

Beyond the Bench 24 Pre-Conference  
**I'm a Human Trafficking Victim!**  
**The New Affirmative Defense and Post-Conviction Relief for Victim-Defendants**  
 December 18, 2018  
 10:00 a.m. - 12:00 p.m.  
 San Diego, CA

FACULTY

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 OPERATIONS AND PROGRAMS DIVISION  
 CENTER FOR JUDICIAL EDUCATION AND RESEARCH



# HYPOTHETICALS

## **Vacatur: Hypothetical #1**

The public defender has filed a motion for vacatur in three cases for 28 year-old Stephen Villegas. 45 days has passed with no response from the respective county deputy district attorneys have been properly served. The convictions where the defendant seeks vacatur are as follows:

- (a) 2012: 647(b) in your county – sentenced to probation
- (b) 2012: 647(b) with a prior and HS 11377(a), from a neighboring county – sentenced to probation, 45 days in custody
- (c) 2013: 647(b) with two priors and PC594(a) for vandalism when defendant kicked patrol car – sentenced to 180 days in custody with no probation and ordered to pay restitution.

The motion for relief provides a detailed declaration from the victim but no other evidence.

What would you do?

## **Vacatur: Hypothetical #2**

Twenty-six year-old Destiny Harrison has filed a motion for vacatur on eight 647(b) cases from 2009 – 2011, HS 11357(a)(2) for possession of marijuana in 2010, and a DUI in 2012. She was ordered to pay \$2,000 in fines for the DUI and has managed to pay \$1,000.

She has not been arrested since 2012 and has submitted letters of support from her NA sponsor and her current employer, a dental office where she works as the administrative assistant. She has begun taking nursing courses but will not be able to be licensed with her current criminal record. She has written a heart-felt letter explaining that she was trafficked from the time she was 14 through 20 and that she “finally decided to leave the streets when I learned I was pregnant with my son in 2011. He was taken from me when he was born--I had hit rock bottom trying to cope with what had happened to me and then having my baby taken from me, but with God’s help and the support of my Twelve Step program, he was returned to me when he was still a baby, and I have never looked back. I have since been clean and sober, I live in a nice apartment that I pay for myself, and I hope to provide a better life for my son than the life I had by going to nursing school and I beg your help in allowing me to finally, truly put this behind me.”

In opposition, the district attorney has argued that Ms. Harrison was not trafficked. The DA has submitted numerous police reports and reports from social workers that were generated at the time of Ms. Harrison's 2009 - 2011 arrests and at the time of the dependency case when her son was removed from her care. In the reports, Ms. Harrison makes statements that imply or state outright that she was acting alone.

During one 2010 interaction with law enforcement the arresting officer commented that he had seen Ms. Harrison before, and asked if she needed help. In response, Ms. Harrison told him, "You can go f--- yourself, so high and mighty. You think I need your help? You're the one who needs help. This is my p---- and I can sell it if I want to, judgmental mother---."

Following a 2011 arrest, a separate law enforcement officer offered to place Ms. Harrison in touch with a newly formed non-profit set up to help young women being trafficked. Her response was that she was not being trafficked by anybody and that the officer was just, "Jealous that I'm such a strong entrepreneur. I got good business sense."

The DA also argues that in none of the police reports is there a pimp mentioned or seen nearby.

In her dependency case, Ms. Harrison was interviewed at length by a social worker. In early statements she denied any involvement in prostitution of any kind despite her multiple convictions. By the end of the case, Ms. Harrison would speak in general terms about having been involved in prostitution and having been involved with a middle-aged boyfriend, but one report notes, "I offered to refer Ms. Harrison to Girls Like Us, a community based case management service for formerly trafficked youth and explained that there were many additional resources available to her if she had been trafficked. Ms. Harrison declined." The final report from the dependency case states that, "Ms. Harrison again declined any referral to Girls Like Us."

Ms. Harrison has moved to Alabama and is not available to come to court in person as she cannot afford the cost of a ticket to CA.

What would you do?

### **Vacatur: Hypothetical #3**

The public defender has filed a motion for vacatur on behalf of twenty-two year-old Xiyun a Chinese national for the following convictions:

- (a) 2013: 647(b) – probation
- (b) 2013: 647(b) with a prior – probation, 60 days in custody

- (c) 2013: VC10851 – probation; 365 days in custody; additional charges for HS11359 and HS11350 dismissed per plea agreement
- (d) 2014: PC 647(b) with two priors – 180 days concurrent to PC 459 felony
- (e) 2014: PC459 – commercial burglary; 16 months concurrent to probation violation on VC10851 case and PC 647(b) with two priors

The only evidence of coercion presented is that Xiyun’s trafficker made repeated promises to help her secure lawful immigration status if she continues to work.

What do you need to know?

#### **Affirmative Defense: Hypothetical #4**

You preside over a juvenile delinquency department. Sixteen year-old Evelyn Ruiz has been charged with HS 11352 and PC 148.9. Her attorney asks to argue the affirmative defense that she was selling drugs at the insistence of her trafficker, a 28 year-old gang member she calls Snoopy. She says Snoopy made her bring in \$200/day on school days, and if she didn’t have enough money from turning tricks by evening she would try selling drugs. She claims she would be beaten if she came in under quota. She says she gave a false name to police to avoid arrest, because arrest also results in a beating.

The district attorney argues that the affirmative defense does not apply because Evelyn was not trafficked. The DA points to evidence that Evelyn lives in a two-parent home in a middle class area of town, and attends a good public school. She has a place to stay every night if she so chooses.

What would you do?

#### **Affirmative Defense: Hypothetical #5**

Assume all of the facts in Affirmative Defense Hypothetical #4. Now also assume that the DA has evidence that Evelyn was overheard at your girls’ detention facility bragging to her 14 year-old cousin, also detained, about a new purse she bought with the proceeds from sex trafficking. She reportedly advised her cousin that if she was “turned out” she wouldn’t have to wear ugly, second hand Converse and she could afford better shoes. She was also overheard telling a girl in her module that she was pretty and she should meet Snoopy because she’s his type.

What else would you want to know? What would you do?

## **Affirmative Defense: Hypothetical #6**

You preside over an adult criminal trial department. Eighteen year-old Tony Amezcua was contacted by law enforcement shortly after midnight on a Wednesday in a high crime area of town and found to be in possession of a butterfly knife and meth. He is charged with carrying a concealed weapon, possession of a prohibited weapon, and possession of a controlled substance.

During the preliminary hearing, as an affirmative defense, his attorney says that he was instructed to carry the knife for protection by his trafficker, who forces him to work long hours as a dish washer and to occasionally deal meth, and asks the judge to decide on the motion

At the time of his arrest, Tony said he was wearing someone else's pants and he did not know the knife and meth were there. During a later interview, he said his friend Donny had given him the knife for protection and that he didn't know the meth was in his pocket.

Investigation by the prosecution has revealed that Donny is a 48 year-old who owns two late-night diners. The diners have been subject to multiple complaints of labor trafficking of employees, mostly young, borderline-homeless Hispanic males, but no investigation has ever resulted in prosecution.

Defense counsel tells you that at trial Tony will testify that Donny was forcing him to work at the diner and sell drugs. The defense also plans to call an expert in labor trafficking.

What do you do?

## **Affirmative Defense: Hypothetical #7**

Assume all of the facts in Affirmative Defense Hypothetical #3. Now also assume that after arresting Tony for weapon and drug possession, law enforcement receives information that 45 minutes prior a man was stabbed in the thigh by a teenaged boy wielding a butterfly knife. The man initially claims that the boy attacked him for no reason, but eventually admits that he was buying drugs and there was a dispute.

Tony is charged with PC 245 with a knife allegation. The defense attorney asks to argue trafficking as an affirmative defense and seeks to have the court consider a determination from U.S. Citizenship and Immigration Services (USCIS) that shows a grant of a T-visa to Tony.

What do you do?

## SELECTED STATUTES

### Penal Code §236.1

*Human trafficking; punishment; provisions regarding minors; definitions; consideration of total circumstances*

(Effective: January 1, 2017)

(a) A person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than five hundred thousand dollars (\$500,000).

(b) A person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of [Section 266](#), [266h](#), [266j](#), [266j](#), [267](#), [311.1](#), [311.2](#), [311.3](#), [311.4](#), [311.5](#), [311.6](#), or [518](#) is guilty of human trafficking and shall be punished by imprisonment in the state prison for 8, 14, or 20 years and a fine of not more than five hundred thousand dollars (\$500,000).

(c) A person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of [Section 266](#), [266h](#), [266j](#), [266j](#), [267](#), [311.1](#), [311.2](#), [311.3](#), [311.4](#), [311.5](#), [311.6](#), or [518](#) is guilty of human trafficking. A violation of this subdivision is punishable by imprisonment in the state prison as follows:

(1) Five, 8, or 12 years and a fine of not more than five hundred thousand dollars (\$500,000).

(2) Fifteen years to life and a fine of not more than five hundred thousand dollars (\$500,000) when the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person.

(d) In determining whether a minor was caused, induced, or persuaded to engage in a commercial sex act, the totality of the circumstances, including the age of the victim, his or her relationship to the trafficker or agents of the trafficker, and any handicap or disability of the victim, shall be considered.

(e) Consent by a victim of human trafficking who is a minor at the time of the commission of the offense is not a defense to a criminal prosecution under this section.

(f) Mistake of fact as to the age of a victim of human trafficking who is a minor at the time of the commission of the offense is not a defense to a criminal prosecution under this section.

(g) The Legislature finds that the definition of human trafficking in this section is equivalent to the federal definition of a severe form of trafficking found in [Section 7102\(9\) of Title 22 of the United States Code](#).

(h) For purposes of this chapter, the following definitions apply:

(1) “Coercion” includes a scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; the abuse or threatened abuse of the legal process; debt bondage; or providing and facilitating the possession of a controlled substance to a person with the intent to impair the person's judgment.

(2) “Commercial sex act” means sexual conduct on account of which anything of value is given or received by a person.

(3) “Deprivation or violation of the personal liberty of another” includes substantial and sustained restriction of another's liberty accomplished through force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out.

(4) “Duress” includes a direct or implied threat of force, violence, danger, hardship, or retribution sufficient to cause a reasonable person to acquiesce in or



perform an act which he or she would otherwise not have submitted to or performed; a direct or implied threat to destroy, conceal, remove, confiscate, or possess an actual or purported passport or immigration document of the victim; or knowingly destroying, concealing, removing, confiscating, or possessing an actual or purported passport or immigration document of the victim.

(5) “Forced labor or services” means labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, duress, or coercion, or equivalent conduct that would reasonably overbear the will of the person.

(6) “Great bodily injury” means a significant or substantial physical injury.

(7) “Minor” means a person less than 18 years of age.

(8) “Serious harm” includes any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or commercial sexual acts in order to avoid incurring that harm.

(i) The total circumstances, including the age of the victim, the relationship between the victim and the trafficker or agents of the trafficker, and any handicap or disability of the victim, shall be factors to consider in determining the presence of “deprivation or violation of the personal liberty of another,” “duress,” and “coercion” as described in this section.

## **Penal Code §236.14**

*Arrest for or conviction of nonviolent offense committed while victim of human trafficking; petition for vacatur relief; hearing; order*

(Effective: January 1, 2017)

(a) If a person was arrested for or convicted of any nonviolent offense committed while he or she was a victim of human trafficking, including, but not limited to, prostitution as described in [subdivision \(b\) of Section 647](#), the person may petition the court for vacatur relief of his or her convictions and arrests under this section. The petitioner shall establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking.

(b) The petition for relief shall be submitted under penalty of perjury and shall describe all of the available grounds and evidence that the petitioner was a victim of human trafficking and the arrest or conviction of a nonviolent offense was the direct result of being a victim of human trafficking.

(c) The petition for relief and supporting documentation shall be served on the state or local prosecutorial agency that obtained the conviction for which vacatur is sought or with jurisdiction over charging decisions with regard to the arrest. The state or local prosecutorial agency shall have 45 days from the date of receipt of service to respond to the petition for relief.

(d) If opposition to the petition is not filed by the applicable state or local prosecutorial agency, the court shall deem the petition unopposed and may grant the petition.

(e) The court may, with the agreement of the petitioner and all of the involved state or local prosecutorial agencies, consolidate into one hearing a petition with multiple convictions from different jurisdictions.

(f) If the petition is opposed or if the court otherwise deems it necessary, the court shall schedule a hearing on the petition. The hearing may consist of the following:

(1) Testimony by the petitioner, which may be required in support of the petition.

(2) Evidence and supporting documentation in support of the petition.

(3) Opposition evidence presented by any of the involved state or local prosecutorial agencies that obtained the conviction.

(g) After considering the totality of the evidence presented, the court may vacate the conviction and expunge the arrests and issue an order if it finds all of the following:

(1) That the petitioner was a victim of human trafficking at the time the nonviolent crime was committed.

(2) The commission of the crime was a direct result of being a victim of human trafficking.

(3) The victim is engaged in a good faith effort to distance himself or herself from the human trafficking scheme.

(4) It is in the best interest of the petitioner and in the interests of justice.

(h) In issuing an order of vacatur for the convictions, an order shall do the following:

(1) Set forth a finding that the petitioner was a victim of human trafficking when he or she committed the offense.

(2) Set aside the verdict of guilty or the adjudication and dismiss the accusation or information against the petitioner.

(3) Notify the Department of Justice that the petitioner was a victim of human trafficking when he or she committed the crime and of the relief that has been ordered.

(i) Notwithstanding this section, a petitioner shall not be relieved of any financial restitution order that directly benefits the victim of a nonviolent crime, unless it has already been paid.

(j) A person who was arrested as, or found to be, a person described in [Section 602 of the Welfare and Institutions Code](#) because he or she committed a nonviolent offense while he or she was a victim of human trafficking, including, but not limited to, prostitution, as described in [subdivision \(b\) of Section 647](#), may petition the court for relief under this section. If the petitioner establishes that the arrest or adjudication was the direct result of being a victim of human trafficking the petitioner is entitled to a rebuttable presumption that the requirements for relief have been met.

(k) If the court issues an order as described in subdivision (a) or (j), the court shall also order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency that arrested the petitioner or participated in the arrest of the petitioner to seal their records of the arrest and the court order to seal and destroy the records for three years from the date of the arrest, or within one year after the court order is granted, whichever occurs later, and thereafter to destroy their records of the arrest and the court order to seal and destroy those records. The court shall provide the petitioner a copy of any court order concerning the destruction of the arrest records.

(l) A petition pursuant to this section shall be made and heard within a reasonable time after the person has ceased to be a victim of human trafficking, or within a reasonable time after the petitioner has sought services for being a victim of human trafficking, whichever occurs later, subject to reasonable concerns for the safety of the petitioner, family members of the petitioner, or other victims of human trafficking who may be jeopardized by the bringing of the application or for other reasons consistent with the purposes of this section.

(m) For the purposes of this section, official documentation of a petitioner's status as a victim of human trafficking may be introduced as evidence that his or her participation in the offense was the result of his or her status as a victim of human trafficking. For the purposes of this subdivision, "official documentation" means any documentation issued by a federal, state, or local agency that tends to show the petitioner's status as a victim of human trafficking. Official documentation shall not be required for the issuance of an order described in subdivision (a).

(n) A petitioner, or his or her attorney, may be excused from appearing in person at a hearing for relief pursuant to this section only if the court finds a compelling reason why the petitioner cannot attend the hearing, in which case the petitioner may appear telephonically, via videoconference, or by other electronic means established by the court.

(o) Notwithstanding any other law, a petitioner who has obtained an order pursuant to this section may lawfully deny or refuse to acknowledge an arrest, conviction, or adjudication that is set aside pursuant to the order.

(p) Notwithstanding any other law, the records of the arrest, conviction, or adjudication shall not be distributed to any state licensing board.

(q) The record of a proceeding related to a petition pursuant to this section that is accessible by the public shall not disclose the petitioner's full name.

(r) A court that grants relief pursuant to this section may take additional action as appropriate under the circumstances to carry out the purposes of this section.

(s) If the court denies the application because the evidence is insufficient to establish grounds for vacatur, the denial may be without prejudice. The court may state the reasons for its denial in writing or on the record that is memorialized by transcription, audio tape, or video tape, and if those reasons are based on curable deficiencies in the application, allow the applicant a reasonable time period to cure the deficiencies upon which the court based the denial.

(t) For the purposes of this section, the following terms apply:

(1) “Nonviolent offense” means any offense not listed in [subdivision \(c\) of Section 667.5](#).

(2) “Vacate” means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed pursuant to this section. The court shall provide the petitioner with a copy of the orders described in subdivisions (a), (j), and (k), as applicable, and inform the petitioner that he or she may thereafter state that he

or she was not arrested for the charge, or adjudicated or convicted of the charge, that was vacated.

(3) “Victim of human trafficking” means the victim of a crime described in [subdivisions \(a\), \(b\), and \(c\) of Section 236.1](#).

## **Penal Code §236.23**

*Coercion to commit offense as direct result of being human trafficking victim; affirmative defense to charge of a crime*

(Effective: January 1, 2017)

(a) In addition to any other affirmative defense, it is a defense to a charge of a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm. This defense does not apply to a serious felony, as defined in [subdivision \(c\) of Section 1192.7](#), or a violent felony, as defined in [subdivision \(c\) of Section 667.5](#), or a violation of [Section 236.1](#).

(b) A defendant asserting the affirmative defense specified in subdivision (a) has the burden of establishing the affirmative defense by a preponderance of the evidence.

(c) Certified records of a federal, state, tribal, or local court or governmental agency documenting the person's status as a victim of human trafficking at the time of the offense, including identification of a victim of human trafficking by a peace officer pursuant to [Section 236.2](#) and certified records of approval notices or enforcement certifications generated from federal immigration proceedings, may be presented to establish an affirmative defense pursuant to this section.

(d) The affirmative defense may be asserted at any time before the entry of a plea of guilty or nolo contendere or admission to the truth of the charges and before the conclusion of any trial for the offense. If asserted before the preliminary hearing held in a case, the affirmative defense shall, upon request by the defendant, be determined at the preliminary hearing.

(e) If the defendant prevails on the affirmative defense provided under subdivision (a), the defendant is entitled to all of the following relief:

(1)(A) The court shall order that all records in the case be sealed pursuant to [Section 851.86](#).

(B) Records that have been sealed pursuant to this paragraph may be accessed, inspected, or utilized by law enforcement for subsequent investigatory purposes involving persons other than the defendant.

(2) The person shall be released from all penalties and disabilities resulting from the charge, and all actions and proceedings by law enforcement personnel, courts, or other government employees that led to the charge shall be deemed not to have occurred.

(3)(A) The person may in all circumstances state that he or she has never been arrested for, or charged with, the crime that is the subject of the charge or conviction, including without limitation in response to questions on employment, housing, financial aid, or loan applications.

(B) The person may not be denied rights or benefits, including, without limitation, employment, housing, financial aid, welfare, or a loan or other financial accommodation, based on the arrest or charge or his or her failure or refusal to disclose the existence of or information concerning those events.

(C) The person may not be thereafter charged or convicted of perjury or otherwise of giving a false statement by reason of having failed to disclose or acknowledge the existence of the charge, or any arrest, indictment, trial, or other proceedings related thereto.

(f) If, in a proceeding pursuant to [Section 602 of the Welfare and Institutions Code](#), the juvenile court finds that the offense on which the proceeding is based was committed as a direct result of the minor being a human trafficking victim, and the affirmative defense established in subdivision (a) is established by a preponderance of the evidence, the court shall dismiss the proceeding and order the relief prescribed in [Section 786 of the Welfare and Institutions Code](#).



## **Penal Code §236.2**

*Identification of victims of human trafficking; indicators*

(Effective: November 7, 2012)

Law enforcement agencies shall use due diligence to identify all victims of human trafficking, regardless of the citizenship of the person. When a peace officer comes into contact with a person who has been deprived of his or her personal liberty, a minor who has engaged in a commercial sex act, a person suspected of violating [subdivision \(a\)](#) or [\(b\) of Section 647](#), or a victim of a crime of domestic violence or sexual assault, the peace officer shall consider whether the following indicators of human trafficking are present:

- (a) Signs of trauma, fatigue, injury, or other evidence of poor care.
- (b) The person is withdrawn, afraid to talk, or his or her communication is censored by another person.
- (c) The person does not have freedom of movement.
- (d) The person lives and works in one place.
- (e) The person owes a debt to his or her employer.
- (f) Security measures are used to control who has contact with the person.
- (g) The person does not have control over his or her own government-issued identification or over his or her worker immigration documents.

## **22 U.S.C.A. § 7102**

### *Definitions*

(Effective: May 29, 2015)

In this chapter:

#### **(1) Abuse or threatened abuse of law or legal process**

The term “abuse or threatened abuse of the legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

...

#### **(3) Coercion**

The term “coercion” means--

- (A)** threats of serious harm to or physical restraint against any person;
- (B)** any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (C)** the abuse or threatened abuse of the legal process.

#### **(4) Commercial sex act**

The term “commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

#### **(5) Debt bondage**

The term “debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

## **(6) Involuntary servitude**

The term “involuntary servitude” includes a condition of servitude induced by means of--

- (A)** any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or
- (B)** the abuse or threatened abuse of the legal process.

...

## **(9) Severe forms of trafficking in persons**

The term “severe forms of trafficking in persons” means--

- (A)** sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B)** 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.

## **(10) Sex trafficking**

The term “sex trafficking” means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

...

## **(14) Victim of a severe form of trafficking**

The term “victim of a severe form of trafficking” means a person subject to an act or practice described in paragraph (9).

## **(15) Victim of trafficking**

The term “victim of trafficking” means a person subjected to an act or practice described in paragraph (9) or (10).

## Cal. Jury Instr.--Crim. 4.42

California Jury Instructions--Criminal | September 2017 Update  
West's Committee on California Criminal Jury Instructions

Part 4. Exemptions and Defenses

E. Duress; Necessity

**CALJIC 4.42** Coercion of Human Trafficking Victim (Spring 2017 New)

**Authority:** ([Penal Code § 236.23, subdivision \(a\)](#))

It is a defense to a charge of the crime[s] of (crime or crimes) that the person was coerced to commit [that] [those] crime[s] as a direct result of being a human trafficking victim at the time of the commission of such crime[s] and had a reasonable fear of harm.

The defendant [\_\_\_\_\_] has the burden of proving all of the facts necessary to establish this defense by a preponderance of the evidence. If you are satisfied by a preponderance of the evidence that this defense has been established, you must find the defendant not guilty of [that] [those] crime[s].

[A person is a victim of human trafficking when that person's personal liberty has been deprived or violated by another person or persons who did so with the intent to obtain forced labor or services.]

[A person is a victim of human trafficking when that person's personal liberty has been deprived or violated by another person or persons who did so with the intent to effect or maintain a violation of the following crime or crimes: (Crime[s] identified in [P.C. § 236.1, subd. \(b\)](#)). [That][Those] crime[s] are defined as follows:

\_\_\_\_\_.]

[A person is a victim of human trafficking when that person is under 18 years of age and another person or persons causes, induces, or persuades the minor to engage in a commercial sex act and did so with the intent to effect or maintain a

violation of the following crime or crimes: (Crime[s] identified in [P.C. § 236.1, subd. \(b\)](#)). [That][Those] crime[s] are defined as follows:

\_\_\_\_\_.]

A “commercial sex act” is sexual conduct on account of which anything of value is given or received by any person.]

#### **USE NOTE**

[CALJIC 2.50.2](#) defines “preponderance of the evidence. It must be given with this instruction.

[Penal Code § 236.23, subd. \(a\)](#) provides that this defense does not apply to either a serious felony, as defined in § 1192.7, subd. (c), or a violent felony as defined in § 667.5, subd. (c), or a violation of [§ 236.1](#).

This instruction’s definitions of victims of human trafficking is derived from [Penal Code § 236.1, subd. \(a\), \(b\), and \(c\)](#).

“Coercion” is defined in [Penal Code § 236.1, subd. \(h\)\(1\)](#).

#### **COMMENT**

[Penal Code § 236.23](#).

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