 (3d ed. 2012) (hereinafter CASE) (reviewing the impact of ANCSA on the relationship between Alaska Natives and the federal government).
- 10 See *id.*
- 11 See Laudan Aron et al., *How are Income and Wealth Linked to Health and Longevity*, URB. INST. & VCU CTR. ON SOC’Y AND HEALTH 7 (2015); see also Roy Wade, Jr., *The Impact of Poverty and Adverse Childhood Events on Child Health*, AAP

- NATIONAL CONFERENCE (Oct. 24, 2016) <https://www.aap.org/en-us/Documents/AAPCommunityPediatricsWade2016.pdf>
- 12 Roy Wade, Jr., *The Impact of Poverty and Adverse Childhood Events on Child Health*, AAP NATIONAL CONFERENCE (Oct. 24, 2016) <https://www.aap.org/en-us/Documents/AAPCommunityPediatricsWade2016.pdf>
- 13 VINE DELORIA, JR. & CLIFFORD M. LYLE, *AMERICAN INDIANS*, *AMERICAN JUSTICE* 58 (1983).
- 14 *See generally id.*, 58-79.
- 15 *See* Indian Reorganization Act, 25 U.S.C.A. § 5123 (2018); *see also* 18 U.S.C.A. § 1151 (1948).
- 16 *See generally* LOUISE ERDRICH, *THE ROUND HOUSE* (2012) (describing how interjurisdictional conflicts on Indigenous reservations can result in crime victims languishing without justice from any legal system).
- 17 *See infra* Part III.
- 18 *See* Jens Manuel Krogstad, *One-in-four Native Americans and Alaska Natives are living in poverty*, PEW RESEARCH CENTER (Jun. 13, 2014), <http://www.pewresearch.org/fact-tank/2014/06/12/1-in-4-native-americans-and-alaska-natives-are-living-in-poverty/>; *see also* K. Whitney Mauer, *Indian Country Poverty: Place-Based Poverty on American Indian Territories, 2006-10*, 82 *RURAL SOC.* 3 473, 473 (Sept. 2017).
- 19 *See id.*
- 20 *North Dakota Legislative Proposal 08-23-2018*, NATIVE AMERICAN DEV. CTR. (2018), https://www.legis.nd.gov/files/committees/65-2017/19_5168_03000appendixi.pdf (hereinafter NATIVE AMERICAN DEV. CTR.); Joe Whittle, *Most Native Americans live in cities, not reservations. Here are their stories*, *THE GUARDIAN* (Sept. 4, 2017), <https://www.theguardian.com/us-news/2017/sep/04/native-americans-stories-california>.
- 21 *See* Mauer, *supra* note 15, at 474.
- 22 *See* Josh Levin, *The Welfare Queen*, *SLATE* (Dec. 19, 2013), http://www.slate.com/articles/news_and_politics/history/2013/12/linda_taylor_welfare_queen_ronald_reagan_made_her_a_notorious_american_villain.html.
- 23 *See* ROXANNE DUNBAR-ORTIZ, *AN INDIGENOUS PEOPLES' HISTORY OF THE UNITED STATES* 211 (2014).
- 24 *See id.*; *see also* Duane Brayboy, *Two Spirits, One Heart, Five Genders*, *INDIAN COUNTRY TODAY* (Sept. 7, 2017), https://newsmaven.io/indiancountrytoday/archive/two-spirits-one-heart-five-genders-9UH_xnbfVEWQHWkjNn0rQQ/.
- 25 *See* DEER, *supra* note 6, at 42-43.
- 26 *See generally* DUNBAR-ORTIZ, *supra* note 20, at 133-161.
- 27 DANIEL H. USNER, *INDIAN WORK* 83 (2009).
- 28 Frank Hopper, *Give Us Back Our Reservation: Mashpee Wampanoag and Allies March on the Capitol*, *INDIAN COUNTRY TODAY* (Nov. 15, 2018), https://newsmaven.io/indiancountrytoday/news/give-back-our-reservation-mashpee-wampanoag-and-allies-march-on-the-capitol-02aeJlBIHkyFyrSwyU_WEW/?fbclid=IwAR1n_hfuITNlfkQNjBm28Jloz6ELqvi_JcjTVVLTmOhmOHcxnVx62nXrG0.
- 29 *See* DUNBAR-ORTIZ, *supra* note 20, at 207-208. (The Lakota Sioux have been demanding the return of the Black Hills (where Mount Rushmore has been carved) since 1877; when the Supreme Court ruled that the Black Hills had been taken illegally, it offered remuneration to the Sioux, who rejected it. The money has been sitting in an interest-bearing account since 1980, which in 2011 was currently at more than \$757 million

dollars. At the same time, the Pine Ridge Reservation in South Dakota had unemployment rates of over 80%. The Black Hills themselves mean more.)

- 30 See DUNBAR-ORTIZ, *supra* note 20, at 91.
- 31 U.S. GOV'T ACCOUNTABILITY OFF., GAO-02-695T, WELFARE REFORM: TRIBES ARE USING TANF FLEXIBILITY TO ESTABLISH THEIR OWN PROGRAMS 2 (2002).
- 32 Associated Press, *South Dakota leads nation in Native American poverty rate*, RAPID CITY JOURNAL (Feb. 20, 2013), https://rapidcityjournal.com/news/south-dakota-leads-nation-in-native-american-poverty-rate/article_524eda1b-f783-529d-8a54-61543128ecd8.html.
- 33 *Id.*
- 34 See *id.*
- 35 Jacqueline Gullede, *American Indians struggle to survive winter in South Dakota*, CNN (Feb. 13, 2017), <https://www.cnn.com/2017/02/13/health/iyw-american-indian-lakota-charity-one-spirit-firewood-program/index.html>; see also *Biggest Indian Reservations In The United States*, WORLDATLAS (last updated June 5, 2018), <https://www.worldatlas.com/articles/biggest-indian-reservations-in-the-united-states.html>.
- 36 Patrick Strickland, *Life on the Pine Ridge Native American reservation*, AL JAZEERA (Nov. 2, 2016) <https://www.aljazeera.com/indepth/features/2016/10/life-pine-ridge-native-american-reservation-161031113119935.html>.
- 37 See NATIVE AMERICAN DEV. CTR., *supra* note 17.
- 38 See *id.*
- 39 See Associated Press, *South Dakota leads nation in Native American poverty rate*, RAPID CITY JOURNAL (Feb. 20, 2013), https://rapidcityjournal.com/news/south-dakota-leads-nation-in-native-american-poverty-rate/article_524eda1b-f783-529d-8a54-61543128ecd8.html; see also NATIVE AMERICAN DEV. CTR., *supra* note 17; compare Mary Garrigan, *State's Native American population grows 15 percent*, RAPID CITY JOURNAL (Feb. 17, 2011), https://newsmaven.io/indiancountrytoday/archive/two-spirits-one-heart-five-genders-9UH_xnbfVEWQHwkjNn0rQQ/ ("Pourier estimates the population of the Pine Ridge Reservation at 40,000 . . . Todd County, which comprises a large part of the Rosebud Sioux Reservation, had 9,612 residents . . . Cordier has an unofficial count of 9,626 tribal members alone . . .") with Tribal Affairs, N.D. INDIAN AFF. COMMISSION, <http://indianaffairs.nd.gov/tribal-nations/> ("In total, there are 31,329 American Indians living in North Dakota . . . [a]most sixty percent [31,329 x .60 = 18,797] live on reservations. . . .")
- 40 *Alaska's History*, ALASKA PUB. LANDS INFO. CENTERS, <https://www.alaskacenters.gov/explore/culture/history>.
- 41 Treaty Concerning the Cession of the Russian Possessions in North America by His Majesty the Emperor of All The Russias to the United States of America, art. 3, U.S.S.R.-U.S., June 20, 1867, 15 U.S.T. 539.
- 42 *Alaska's History*, ALASKA PUB. LANDS INFO. CENTERS, <https://www.alaskacenters.gov/explore/culture/history>.
- 43 CASE, *supra* note 9, at 32.
- 44 *Id.* at 34.
- 45 *Id.* at 35.
- 46 *Id.*
- 47 See Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 83 Fed. Reg. 4235, 4239-41 (Jan. 30, 2018).

- 48 Benjamin W. Thompson, *The De Facto Termination of Alaska Native Sovereignty: An Anomaly in an Era of Self-Determination*, 24 AM. INDIAN L. REV. 421, 454 (1999/2000) ("By imposing Alaska state jurisdiction, transferring title to state corporations, and refusing to recognize tribal jurisdiction . . . the federal government essentially divested Alaska Native tribal governments . . . of most if not all of their autonomous attributes").
- 49 See QuickFacts, Kusilvak Census Area, Alaska, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/kusilvakcensusareaalaska>; see also Lisa Demer, *It's one of the poorest places in the U.S. Can residents of the Lower Yukon make it better?*, ANCHORAGE DAILY NEWS (Sept. 29, 2017), <https://www.adn.com/alaska-news/rural-alaska/2017.09/29/its-one-of-the-poorest-places-in-the-u-s-can-residents-of-the-lower-yukon-make-it-better/>; see also Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 83 Fed. Reg. 4235, 4239-41 (Jan. 30, 2018).
- 50 Bureau of Indian Affairs, *Mission Statement*, <https://www.bia.gov/bia>.
- 51 See USNER *supra* note 23, at 75.
- 52 See, e.g., Kevin Gover, (former) Assistant Secretary—Indian Affairs, *Remarks at the Ceremony Acknowledging the 175th Anniversary of the Establishment of the Bureau of Indian Affairs* (Sept. 8, 2000) reprinted in 25 AM. INDIAN L. REV. 161, 161-62 (2000-2001).
- 53 See USNER, *supra* note 23, at 75-76; see also CHARLES WILKINSON, BLOOD STRUGGLE: THE RISE OF MODERN INDIAN NATIONS 21 (2005).
- 54 See WILKINSON, *supra* note 47, at 21.
- 55 See *id.*
- 56 See USNER, *supra* note 23, at 82.
- 57 See *id.*
- 58 *Id.* at 86.
- 59 See USNER, *supra* note 23, at 76
- 60 See Mark H. Harvey and Kathleen A. Pickering, *Color-blind Welfare Reform or New Cultural Racism? Evidence from Rural Mexican- and Native-American Communities*, in 15 RES. IN RURAL SOC. AND DEV. 61, 76 (Paul Milbourne, ed., 2010) (hereinafter Harvey).
- "[W]elfare reform plays a major and regressive role in the ongoing process of racial formation in the United States. It does so by exacerbating the material inequalities that obtain between racialized rural minorities and the white mainstream, thereby expanding the gap in material well-being that forms the breach in which ideologies of essentialized difference and hierarchy flourish."
- 61 Tribal TANF, ADMIN. FOR CHILD. AND FAMILIES, DEP'T OF HEALTH AND HUM. SERVICES, <https://www.acf.hhs.gov/ofa/programs/tribal/tribal-tanf>.
- 62 See *id.*; see also Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 81 Fed. Reg. 5020 (Jan. 29, 2016). <https://www.federalregister.gov/documents/2016/01/29/2016-01769/indian-entities-recognized-and-eligible-to-receive-services-from-the-united-states-bureau-of-indian>
- 63 See Tribal TANF, ADMIN. FOR CHILD. AND FAMILIES, DEP'T OF HEALTH AND HUM. SERVICES, <https://www.acf.hhs.gov/ofa/programs/tribal/tribal-tanf>.
- 64 Native Employment Works, OFF. OF FAM. ASSISTANCE, ADMIN. FOR CHILD. AND FAMILIES, <https://www.acf.hhs.gov/ofa/programs/tribal/new>.
- 65 *Id.*

- 66 See *Help for Families*, OFF. OF FAM. ASSISTANCE, ADMIN. FOR CHILD. AND FAMILIES, <https://www.acf.hhs.gov/ofa/help>; see also *Native Employment Works Grantees and Funding, July 1, 2017 to June 30, 2018*, OFF. OF FAM. ASSISTANCE, ADMIN. FOR CHILD. AND FAMILIES, <https://www.acf.hhs.gov/ofa/resource/native-employment-works-grantees-and-funding>.
 - 67 See *Help for Families*, OFF. OF FAM. ASSISTANCE, ADMIN. FOR CHILD. AND FAMILIES, <https://www.acf.hhs.gov/ofa/help>; see also *Native Employment Works Grantees and Funding, July 1, 2017 to June 30, 2018*, Office of Family Assistance, Administration for Children and Families, <https://www.acf.hhs.gov/ofa/resource/native-employment-works-grantees-and-funding>.
 - 68 See Harvey, *supra* note 54, at 67.
 - 69 KATHLEEN PICKERING ET AL., *WELFARE REFORM IN PERSISTENT RURAL POVERTY: DREAMS, DISENCHANTMENTS, AND DIVERSITY* 98-99 (2006).
 - 70 See *id.*
 - 71 See *id.*
 - 72 See Laudan Aron et al., *How are Income and Wealth Linked to Health and Longevity*, URB. INST. & VCU CTR. ON SOC'Y AND HEALTH 7 (2015); see also Roy Wade, Jr., *The Impact of Poverty and Adverse Childhood Events on Child Health*, AAP NATIONAL CONFERENCE (Oct. 24, 2016) <https://www.aap.org/en-us/Documents/AAPCommunityPediatricsWade2016.pdf>
 - 73 Roy Wade, Jr., *The Impact of Poverty and Adverse Childhood Events on Child Health*, AAP NATIONAL CONFERENCE (Oct. 24, 2016) <https://www.aap.org/en-us/Documents/AAPCommunityPediatricsWade2016.pdf>
 - 74 *Id.*
 - 75 See Aron, *supra* note 66, at 8.
- "Even after controlling for race and ethnicity, the risk of unemployment with four or more ACEs was 3.6 times higher for men and 1.6 times higher for women. . . Children who are raised in poverty and suffer poor health can find it difficult to climb the economic ladder or to leave disadvantaged neighborhoods, often repeating the cycle when they have their own children."
- 76 See *infra* Part I.
 - 77 See generally DAVID GRANN, *KILLERS OF THE FLOWER MOON: THE OSAGE MURDERS AND THE BIRTH OF THE FBI* (2017); see also Jean Carter, *5 Riches Native American Tribes Owning Casinos*, USA ONLINE CASINO BLOG (Oct. 24, 2017), <https://www.usaonlinecasino.com/blog/5-richest-native-american-tribes-owning-casinos/>.
 - 78 Compare *infra* Part I with Part II.
 - 79 Tamara Hill, *Should mental health professionals understand intergenerational trauma?*, ASS'N FOR CHILD AND ADOLESCENT MENTAL HEALTH (Dec. 18, 2017), <https://www.acamh.org/blog/intergenerational-trauma/>.
 - 80 See P. Fossion et al., *Family approach with grandchildren of Holocaust survivors*, 57 AM. J. OF PSYCHOTHERAPY 519, 519-527 (2003).
 - 81 Howard Pinderhughes et al., *Adverse Community Experiences and Resilience: A Framework for Addressing and Preventing Community Trauma*. PREVENTION INST. 12 (2015).
 - 82 WALTER R. ECHO-HAWK, *IN THE LIGHT OF JUSTICE: THE RISE OF HUMAN RIGHTS IN NATIVE AMERICA AND THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES* 101 (2013).
 - 83 See *id.*

- 84 See Alexandra Pierce & Suzanne Koepplinger, *New language, old problem: Sex trafficking of American Indian women and children*, NAT'L ONLINE RES. CTR. ON VIOLENCE AGAINST WOMEN 2 (2011) (hereinafter Pierce).
- 85 See *id.*
- 86 Indian Country Today, *Intergenerational Trauma: Understanding Natives' Inherited Pain*, INDIAN COUNTRY TODAY (May 10, 2018), <https://newsmaven.io/indiancountrytoday/news/intergenerational-trauma-understanding-natives-inherited-pain-HuBOpnz-69kSHjN3RsFYg/>.
- 87 See *infra* Part II.A.
- 88 DAVID T. COURTWRIGHT, *Violent Land: Single Men and Social Disorder from the Frontier to the Inner City* 64 (1996) ("The girl, when sold to a white man, is generally skeary for a while and will take the first chance to run away....Should you take her again, and whip her well, and perhaps clip a little slice out of her ear, then she will stay").
- 89 See generally DEER, *supra* note 6, at 59-75.
- 90 See generally ANDRÉS RESÉNDEZ, *THE OTHER SLAVERY: THE UNCOVERED STORY OF INDIAN SLAVERY IN AMERICA*, "Chapter 3: The Trafficker and His Network" (2016); see also DEER, *supra* note 6, at 62.
- 91 See *id.*; see generally RESÉNDEZ, *supra* note 83.
- 92 See DEER, *supra* note 6, at 62; see also Ruth Graham, *How Sex Trafficking Became a Christian Cause Célèbre*, SLATE (Mar. 5, 2015), <https://slate.com/human-interest/2015/03/christians-and-sex-trafficking-how-evangelicals-made-it-a-cause-celebre.html>.
- 93 See DEER, *supra* note 6, at 62.
- 94 *Id.*
- 95 See DEER, *supra* note 6, at 61.
- 96 See *id.*
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- 98 *Id.*
- 99 See DEER, *supra* note 6, at 5. ("Through my work in Native communities, I heard more than once, *I don't know any woman in my community who has not been raped.*")
- 100 *Final Report and Recommendations*, ST. OF ALASKA TASK FORCE ON THE CRIMES OF HUM. TRAFFICKING, PROMOTING PROSTITUTION, AND SEX TRAFFICKING 6-7 (Feb. 15, 2013).
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- 103 See generally U.S. GOV'T ACCOUNTABILITY OFF., GAO-17-624, *INFORMATION ON CASES IN INDIAN COUNTRY OR THAT INVOLVED NATIVE AMERICANS* (2017); see also Rebecca Surtees, *Trafficked Men as Unwilling Victims*, 4 ST. ANTHONY'S INT'L REV. 16 (2008).
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- 106 *Signatories to the United Nations Conventions against Transnational Crime*, UNODC, <https://www.unodc.org/unodc/en/treaties/CTOC/signatures.html>.
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- 108 Compare President George W. Bush, Remarks at the Tampa Marriott Waterside Hotel (July 26, 2004) (“Worldwide, at least 600,000 to 800,000 human beings are trafficked across international borders each year. Of those, it is believed that more than 80 percent are women and girls, and that 70 percent of them were forced into sexual servitude”) with President Barack Obama, Remarks to the Clinton Global Initiative (Sept. 25, 2012) (“When a little girl is sold by her impoverished family – girls my daughters’ age – runs away from home, or is lured by the false promises of a better life, and then imprisoned in a brothel and tortured if she resists – that’s slavery”).
- 109 See 22 U.S.C. § 7102 (4), (9)-(10).
- 110 Violence Against Women Act of 1994, Pub. L. No. 103-322.
- 111 *Id.*
- 112 *The Violence Against Women Act – Factsheet*, NAT’L INDIGENOUS WOMEN’S RESOURCE CTR. (Sept. 7, 2017), <http://www.niwrc.org/resources/vawa-fact-sheet>; see also Ashley Killough, *House passes reauthorization of Violence Against Women Act*, CNN (Apr. 4, 2019, 2:59PM) <https://www.cnn.com/2019/04/04/politics/house-passes-violence-against-women-act-reauthorization/index.html>.
- 113 Violence Against Women and Department of Justice Reauthorization Act, Pub. L. No. 109-162 § 902 (2005).
- 114 *Id.*
- 115 *Id.*
- 116 See 42 U.S.C. § 13925 (2006); see generally Rory Flay, *A Silent Epidemic: Revisiting the 2013 Reauthorization of the Violence Against Women Act to Better Protect American Indian Native Women*, 5 AM. INDIAN L. REV. 230 (2017).
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- A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who—
- (1) has previously been convicted of the same or a comparable offense by any jurisdiction in the United States; or
 - (2) is being prosecuted for an offense comparable to any offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.
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- “We also acknowledge that with the passage of the Indian Civil Rights Act of 1968, which extends certain basic procedural rights to *anyone* tried in Indian tribal court, many of the dangers that might have accompanied the exercise by tribal courts of criminal jurisdiction over non-Indians only a few decades ago have disappeared.”
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- 154 ROBERT A. WILLIAMS, JR., *LIKE A LOADED WEAPON: THE REHNQUIST COURT, INDIAN RIGHTS, AND THE LEGAL HISTORY OF RACISM IN AMERICA* 91 (2005).
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