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Preventing Predatory Alienation by High-Control Groups: The Application of Human Trafficking Laws to Groups Popularly Known as *Cults*, and Proposed Changes to Laws Regarding Federal Immigration, State Child Marriage, and Undue Influence

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Abstract^{1,2}

In this article, I summarize some of the significant legal developments in the United States that have taken place within the past year. First, United States v. Raniere was a criminal case launched against the founder of a purported self-help organization, NXIVM, and several of his associates. The Raniere case established precedent for using the human-trafficking statutes, among other grounds, to pursue justice for victims of high-demand groups. Second, the number of asylum seekers is increasing annually, and some of these undocumented immigrants are escaping from their countries-of-origin cults, gangs, and other extremist groups. However, once they arrive in the United States, there are many statutory and court-imposed requirements for establishing asylum; lawmakers should clarify or eliminate some of these requirements in order to fulfill the original purpose of the Immigration and Nationality Act. Third, setting the minimum age for marriage would help to reduce the number of child brides who are often pressured by cults and high-control groups. Fourth, still in need of refinement is the legal theory of "undue influence," which potentially could aid cult victims in civil lawsuits against overreaching organizations and individuals. And finally, pending in the New Jersey legislature is the Predatory Alienation Bill, which calls for

ongoing public-awareness campaigns, alienation counseling, and other remedies.

There are no laws that protect people from cults and high-control groups because such entities are not legally recognized in the United States.³ There are no anticult laws that prohibit a cult from existing. Yet, when religious or business organizations cross the line into criminal or civil wrongdoing, our American legal system can provide justice, broadly defined. In this article, I explore some of the legal pathways toward justice.

Cults are groups that are centered on an ideology, led by a charismatic leader who dominates the thoughts and daily activities of its members for the betterment of the group or of the leader.⁴ The ideology of cults can focus on anything, not necessarily based upon religion. Juxtaposed to egregious behavior of oftentimes cultic groups is the American principle that its citizens are free to think and act according to tenets of religious, political, or philosophical ideology. The First Amendment in the Bill of Rights to the *United States Constitution* prohibits Congress from passing laws that infringe upon freedom of religion, freedom of speech,

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² Following standard legal citation format, the citations in this article vary from the standard APA style of *IJCAM* content.

³ This paper uses *high-demand groups* and *cults* somewhat interchangeably.

⁴ See INT'L CULTIC STUD. ASS'N, *FAQs*, www.icsahome.com (last visited Sept. 14, 2020) ("a cult is an ideological organization, held together by charismatic relationships, and demanding high levels of commitment").

and freedom of assembly.⁵ The First Amendment has been held in such high regard that victims of cults have been short of remedy.⁶

It is estimated that there are from 2,500 to 8,000 cults in the United States today.⁷ Many of these are small in terms of numbers of adherents, although it is hard to estimate numbers when birth certificates are never created.⁸ The organizations may not be filing taxes or incorporation applications within their states. Cults often exist under the radar, until the damage they do becomes known to authorities.

In the past, laws protecting victims have been less than fully utilized, such as the Violence Against Women Act (VAWA),⁹ anti-stalking statutes,¹⁰ and emancipation laws for teenagers.¹¹ Criminal and civil victories for victims of high-demand groups have been few and far between. In this paper, I explore current laws that are seemingly more effective in providing justice from wrongs imposed by high-control groups. Following up from my former theoretical paper about applying the federal human-trafficking statutes to cults,¹² Part IA deconstructs the facts of the more recent precedent-setting case of *United States v. Ranieri* and compares those facts to traits of cults. In Part IB, I examine more closely the human trafficking statutes, providing potential bases

for future prosecutions. In Part II, I illuminate legal challenges faced by asylum-seekers who are escaping cults from their home countries and propose reforming the legal requirements. I present state laws affecting high-demand groups in Part III—namely, child marriage laws, undue influence, and New Jersey’s pending predatory-alienation legislation. Although there are legal challenges ahead, human trafficking laws can continue to provide ground for criminal prosecution of cult leaders; state marriage laws can continue to protect young brides from cultic ceremonial bonding. Further legal reform is necessary in the following ways: (a) to reduce the legal challenges for former cult members seeking asylum here in the United States, (b) to enact state marriage laws in states where there are none, and (c) to reduce the emphasis of mental state of the victim with claims of undue influence.

I. Human Trafficking Statutes— Providing a Template for Prosecution

Human trafficking is modern-day slavery. Today there are approximately 24.9 million exploited persons worldwide for some form of gain to the traffickers—either labor, sex, or anything of value.¹³ Cults or high-demand groups may have subjected their members to human trafficking. For instance, traffickers in Brazil, reportedly “under the guise of religious mandates, exploit Brazilian victims

⁵ U.S. CONST. amend. I.

⁶ See generally Alan W. Schefflin, *Supporting Human Rights by Testifying Against Human Wrongs*, 6 Int’l. J. Cultic Stud. 69, 75 (2015); MARCI A. HAMILTON, *GOD VS. THE GAVEL: THE PERILS OF EXTREME RELIGIOUS LIBERTY* 18-21 (2d ed., Cambridge Univ. Press 2014).

⁷ See Susan Landa, *Children and Cults: A Practical Guide*, 29 J. Fam. L. 591, 591 n.1 (1991). Cults range in size from a few people to tens of thousands.

⁸ See *id.*

⁹ See Robin A. Boyle, *Women, the Law, and Cults: Three Avenues of Legal Recourse—New Rape Laws, Violence Against Women Act, and Anti-stalking Laws*, 15 CULTIC STUD. J. 1 (1998). Congress enacted the VAWA in 1994, Pub. L. No. 103-322, Title IV, 108 Stat. 1902 (codified in scattered sections of 18 & 42 U.S.C.) (1994). Congress also created the Violence Against Women Office whose purpose was to reduce violence against women and to strengthen

services for victims of domestic violence, sexual assault, and stalking. (<https://www.justice.gov/ovw/about-office>) (last visited Sept. 14, 2020). However, the United States Supreme Court partially defeated the statute’s purpose by ruling that the VAWA may not be used for civil remedies, such as in a case of a civil action brought by a university student rape victim against her accused. *United States v. Morrison*, 529 U.S. 598, 598 (2000).

¹⁰ See *id.*

¹¹ See Robin A. Boyle, *How Children in Cults May Use Emancipation Laws to Free Themselves*, 16 CULTIC STUD. J. 1 (1999).

¹² See Robin Boyle-Laisure, *Employing Trafficking Laws to Capture Elusive Leaders of Destructive Cults*, 17 OR. REV. INT’L L. 205, 209 (2016), reprinted in 9 INT’L J. CULTIC STUD. 1 (2018) (“*Employing Trafficking Laws*”).

¹³ U.S. DEPT. OF STATE, *TRAFFICKING IN PERSONS REPORT* 1 (2019).

in forced labor, including on farms and in factories and restaurants, after the victims join certain churches or religious cults.”¹⁴

Reacting to human-rights abuses, the United States Congress in the year 2000 passed the Victims of Trafficking and Violence Protection Act (TVPA).¹⁵ By 2007, federal authorities consolidated prosecutorial efforts by creating a specialized Human Trafficking Prosecution Unit within the US Department of Justice. By doing so, it coordinated federal human trafficking prosecutions concentrating on labor and sex trafficking of adults. The Criminal Division had previously formed a unit in 1987, focused on child sex trafficking, technology-facilitated child sex trafficking, and child sex tourism.¹⁶

A. United States v. Raniere Case (aka NXIVM Case)

While the federal government was shoring-up its prosecutorial efforts against human traffickers, Keith Raniere was building an empire based upon purported self-help workshops, which had its headquarters outside of Albany, New York, with centers in Canada, Mexico, and other US locations.¹⁷ The empire was called *NXIVM*, and it attracted at least 16,000 people who took courses, some paying tens of thousands of dollars.¹⁸ However, complaints were being lodged with the authorities, such as the persistent requests by actress Catherine Oxenberg to save her daughter, India, from

NXIVM.¹⁹ After investigating *NXIVM*, federal prosecutors arrested Keith Raniere and codefendants in 2018, charging them initially with sex trafficking and forced-labor conspiracy.²⁰ In the spring in 2019, the trial of Raniere was conducted by a well-prepared prosecution team who called numerous articulate witnesses; the trial lasted 6 weeks in the federal Eastern District of New York courthouse.

The guilty verdict in *United States v. Raniere* was a significant victory for those on the side of seeking justice for victims of cults or high-demand groups. The jury took less than half a day to declare Raniere, age 58, guilty of all counts against him—racketeering, sex trafficking, conspiracy, forced labor, identity theft, sexual exploitation of a child, and possession of child pornography.²¹ As of this writing, Raniere awaits sentencing.

As an initial observation, *NXIVM*’s core players had celebrity status; defendants’ arrests and witnesses’ testimony were frequently captured in the news. For example, television actress from the popular show *Smallville*, Allison Mack, was charged as coconspirator, took a plea agreement, and was often pictured in the press. (Raniere, on the other hand, pleaded not guilty and, according to his lawyer, Marc Agnifilo, claimed that the encounters with victims were consensual.²²) Clare Bronfman, an heiress to the Seagram liquor fortune, helped to finance *NXIVM*’s activities, also took a

¹⁴ *Id.* at 3.

¹⁵ Victims of Trafficking & Violence Protection Act of 2000, Pub. L. No. 106–386, 114 Stat. 1464 (2000) (codified as amended in various titles of U.S.C.). The Act comprises three divisions (i) the Trafficking Victims Protection Act of 2000, 22 U.S.C. Sec. 7101–7110 (2000), (ii) Violence Against Women Act of 2000, 34 U.S.C. Sec. 12361 (West 2015), and the trafficking sections begin with Sec. 20701 et seq. (Combat Human Trafficking Act) and (iii) Miscellaneous Provisions, 18 U.S.C. Sec. 1596, and “Sex Trafficking of Children or by Force, Fraud, or Coercion,” 18 U.S.C. Sec. 1591.

¹⁶ *Id.*

¹⁷ See generally SARAH EDMONDSON (WITH KRISTINE GASBARRE), *SCARRED: THE TRUE STORY OF HOW I ESCAPED NXIVM THE CULT THAT BOUND MY LIFE* (2019).

¹⁸ Colin Moynihan (2019, May 14). *NXIVM Trial: ‘I’m Trying to Break Her.’* *The New York Times*, p. A.20.

¹⁹ See *NXIVM Cult: A Mother’s Fight to Save Her Daughter*, Lifetime & A & E Networks (2019).

²⁰ *United States v. Raniere*, No. 18-MJ-00132-LB (E.D.N.Y. filed Feb. 14, 2018) (accessed <https://www.justice.gov/usao-edny>) (visited Sept. 14, 2020) (“indictment”).

²¹ Cover page of Daily News, “Brand Him Guilty: Jury takes just 4 hours to convict sex cult freak on all charges.” June 20, 2019.

²² Shayna Jacobs (June 20, 2019), *Sicko! Guilty! Jury wastes little time convicting sex-cult leader.* *Daily News*, p. 5.

plea, and was mentioned often by the press.²³ Not all high-demand groups have well-known celebrities or wealthy empire heiresses.

Stripping away the glamour of the codefendants, Raniere's NXIVM had the markings of a cult.²⁴ NXIVM's defense attorney stated at trial, although "the word *cult* has come up a couple of times in this trial,' it may not be something jurors ought to dwell on during their deliberations."²⁵ That may be the one point on which both sides agreed—the trial was not about whether NXIVM was a cult. Nor would the prosecution have secured a favorable outcome if it had tried to prove to the jury that NXIVM was a cult.²⁶ Being a cult is not an illegal activity, and, accordingly, the prosecution did not make that a theory of the case.

United States v. Raniere was probably the most significant criminal case against a cult leader in recent times. As such, examining the facts of the case helps to build a future case against another high-demand group. To do so, it is important to compare NXIVM with cultic characteristics.²⁷

First, witnesses such as Mark Vicente testified for 3 days about the "horrible evil" of the organization.²⁸ Destructive cults are evil entities.²⁹ Vicente was a Hollywood filmmaker who attended NXIVM workshops,

which cost him thousands of dollars, and eventually earned him promotions to senior member.³⁰ However, he later learned about members feeling trapped; he testified how it was revealed to him that members could not leave NXIVM because they had been coerced to supply "collateral."³¹

Second, the defendant's demand of collateral from NXIVM members was another indicium of its cultic characteristics. Lauren Salzman, whose mother, Nancy, cofounded NXIVM,³² testified that she was one of nine female "first-line slaves,"³³ ranking them among the highest in the organization. Lauren testified that she and other women in the secret society, DOS, had to strip naked, as frequently as three times each week, and take group photographs of themselves and send the photographs electronically to Raniere for his approval.³⁴ Raniere collected these photographs, and other potentially embarrassing material, to show allegiance. Arguably, from the point of view of the prosecution, evidence of collateral likely helped the jury to find coercive tactics.

The collateral collected from NXIVM members consisted of personal information that would be potentially damaging if made public. Members were told that turning over collateral proved their dedication.³⁵ The collateral was held in reserve to coerce the slaves, who were threatened to perform to

²³ Colin Moynihan (June 20, 2019). NXIVM leader is guilty in sex trafficking case. *The New York Times*, p. A26.

²⁴ See *Employing Trafficking Laws*, *supra* note 12.

²⁵ Colin Moynihan (June 16, 2019). Prosecutor Says NXIVM Cult was like 'Horror Movie Set.' *The New York Times*, p. A 20.

²⁶ See *Employing Trafficking Laws*, *supra* note 12 at 225–32 (explaining how the First Amendment and evidentiary tests, such as *Frye* and *Daubert* have prevented the theory of brainwashing to be accepted by a jury or court).

²⁷ See *id.* at 232 (Jonestown, Branch Davidian, Heaven's Gate, Order of the Solar Temple, The Movement for the Restoration of the 10 Commandments).

²⁸ Edward Helmore (May 11, 2019). 'Everything was just lies': how alleged sex cult NXIVM deceived its victims. *The Guardian*. (www.theguardian.com/uk) (site last visited Sept. 14, 2020). Author's notes of Mark Vicente's testimony.

²⁹ See *Employing Trafficking Laws*, *supra* note 12 at 207 (Charles Manson's Helter Skelter, cold-blooded killings).

³⁰ Colin Moynihan (May 14, 2019). NXIVM Trial: 'I'm trying to Break Her.' *The New York Times*, p. A20.

³¹ Author's notes from attending the trial during Mark Vicente's testimony.

³² Colin Moynihan (June 14, 2019). Members Spellbound by 'Some kind of God' tell of shadowy group. *The New York Times*, p. A21.

³³ Shayna Jacobs (June 20, 2019), Sicko! Guilty! Jury wastes little time convicting sex-cult leader. *Daily News*, p. 5. Author's notes from attending the trial during Lauren Salzman's testimony.

³⁴ Author's notes from attending the trial during Lauren Salzman's testimony.

³⁵ Colin Moynihan (June 14, 2019). Members Spellbound by 'Some kind of God' tell of shadowy group. *The New York Times*, p. A21.

prevent their private facts and photographs being released to the public. Some women staged a crime to provide collateral. Others invented stories about their families that would be damaging if publicly released. The use of collateral is a form of threat and psychological coercion commonly used by cults.³⁶

Third, when Raniere was displeased with the photographs of nude bodies, he ordered punishment. Punishment ranged from taking a cold shower, planking, standing in snow with bare feet, to being hit with a paddle and leather straps. Raniere monitored punishment to make sure that the punisher flicked her wrists enough to make the paddling hurt. Punished members could also be shunned.³⁷ A cage and torturing devices had been ordered for punishment, but when Raniere was arrested, this order was cancelled. Punishment, shunning, and shaming tactics are some tactics used by high-demand groups.³⁸

Fourth, the prosecution brought forth evidence that Raniere had sex with an underage girl. The witness, Daniela, now age 33, testified that her parents moved to New York state from Mexico to join NXIVM. Raniere began a sexual relationship with her and her younger sister when both were teenagers.³⁹ Raniere had arranged Daniela's illegal entrance through Canada, causing her to feel that he had power over her.⁴⁰ Sexually explicit photographs of Daniela, which he

took when sexual relations began after she turned 16,⁴¹ were entered into evidence. At the time of his arrest, Daniela's underage sister, Camila, at 15 years old was being groomed to start sexual relations with Raniere. Sexual and physical abuse are prevalent in destructive cults.⁴² Such abuse against a member can be made obvious to others to impose fear and obedience among followers.⁴³

Fifth, Daniela was punished by Raniere for admitting to having romantic interest in another man. She was confined to one room and given only a mattress and a writing pad for 2 years.⁴⁴ Isolation, which can be either physical or psychological barriers imposed upon followers, is a tactic used by cultic organizations.⁴⁵

Sixth, allegiance to Raniere was shown by hot-branding women with his initials. First-line slaves were told that this was "surrendering." They were put on a massage table and had to recite the line, "Master, please brand me; it would be an honor."⁴⁶ Second-line slaves were instructed to lay naked on the table. Lauren Salzman described branding as "incredibly painful, most painful thing I've ever experienced"⁴⁷ and having caused a third-degree burn. Psychological coercion in destructive cults can include acts that appear to show consent,

³⁶ See *Employing Trafficking Laws*, *supra* note 12 at 239–40 (Fundamentalist Church of Jesus Christ of Latter-day Saints member Elissa Wall was threatened with an altar ritual that would result in her death).

³⁷ Colin Moynihan (June 14, 2019). Members Spellbound by 'Some kind of God' tell of shadowy group. *The New York Times*, p. A21.

³⁸ See *Employing Trafficking Laws*, *supra* note 12 at 239–40, 244; Perry Bulwer, *A Response to James D. Chancellor's Life in the Family: An Oral History of the Children of God*, 6 CULTIC STUD. REV. 1010 (2007).

³⁹ Colin Moynihan (June 14, 2019). Members Spellbound by 'Some kind of God' tell of shadowy group. *The New York Times*, p. A21.

⁴⁰ Colin Moynihan (May 31, 2019). Ex-Cult Member Testifies About Long Confinement. *The New York Times*, p. A22.

⁴¹ Colin Moynihan (May 24, 2019). NXIVM Member Describes Harem Kept by Cult Leader. *The New York Times*, p. A25.

⁴² See *id.* at 217 ("Sexual and physical abuse, prevalent in destructive cults, reinforces undue influence, fear, and paranoia among followers.")

⁴³ See *Employing Trafficking Laws*, *supra* note __ at 217.

⁴⁴ Colin Moynihan (May 31, 2019). Ex-Cult Member Testifies About Long Confinement. *The New York Times*, p. A22.

⁴⁵ See *Employing Trafficking Laws*, *supra* note 12 at 244 ("Both traffickers and cultic organizations use physical and psychological isolation as a tactic for controlling their victims.")

⁴⁶ See Edmondson, *supra* note 17 at 15.

⁴⁷ Author's notes from attending the trial during Lauren Salzman's testimony.

although the victim did not willingly consent.⁴⁸

Seventh, slaves were expected to do acts of care for their masters. Some acts were buying groceries or editing a book. Mack recruited slaves and ordered them to have sex with Ranieri.⁴⁹ Some cults have used sex to lure people into the group⁵⁰ or to coerce recruits to perform sex.⁵¹

Eighth, one of the means by which Ranieri controlled DOS women was through readiness drills conducted through their cell phones. Within a minute after receiving a text from Ranieri, the subordinates were to respond to the master. If time lapsed, punishment would be issued. Drills were conducted at all times of the day or night. Even while driving cars, NXIVM slaves would be expected to pull over and return text messages, which was dangerous on the road. The drills were stressful and led to sleep deprivation because they were conducted sometimes in the middle of the night. Cults have used sleep-deprivation techniques to reduce critical thinking.⁵²

The core of the Ranieri case was the charge against the defendants for use of “force, threats of force, fraud, and coercion” in the crime of sex trafficking.⁵³ In summation, prosecutors told the jury that Ranieri was a “con man who stole money and created a harem of sexual ‘slaves,’ branded with his initials and kept in line with blackmail”⁵⁴ *United States v. Ranieri* will serve as useful precedent for future prosecutions against cult

leaders; the federal trafficking statute continues to provide an appropriate template for future prosecution of other high-demand groups.

B. Parsing the Legal Elements of the Human-Trafficking Statutes

Litigation against high demand groups, whether in the criminal or civil context, has been wrought by evidentiary challenges. Unreceptive courts have disregarded theories of brainwashing, mental manipulation, and undue influence.

Regarding criminal prosecution, the human-trafficking statutes are significant in obtaining justice for victims of high-demand groups because the laws bypass the evidentiary challenges of mental coercion. In the past, the United States Supreme Court declared that the prosecution could not use mental coercion as a theory to hold defendants liable for their acts of forced labor in the case of *United States v. Kozminski*.⁵⁵ Serving as bad precedent for future cases, the high court found that the two mentally incompetent farm workers who were forced to live in squalid conditions and work for long hours for low to no wages lacked proof of mental coercion.

Mental coercion was also an unsuccessful theory for the defense side, as well. In the highly publicized *United States v. Hearst* case, defendant Patty Hearst unsuccessfully claimed undue influence. A member of a wealthy and famous family, she was kidnapped, locked in a closet, starved, and

⁴⁸ See *Employing Trafficking Laws*, *supra* note 12 at 240–41.

⁴⁹ Shayna Jacobs (June 20, 2019), Sicko! Guilty! Jury wastes little time convicting sex-cult leader, *Daily News*, p. 5.

⁵⁰ See *Employing Trafficking Laws*, *supra* note 12 at 243 (Children of God attracted new members using a technique called “flirty fishing”).

⁵¹ See *id.*

⁵² See generally STEVEN HASSEN, *THE CULT OF TRUMP* (2019).

⁵³ Indictment, *supra* note 20 at para. 1.

⁵⁴ Colin Moynihan (June 20, 2019), NXIVM leader is guilty in sex trafficking case, *The New York Times*, p. A26.

⁵⁵ *United States v. Kozminski*, 487 U.S. 931 (1988), superseded by statute, Victims of Trafficking & Violence Protection Act of 2000. For discussion of this case, see *Employing Trafficking Laws*, *supra* note 12 at 229. The farm owners were charged with involuntary servitude and of conspiring to deprive them of constitutional right to be free from involuntary servitude. The US Supreme Court held that in order to prove involuntary servitude, one must prove that the victim is forced to work for defendant by use or threat of physical restraint or injury or by use or threat of coercion through law or legal process, and that psychological coercion was not enough.

allegedly raped. She claimed that her captors wore her down to the point where she appeared willing and participated in a bank robbery. Her defense was that she was brainwashed; however, the court did not excuse her criminal acts and convicted and sentenced her to prison.⁵⁶

The human-trafficking statutes have lessened the legal evidentiary challenges of establishing mental coercion, otherwise referred to as *undue influence*, *mind control*, or *brainwashing*. For instance, in relevant section of the federal statute incorporating the definition of *coercion*, it omits reference to mental states other than the victim's belief that serious harm or physical restraint would result in failure to adhere to demands:

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.⁵⁷

In another relevant statutory definition, *commercial sex act* was given a broad definition, not necessitating monetary gains:

(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.⁵⁸

And in the provision prohibiting sex trafficking of children, the statute provides this language:

(a) Whoever knowingly—

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1) . .

⁵⁹

The language of the sex-trafficking statute purposefully omits references to mental coercion. Furthermore, the culpability is broad, including "anything of value." Thus, the federal human-trafficking statutes put to rest the hurdles created by the precedents of *Kozminski* and *Hearst*. In doing so, the statutes provide the legal premise upon which to build a case against a cult, when facts meet the broadly defined terms.

Prior to the criminal case against Raniere, the human trafficking statutes were successfully used in the prosecution of a commercial cult run by an individual, Jimmie Lee Jones, in the Atlanta area.⁶⁰ Jones lured young women into a scheme for "modeling" contracts, and then used the personal information in the contracts and his claims for debt owed to him to have the women perform coerced prostitution. He was arrested and sentenced to serve 15 years on federal charges of conspiring to engage in sex trafficking and

⁵⁶ See *United States v. Hearst*, 466 F. Supp. 1068 (N.D. Cal. 1978), *aff'd in part, vacated in part*, 638 F.2d 1190 (9th Cir. 1980).

⁵⁷ 22 U.S.C. § 7102 (3) (Westlaw 2020).

⁵⁸ 22 U.S.C. § 7102 (4) (Westlaw 2020).

⁵⁹ 18 U.S.C. § 1591 (Westlaw 2020).

⁶⁰ DEPT. OF JUSTICE, *Georgia Man Sentenced to 15 Years on Sex Trafficking and Mann Act Charges* (Jan. 24, 2008) (<http://www.justice.gov/archive>) (site last visited Sept. 14, 2020). Jones' alias name is "Mike Spade." See also *Employing Trafficking Laws*, *supra* note 12 at 251-54 (describing Rachel Thomas's ordeal and bravery to come forward).

transporting young women across state lines for purposes of prostitution.

Recently, federal prosecutors again arrested another defendant for human trafficking. The United States Attorney's office indicted Lawrence Ray, a/k/a "Lawrence Grecco"⁶¹ on charges of sex trafficking and forced labor trafficking.⁶² The indictment alleges that defendant "targeted a group of college students and others" for purposes of "indoctrination and criminal exploitation." It further alleges that Ray, parent of a college student, lived with some of the victims in on-campus housing at a Westchester, New York college, and then moved with victims to other locations. The case against Ray has the useful precedent of *United States v. Ranieri*, and it is one to observe. Based upon the successful prosecutions against Keith Ranieri and Jimmie Lee Jones, and now the Ray indictment, the human trafficking statutes are serving as a template for successful recovery against high-demand groups/cultic groups that exploit others.

II: Asylum-Seekers Face Legal Hurdles

For immigrants who escape high-demand groups in their home country, the process of seeking asylum in the United States may be daunting and unsuccessful. Under the Immigration and Nationality Act, the Attorney General may grant asylum to an "alien" who "demonstrates that he or she meets the definition of a "refugee."⁶³ To establish refugee status, the alien must demonstrate either proof of persecution or a well-founded fear of persecution in his home

country "on account of race, religion, nationality, membership in a particular social group, or political opinion."⁶⁴ Furthermore, the acts complained about by the alien "must have been committed by either the government or by forces the government is either unable or unwilling to control."⁶⁵

If the asylum petition is denied, then the "alien" would seek withholding of removal from the U.S.⁶⁶ For someone escaping a cult in his home country, he would likely apply under the provision for those where "it is more likely than not that his life or freedom would be threatened if returned to his country."⁶⁷ However, this is a stricter standard than above, requiring that the alien establish a "clear probability."⁶⁸

People fleeing their foreign countries and seeking asylum in the United States must prove to an Immigration Judge (IJ), and potentially to the Board of Immigration Appeals (BIA), and to a federal intermediate court, that they meet certain requirements. If they are escaping a cult, they would likely claim "particular social group" as the appropriate category. Once claiming social group as a basis for asylum protection, asylum-seekers must meet three criteria, namely that their social group (1) has common, immutable characteristics of its members; (2) is defined with particularity; and (3) is socially distinct within its society from which the alien had emigrated.⁶⁹ Those who claim that the social group was a cult or a gang (a gang is more common in the

⁶¹ Kristina Sgueglia & Eric Levenson, (Feb. 13, 2020), Student's dad arrested on sex trafficking charges after magazine's revelations. CNN (<https://www.cnn.com/2020/02/11/us/sarah-lawrence-college-sex-trafficking/index.html>) (site last visited Feb. 25, 2020). Site links to the indictment: *United States v. Ray*, United States District Court, S.D.N.Y.

⁶² The indictment additionally charges Ray with forced labor conspiracy, and also on charges of extortion, extortion conspiracy, money laundering, and use of interstate commerce to promote unlawful activity.

⁶³ 8 U.S.C. § 1158(b)(1)(A) (Westlaw 2020).

⁶⁴ 8 U.S.C. § 1101(a)(42) (Westlaw 2020).

⁶⁵ *Garcia v. Att'y Gen.*, 787 F.3d 496, 505 (3d Cir. 2011) (quoting *Sukwanputra v. Gonzales*, 434 F.3d 627, 637 (3d Cir. 2006)).

⁶⁶ 8 U.S.C. § 1231 (Westlaw 2020).

⁶⁷ 8 U.S.C. § 1231 (3)(A) (Westlaw 2020).

⁶⁸ *Id.*

⁶⁹ *Matter of M-E-V-G*, 26 I & N Dec. 227, 237 (BIA 2014).

applications) have had little success in gaining asylum.⁷⁰

A case on point is *Edeki v. The Attorney General of the United States of America*.⁷¹ Efe Edeki was a native of Nigeria whose father was a chief priest of the neo-Black Movement of Africa (Black Axe). His father renounced his membership and was then murdered by members of the group; his sister was raped in her father's house by the Black Axe so brutally that she later died of her injuries. At his father's funeral, the Black Axe tried to recruit Edeki, but he rejected them. The group soon kidnapped him and put him through a 3-day initiation ritual of beatings and threats. Edeki fled the area, but threats from Black Axe followed him and were launched at his family members. He then left the country and came to the United States as a refugee and sought asylum.

The IJ found that Edeki had not demonstrated that he suffered past persecution on account of his membership in a particular social group. The social group Edeki proposed was "individuals who have significant kinship ties to [Black Axe], but who consciously refuse to be in this cult."⁷² The IJ specifically found that Black Axe was not a "socially distinct" group, which it was required to find. IJ also found that Edeki did not show that the Nigerian government was unwilling or unable to control the group. The BIA, for the most part, agreed with the IJ.

On appeal, a federal court also denied his asylum petition on two grounds (1) that Black Axe did not meet the criteria of a social

group. The court stated: "To be socially distinct, a group need not be seen by society; rather, it must be perceived as a group by society. Society can consider persons to comprise a group without being able to identify the group's members on sight."⁷³ In this case, the court found that the Black Axe lacked "social distinction" and, thus, failed to meet that requirement. Additionally, Edeki failed to show a connection between his membership in Black Axe and the persecution he suffered. The court held that he "has not established that cult members targeted him to punish him for or to overcome his group membership."⁷⁴ His asylum petition denied, Edeki likely faced deportation.

Deporting Edeki back to Nigeria could be sending him back to the clutches of the cult from which he sought escape. There are several possible solutions to reducing the legal challenges for asylum-seekers escaping destructive cults in their countries of origin.

First, the requirement that the asylum-seeker establish common, immutable characteristics means that the applicant must show that members of his former particular social group must share a characteristic that they "either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences."⁷⁵ Examples of common immutable characteristics are sex; color of skin; kinship ties to members of the group; or shared past experiences, such as military

⁷⁰ *Oliva v. Lynch*, 807 F.3d 53 (4th Cir. 2015) (holding that the BIA failed to consider evidence by the alien regarding whether he had a particular social group and remanded back to the BIA); *Martinez v. Holder*, 740 F.3d 902, 913 (4th Cir. 2014) (holding that alien's membership in a group that constitutes former MS-13 members was immutable but remanded back to lower court for further determinations). *But see Reyes v. Lynch*, 842 F.3d 1125, 1129 (9th Cir. 2016) (denying alien's petition because the BIA reasonably determined that his proposed particular social group of "former members of Mara 18" and "deportees" are not cognizable).

⁷¹ *Edeki v. The Attorney Gen. of the United States of Am.*, 658 F. App'x. 643 (3d Cir. 2016).

⁷² *Id.* at 645.

⁷³ *Id.* (quoting *Matter of M-E-V-G*, 26 I. & N. Dec. 227, 240 (BIA 2014)).

⁷⁴ *Id.*

⁷⁵ *In re Acosta*, 19 I. & N. Dec. 211, 233 (BIA 1985), *overruled in part on other grounds by In re Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987).

service or land ownership.⁷⁶ In *Martinez v. Holder*, the court agreed that the asylum-seeker Martinez met this requirement.⁷⁷ The court found it important that Martinez was no longer a current member, but rather that he had rejected the MS-13 gang and its violence. Martinez argued that his repudiation of gang membership, along with its violence and criminality, were critical to his conscience and that he should not be forced to change.⁷⁸ The court agreed with Martinez that he met the immutability requirement, but it did not grant his petition and sent it down to lower court for further consideration. In putting this case holding in the context of individuals escaping cults, it would be helpful to the asylum-seeker to make a similar argument as Martinez did in arguing that the immutability criterion was met based upon repudiation of the former cultic group.

Second, to assist asylum-seekers, the courts should eliminate or clarify the *particularity* requirement. For instance, the particularity requirement forces asylum-seekers to distinguish between social groups that are “discrete and those that are amorphous.”⁷⁹ The individual who escaped a destructive cult must prove to the BIA or to a court that the group had “some definable boundary.”⁸⁰ Unclear in the United States case law are the boundaries for establishing that the former cult was not amorphous. Reform of the case law is necessary on this criterion.

Similar is the challenge of establishing the *socially distinct group* requirement. The US courts do not require “[l]iteral or ‘ocular’ visibility,”⁸¹ but they do require evidence that the former group “is understood to exist as a recognized component of the society in question.”⁸² If the former cult was

underground in a figurative sense, as many are, then establishing social visibility could be nearly impossible for some asylum-seekers. Courts should clarify or eliminate the *socially distinct group* requirement.

Finally, lawyers, mental health professionals, former cult members, and those who have gained asylum here in the United States should collectively seek to educate the bench and the bar about the nature of cults and their destructiveness. Sending asylum-seekers back to their country of origin could subject them to violence or even death by the cult. Often these cults demand that their members never leave, and thus they force members back to lifetime, gang-like existence, which is contrary to the purpose of asylum protection.

III: State Laws Affecting Cults

Recently, there are state laws either pending or passed that affect cultic groups. The absence of child marriage laws creates vulnerability for cults to take advantage of young women. Although there has been improved legislation in recent years, there remain states with no legislation in place. Additionally, undue influence is yet another legal issue to address on a state-by-state basis. And finally, New Jersey’s pending bill is deserving of attention.

A. Child Marriage Laws

Child brides are often prey to cults and high-control groups. Tahirih Justice Center found that between the years 2000 and 2015, more than 200,000 children under the age of 18 were married.⁸³ Recently, advocates have been able to raise the age of marriage in some states, but legislative change must occur

⁷⁶ *Id.* at 233.

⁷⁷ *Martinez v. Holder*, 740 F.3d at 911.

⁷⁸ *Id.* at 913.

⁷⁹ *Reyes v. Lynch*, 842 F.3d 1125, 1135 (9th Cir. 2016).

⁸⁰ *Id.*

⁸¹ *Matter of M-E-V-G*, 26 I. & N. Dec. 225, 238 (BIA 2014).

⁸² *Id.* at 239.

⁸³ <https://www.daytondailynews.com/news/local/new-state-law-prevents-marriage-younger-than/516XTPS7FGz0FR5yNWrrhl/>.

state-by-state because child marriage is a matter of state law. Groups such as the Tahirih Justice Center⁸⁴ are advocating that states raise the minimum age for marriage. Within the past 2 years, at least three states have raised their minimum marriage ages. In New York, the threshold age of 14 was raised to 17.⁸⁵ In Ohio, the age was raised to a minimum of 18 for both parties.⁸⁶ Georgia raised the age minimum to 18. Raising the age of legal marriages recognized by states has made it more difficult for cults to coerce child members to intermarry other members and leaders, such as the child marriages coerced by cult leader Tony Alamo.⁸⁷

But more work needs to be done. Thirteen states currently do not have a minimum age requirement for marriage.⁸⁸

B. Undue-Influence Theory

Undue influence could potentially be a theory for recovery by cult victims, primarily in the civil context. One could envision a case made out by a former member who claims that she was coerced into giving a cult money, and now seeks recompense. Historically, undue influence arose as legal theory primarily in civil cases involving will disputes in which plaintiffs claimed that they should have received more from the decedent's estate, but for the improper influence imposed by the

beneficiary/defendant upon the dying relative or friend.⁸⁹ If one were to file a case of a will dispute, it would be a matter of state law, which changes slightly from state to state.

A typical definition of *undue influence* was expressed in this landmark New York case: "a moral coercion, which restrained independent action and destroyed free agency, or which, by importunity which could not be resisted, constrained the [actor] to do that which was against [her] free will and desire, but which [she] was unable to refuse or too weak to resist."⁹⁰ The emphasis in that definition is the lack of free will on the part of the aggrieved party. As explained previously, in the *Kozminski* and *Hearst* trials, undue influence was not a winnable theory in federal criminal cases.

Yet, undue influence remains a potential ground for seeking civil redress from cults and high-demand groups. In a successful case, *D'Onofrio v. Mother of God with Eternal Life*, the plaintiff brought an undue-influence claim against a religious nonprofit and its spiritual advisor.⁹¹ The plaintiff sought to rescind transactions, such as real estate and personal property. The trial court noted that it was unusual to rescind a contract based upon an undue-influence claim, but it nevertheless held in the plaintiff's favor. The plaintiff had alleged facts of physical and

⁸⁴ Tahirih Justice Center's website provides information at <http://www.tahirih.org> (last visited Sept. 14, 2020); see also Ashley Belanger, Child Marriage in the United States, Explained, *Teen Vogue* (September 5, 2017)

(<https://www.teenvogue.com/story/child-marriage-in-the-united-states-explained>) (visited Feb. 24, 2020)

⁸⁵ Website for Human Rights Watch: www.hrw.org (last visited Sept. 14, 2020).

⁸⁶ <https://www.daytondailynews.com/news/local/new-state-law-prevents-marriage-younger-than/516XTPS7FGz0FR5yNWrhhl/>. The Ohio law allows for 17-year-old to marry if they have juvenile court consent, a 14-day waiting period, and an age differential of no more than 4 years. In Georgia, the law includes a narrow exception only for 17-year-old minors that have been emancipated after a special proceeding before a juvenile court, and a 4-year limit on the age difference.

⁸⁷ Elaine Aradillas, (June 11, 2018). A cult's dark secrets: We were child brides. *People Magazine*, 44-48 (reporting on how girls as young as 14 and 12 were forced to marry cult leader Tony Alamo).

⁸⁸ Dartunorro Clark (June 24, 2019). States across the country to take action to save child brides. *NBC News*.

<https://www.nbcnews.com/politics/politics-news/states-across-country-take-unprecedented-action-save-child-brides-n1019886>; Tahirih Justice Center's website provides further information at <http://www.tahirih.org> (last visited Sept. 14, 2020).

⁸⁹ See generally *D'Onofrio v. Mother of God with Eternal Life*, 60 Misc. 3d 910, 79 N.Y.S.3d 902 (Westch. Cnty. 2018).

⁹⁰ *Children's Aid Soc. v. Loveridge*, 70 N.Y. 387, 394 (1877).

⁹¹ *D'Onofrio v. Mother of God with Eternal Life*, 60 Misc. 3d 910, 79 N.Y.S.3d 902 (Westch. Cnty. 2018). No further filings in this case, which indicates it likely settled out of court.

emotional abuse by her spiritual advisor. Although this was not the end of the case, the court merely denied the motion to dismiss by the defendant, and the case was permitted to go forward. But it is a case that sets precedence for similarly situated plaintiffs in New York.

In a federal bankruptcy case, the court placed the burden on the donor to prove that (1) she was susceptible to undue influence; (2) undue influence was exerted; and (3) she submitted to the overmastering effect of such undue influence.⁹² The court in that case found facts legally sufficient to satisfy the three-prong test of undue influence.

Arguably, a potential avenue for successful undue-influence litigation is to minimize the need to establish the mental infirmities of the plaintiff and to focus instead on the harm caused by the defendant. After all, that is what the human-trafficking statutes essentially accomplished. Lessening the burden of providing the weak and vulnerable mental state of the victim in an undue-influence case would be a significant step forward in setting precedent for future litigation against high-demand groups.

Another approach is one by Alan Schefflin, who has produced a substantial body of work identifying how courts can refine the undue-influence theory.⁹³ Schefflin introduces a Social Influence Model and proposes that this model serve as a template for future litigation against high-demand groups who have defrauded and otherwise harmed its followers. The Social Influence Model has six components: Influencer (who did the influencing), Influencer's Motives (or Purpose), Influencer's Methods (or Techniques), Circumstances (or Timing and Setting), Influence's Receptivity/

Vulnerability (or Indifference), and Consequences (Results).

California's legislature adopted a new definition for undue influence that provides guidance to California courts in cases of "excessive persuasion" exerted against the elderly. Theoretically, the California statutory framework with its factor test could potentially be used against high-demand groups when claims are brought in that state. California's statute defines *undue influence* as "excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity."⁹⁴ The statute enumerates factors for courts to consider when evaluating undue-influence cases, such as the influencer's conduct, and evidence of

- (a) [c]ontrolling necessities of life, medication, the victim's interactions with others, access to information, or sleep; (b) [u]se of affection, intimidation, or coercion; (c) [i]nitiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.⁹⁵

Not all of these factors provided in the California code need be present to win a case. Arguably, these factors could be incorporated into a complaint for civil remedies by an aggrieved high-demand group member seeking damages from her former organization.

Therefore, undue influence could be successful as a cause of action in a case such as the one in New York, in which a member of a group can claim that the group-controlled

⁹² *The Bible Speaks v. Dovydenas*, 81 B.R. 750 (D. Mass. 1988).

⁹³ See Schefflin, *supra* note 6.

⁹⁴ Cal. Welfare and Institutions Code section 15610.70(a) (Westlaw 2020).

⁹⁵ Sections 15610.70(a)(1)-(4) (Westlaw 2020).

interactions and defrauded them. Three potential grounds for success would be to convince courts or legislators (a) to shift focus away from the weakened and vulnerable state of the victim and put more weight on the culpable conduct of the defendant; (b) to use the Social Influence Model proposed by Schefflin; or (c) to adopt a factor test similar to California's statutory factor test.

The Rutgers' Study and Pending Predatory Alienation Bill

In 2017, the New Jersey legislature enacted a law⁹⁶ requiring the departments of Children and Families and Human Services to study predatory alienation and its effects on young adults and senior citizens. The study was conducted by researchers from the Center on Violence Against Women and Children of the Rutgers University School of Social Work.⁹⁷ The groundbreaking report included policy recommendations on addressing the manipulative tactics that Internet predators, terrorists, human traffickers, pimps, abusive partners, gangs, swindlers, and other malicious individuals and groups use to isolate, control, and exploit people of all ages.

NJ Safe & Sound, a grassroots advocacy organization, reached out to state legislators to take action on the researchers' recommendations. As a result of their advocacy, the bill currently pending is called the Predatory Alienation Prevention and Consensual Response Act.⁹⁸

The bill defines *predatory alienation* as

whenever a person or group uses
predatory behaviors, such as entrapment,

coercion, and undue influence, to establish a relationship with a victim and isolate the victim from existing relationships and support systems, including family and friends, with the goal of gaining and retaining sweeping control over the victim's actions and decisions.

It further states: "Predatory alienation tactics and other forms of undue influence are commonly used by cults, religious sects, gangs, extremist groups, human traffickers, sexual predators, domestic abusers, and other similar persons and groups . . ."

The bill calls for an ongoing public-awareness campaign. It also calls for a predatory-alienation counseling-referral system and a comprehensive screening and assessment tool. Constituents have reached out to bill sponsors to refine the bill's language by adding criminal sanctions for the predatory behavior it describes or giving those concerned about the predatory alienation of a loved one the right to bring their case before a judge.⁹⁹ The development of this bill through the New Jersey legislature should be observed. California legislature is considering a bill that would amend the state's Family Code to include "coercive control" in the definition of domestic abuse.

Conclusion

In conclusion, *United States v. Raniere* provides groundwork for authorities to use the human-trafficking laws, and related provisions, to prosecute dangerous and manipulative leaders of high-control groups and cults. One area of the law that needs

⁹⁶ P.L. 2017, Ch. 64.

⁹⁷ Report can be accessed from the Rutgers Univ. School of Social Work. <https://socialwork.rutgers.edu/centers/center-violence-against-women-and-children/research-and-evaluation/predatory-alienation> (last visited Sept. 14, 2020).

⁹⁸ Bipartisan bill, S161, and on January 14, 2020 was referred to the State Senate Health, Human Services, and Senior Citizens Committee.

further refinement is with immigration law and the definition of *social groups*, so that asylum-seekers leaving cults in foreign countries would be able to successfully gain entry into the United States. State legislative enactments raising the permissible age of marriage can be another positive step. Undue influence as a claim against a high-demand group could be successful if the requirement for proving a weakened mental state by the plaintiff is eliminated. The groundwork provided by Alan Schefflin's work with the theory of undue influence can be used as a template for future litigation. As for what lawmakers can do, the Rutgers study's impact is not confined to just New Jersey; and the pending legislation regarding predatory alienation should be given concerted attention.

About the Author

Robin Boyle-Laisure, JD, Professor of Legal Writing at St. John's University School of Law, lectures on topics concerning cults and the law. Her articles include "Employing Trafficking Laws to Capture Elusive Leaders of Destructive Cults" (*Oregon Review of International Law*, 2016), "Current Status of Federal Law Concerning Violent Crimes Against Women and Children: Implications for Cult Victims" (*Cultic Studies Review*, 2002), "How Children in Cults May Use Emancipation Laws to Free Themselves" (*Cultic Studies Journal*, 1999), and "Women, the Law, and Cults: Three Avenues of Legal Recourse—New Rape Laws, Violence Against Women Act, and Antistalking Laws" (*Cultic Studies Journal*, 1998). In 2005, she received the Faculty Outstanding Achievement award from the President of St. John's University, and she is on the Editorial Board of ICSA's *International Journal*