



**Statement of Mina Q. Malik  
Deputy Attorney General for the Public Safety Division  
Office of Attorney General for the District of Columbia**

**Before the**

**Committee on the Judiciary and Public Safety  
The Honorable Charles Allen, Chairperson**

**Public Hearing**

**Bill 22-329, the "Trafficking Survivors Relief Amendment Act of 2017"**

**September 21, 2017  
9:30 am  
Room 120  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, District of Columbia 20004**

Greetings Chairman Allen, Councilmembers, staff, and residents. I am Mina Q. Malik, and I have the privilege of serving as the Deputy Attorney General for the Public Safety Division of the Office of the Attorney General (hereinafter "OAG"). I am pleased to appear on behalf of Attorney General Karl A. Racine to testify in favor of the goals and objectives found in Bill 22-329, the "Trafficking Survivors Relief Amendment Act of 2017." I want to begin by thanking the Committee on the Judiciary and Public Safety (hereinafter "the Committee") for holding this important hearing, and I look forward to working with you and the advocates throughout the legislative process.

Since coming into office, Attorney General Racine made combating human trafficking a top priority of OAG, and efforts to combat this problem span across divisions within our office. OAG's role in the Citywide Human Trafficking Task Force has been helpful in raising awareness, providing training opportunities, and expanding the coalition of efforts in the city to stop trafficking. OAG is also a member of the Superior Court's Committee on Human Trafficking. This crucial committee functions to bring child welfare and juvenile justice stakeholders together to develop ways to collaborate and communicate when youth are involved in trafficking and involved with both systems.

Attorney General Racine is pleased to partner with the Court and District agencies on establishing HOPE court, a human trafficking specialty court that is still in the developmental stages. The goal of HOPE court is to provide victims of human trafficking the advocacy and services they need as they navigate through the justice system. In addition, OAG conducts

outreach to schools and in the community on the signs and dangers of human trafficking, and develops training for employees in our hotel, nightlife, and for-hire vehicle industry.

The work OAG does with respect to human trafficking is what informs the Attorney General's support for Bill 22-329. The laudable purpose of this legislation is to permit a judge to seal arrests and vacate convictions for certain offenses, when the judges, in their discretion, determine that a person, who as a direct result of being trafficked, was forced to commit the acts that served as the basis of the conviction. A human trafficking victim would now have an opportunity to raise the affirmative defenses of coercion and/or duress when she, as a result of her victimization, was sentenced for an offense after she failed to raise these affirmative defenses at trial or failed to raise them prior to a plea.

This should not be viewed as a blanket opportunity for a defendant to have her conviction set aside in situations where a person who was a human trafficking victim was arrested for or convicted of an offense that was unrelated to being trafficked. Nor should it be an opportunity to have a second bite at the apple to have the conviction set aside by a judge under the lower post-conviction provisions outlined in the bill, despite raising the defense(s) and being convicted beyond a reasonable doubt.

While the Attorney General supports the goals of this legislation, I must note that OAG is concerned that the bill as currently drafted is overly broad and may have the unintended consequence of limiting the use of important investigative information by law enforcement and prosecutors. To this point, OAG was grateful to have met with advocacy groups that

championed the introduction of this legislation. We discussed our concerns and I am pleased to report that the advocacy groups with whom we met understand the concerns raised and seek the same outcomes with respect to this legislation. A few concerns we discussed included the following:

- The legislation would allow a conviction to be set aside if the conduct of “*the person [that] resulted in the conviction was the direct result of the person having been a victim of trafficking.*” [emphasis added.] The bill, however, does not define “direct result.” OAG strongly recommends that we work with the Committee on a definition of “direct result” to give the Court guidance on how to determine this important factor;
- There is no time limitation for filing a motion to vacate after a conviction has been obtained. As the Council recognized when it passed the Criminal Record Sealing Act of 2006, the longer the time frame between a conviction and a motion to seal is filed, the less likely it is that the government will have the information or the witnesses necessary to legitimately rebut the motion;
- If the conviction is set aside pursuant to this legislation, an expungement order directs that all references to the arrest of the person for the covered offense be expunged. The bill does not, however, explicitly state who may access and see the expunged records. Under current law, when an arrest or conviction is sealed under grounds of actual innocence, D.C. Official Code § 16-802 severely limits who may access and see sealed law enforcement, prosecution, and other records. In addition, when the court seals a

record under D.C. Official Code § 16-803, the records must be sealed from all public view, but may be viewed by law enforcement and prosecutors. Here, the Council acknowledged that information in those records may aid future investigations. OAG strongly recommends that the information concerning the expungement of an arrest or a vacated conviction be available only for use by law enforcement. While record of the expungement should not be available to the public, such information may aid law enforcement in future investigations of cases that involve similar fact patterns as the sealed or vacated human trafficking-related offense.

I greatly appreciate the opportunity to testify in support of Bill 22-329. OAG stands ready to work with the Committee, our public safety partners, and community stakeholders to ensure the “Trafficking Survivors Relief Amendment Act of 2017” achieves the outcomes desired by all interested parties. Our staff and I are happy to answer any questions that members may have.