

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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ALLIANCE FOR OPEN SOCIETY INTERNATIONAL, :  
INC., and OPEN SOCIETY INSTITUTE, :

Plaintiffs, :

v. :

UNITED STATES AGENCY FOR INTERNATIONAL :  
DEVELOPMENT and ANDREW S. NATSIOS, in his :  
Official Capacity as Administrator of the United States :  
Agency for International Development, :

Defendants. :

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Civil Action No.

05-CV-8209

**MEMORANDUM OF LAW  
OF APNE AAP AND EIGHTEEN OTHER ORGANIZATIONS  
AS *AMICI CURIAE***

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Association IROKO

Association Women in Contemporary Society

BAGONG Kamalayan Collective

Bilateral Safety Corridor Coalition

Breaking Free

BUKLOD

Center for Counseling and Information on Sexual Violence (Stigamot)

Coalition Against Trafficking in Women, Asia Pacific

Girls Education and Mentoring Services (GEMS)

International Union – Center for Foreign Citizens and Migrants Rights and Security

Kvinnefronten (Women’s Front)

Minorities and Survivors Improving Empowerment (MASIE)

MiraMed Institute

Pandora

Prostitution Research and Education

Standing Against Global Exploitation (the SAGE Project, Inc.)

Shelter Movement Secretariat

Veronica’s Voice

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## **INTRODUCTION**

*Amici* are organizations, mostly led by survivors of prostitution, that provide services, including HIV/AIDS prevention services, to women, men, and children in prostitution. *Amici*'s experiences as survivors and as direct service providers attest to the violence and harm that are inherent in prostitution, whether legalized or illegal.

At the core of our work is a recognition that criticizing the prostitution industry is different from criticizing the people who are bought and sold in that industry. *Amici* view prostitution as an abuse of human rights, and the individuals whose bodies are bought and sold as the victims of that abuse. The grave risk of HIV/AIDS exposure faced by prostituted persons is closely linked to the other forms of abuse pervading the sex industry: the targeting of victims who are made vulnerable by myriad factors such as poverty or childhood sexual abuse; the use of violence by pimps, johns, and traffickers to impose their wishes on prostituted individuals; and the very nature of commercial sex, which by definition exposes those used in it to a wide array of physical and psychological harms.

*Amici* respectfully but adamantly reject the notion that it is impossible to do effective HIV/AIDS-prevention work among prostituted people while condemning the industry of prostitution. *Amici* have learned through experience that programs that seek to reduce the harms of prostitution are most effective if they are holistic, if efforts to help curb HIV/AIDS accompany broader efforts to help prostituted individuals escape prostitution and find other means to survive. Tellingly, escape from prostitution is the

outcome that persons in prostitution say they most want.<sup>1</sup> To identify the prostitution industry as a system of exploitation, discrimination, and abuse is not to stigmatize its victims; it is to stand in solidarity with them.

*Amici* do not address the constitutional arguments but rather the policy contentions that have been placed at issue in this case. *Amici* argue that there are compelling reasons to require that public HIV/AIDS-prevention funds be directed to organizations that conduct harm reduction efforts with an ultimate view to harm elimination, to helping individuals establish the free and practical choice of a life outside prostitution. *Amici* stress that distribution and education on the use of condoms is a crucial component of global efforts to reduce the risk of HIV/AIDS. But organizations that oppose prostitution will conduct their HIV/AIDS-prevention and condom-distribution work differently than those who believe that the prostitution industry should be legalized, tolerated, or accommodated. The United States has compelling reasons to decide that its funds are better spent on organizations whose approach will in the long run be far more effective.

In Point One, *amici* will contend that the prostitution and sex trafficking industry is inherently harmful; in Point Two, that it is possible and in fact optimal to oppose this industry without stigmatizing or criminalizing its victims; in Point Three, that the legislation at issue requires opposition to the legalization and practice of prostitution and sex trafficking, not stigmatization of its victims; and in Point Four, that the provisions of the legislation were enacted in response to specific abuses documented prior to the

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<sup>1</sup> M. Farley et al, "Prostitution and Trafficking in Nine Countries" in *Journal of Trauma Practice* Vol. 2 No. 3/4, 33-72 (2003).

legislation's enactment.

### POINT ONE

#### **Prostitution and sex trafficking are forms of abuse, which gravely harm their victims.**

The prostitution and sex trafficking industry,<sup>2</sup> whether legal or illegal, brings physical and mental devastation upon the persons – mostly female, and mostly young - whose bodies are bought and sold for sexual use. Individuals living in prostitution or emerging from prostitution exhibit symptoms of mental and emotional trauma at levels that are comparable to the mental health injuries sustained by survivors of combat or rape.<sup>3</sup> This harm to mental health, typically accompanied by serious harm to physical health, is readily explained upon examination of conditions in the sex industry. Prostitution within that industry is an experience that is saturated in violence and coercion, both physical and sexual.

Violence paves most victims' entry into prostitution. Studies of prostituted persons consistently reveal that a majority were sexually abused as children.<sup>4</sup> Most say

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<sup>2</sup> Plaintiffs claim in their Complaint that the terms "sex work" and "sex worker" are "the terms generally used in the public health and international relief fields." Complaint p. 1. This claim is inaccurate. The phrases "sex work" and "sex worker" are associated with a certain political view concerning prostitution: specifically, the view that prostitution should be considered a form of employment and should be legalized and treated as a job like any other. The term "sex work" usually signals agreement with this point of view and is very far from being "generally used." For example, the United Nations has not used the term in its Conventions, Protocols, and Declarations, including its most recent Protocol on trafficking, now ratified by almost 100 countries, including the United States. *U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children*, Supplementing the *U.N. Convention Against Transnational Organized Crime* (2000).

<sup>3</sup> A 2003 study of 854 people living in or recently emerged from prostitution found that 68% of them exhibited post-traumatic stress disorder. M. Farley et al, "Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder" in *Journal of Trauma Practice* Vol. 2 No. 3/4, 33-74 (2003). This prevalence rate is comparable to rates found among combat veterans seeking treatment, battered women seeking shelter, rape survivors, and survivors of state-sponsored torture. *Id.* at 56.

<sup>4</sup> Various studies report that somewhere between 55% and 90% of persons in prostitution report a history of childhood sexual abuse. *Id.* at 35.

that this early abuse influenced their entry into prostitution.<sup>5</sup> A conservative estimate of the average age of recruitment into prostitution in the United States is 13-14 years.<sup>6</sup>

Once recruited into prostitution, prostituted persons typically experience abuse as an everyday reality. In a landmark study, 71% of persons in prostitution reported that they had been physically assaulted while in prostitution, and 63% had been raped while in prostitution. Notably, even in countries that have legalized prostitution in an effort to reduce its harms, rates of assault and rape against prostituted persons remain extremely high.<sup>7</sup> Survivors of the prostitution industry report that the trauma associated with physical danger is matched by the trauma associated with constant sexual degradation, with having one's body sold as a commodity. One survivor described the experience in this way:

It was horrible, they'd look you up and down. That moment, when you felt them looking at you, sizing you up, judging you . . . It used to make me furious, but at the same time I was panic-stricken, I didn't dare speak . . . I was the thing he came and literally bought. He had judged me like he'd judge cattle at a fairground, and that's revolting, it's sickening, it's terrible for the women. You can't imagine it if you've never been through it yourself.<sup>8</sup>

Many survivors have reported that, in order to cope with the psychological degradation of prostitution, they developed a dissociation response—a sense of splitting off a part of the self, of “leav[ing] my body,” of going “someplace else mentally.”<sup>9</sup> The

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<sup>5</sup> *Id.* at 35.

<sup>6</sup> *Id.* at 35.

<sup>7</sup> I. Vanwesenbeeck et al, “Professional HIV risk taking, levels of victimization, and well-being in female prostitutes in the Netherlands” in *Archives of Sexual Behavior* 24(5), 503-515 (1995).

<sup>8</sup> C. Jaget, *Prostitutes—Our Life* (1980).

<sup>9</sup> See, e.g., C. Hoigard and L. Finstad, *Backstreets: Prostitution, Money and Love* (1986) (“Regardless of the variations in the type of prostitution, women feel that they have to rent out the most intimate parts of the body to anonymous strangers to use as a hole to jerk off in. The women try to keep themselves as unharmed as possible from this massive invasion by maintaining a distance from the customer.”); E. Giobbe, “Prostitution: Buying the right to rape” in A.W. Burgess (Ed.), *Rape and Sexual Assault III: A Research Handbook*, 143-160 (1991)(“I would numb my feelings. I wouldn't even feel like I was in my

aftermath of this coping mechanism is the high incidence of dissociative disorders diagnosed in individuals emerging from prostitution.<sup>10</sup>

The health effects of prostitution are wide-ranging and severe and commonly include tuberculosis, sexually transmitted diseases, frequent viral illness, vaginal infections, backaches, pelvic pain, substance abuse, sleeplessness, depression, headaches, eating disorders, cervical cancer, hepatitis, broken bones, brain injury resulting from head trauma, anxiety disorders, dissociative disorders, infertility, and early mortality.<sup>11</sup> HIV/AIDS infection is rampant among prostituted persons and is a leading cause of death.<sup>12</sup>

The harms of prostitution are so profoundly linked to gender, class, and racial inequality as to make the prostitution industry one of the world's most extreme systems of discrimination. Its victims are overwhelmingly female and overwhelmingly poor.<sup>13</sup> They are made vulnerable by the disadvantaged status of women in many regions, by the childhood sexual abuse for which girls are disproportionately targeted, and by the desperation induced by poverty.<sup>14</sup> Once in prostitution, their status falls even lower and

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body. I would actually leave my body and go somewhere else with my thoughts and with my feelings until he got off, and it was over with. I don't know how else to explain it except that it felt like rape. It was rape to me."); J.L. Williams, *Sold Out: A Recovery Guide for Prostitutes Anonymous* (available from P.O. Box 3279, North Las Vegas, NV 89036)(1991)("I would just go someplace else mentally as well as emotionally. Soon I just lost track of days at a time. When I was awake, I started feeling 'invisible.' When I would come back home from a call, I used to stand in front of a mirror and pinch myself just to see if I was real. Spending months with people just looking at your body can make you wonder if 'you' exist at all.").

<sup>10</sup> C.A. Ross, M. Farley, and H.L. Schwartz, "Dissociation Among Women in Prostitution" in M. Farley (Ed.), *Prostitution, Trafficking, & Traumatic Stress* 199-212 (2003).

<sup>11</sup> M. Farley, "'Bad For the Body, Bad for the Heart': Prostitution Harms Women Even if Legalized or Decriminalized," *Violence Against Women* Vol. 10 No. 10, 1097 (2004); M. Farley et al, "Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder" in *Journal of Trauma Practice* Vol. 2 No. 3/4, 52-53 (2003).

<sup>12</sup> "AIDS stalks imported sex slaves," *South China Morning Post*, Nov. 10, 2003.

<sup>13</sup> D. Leidholdt, "Prostitution and Trafficking in Women: An Intimate Relationship," *Journal of Trauma Practice* Vol. 2 No. 3/4, 167-183 (2003).

<sup>14</sup> *Id.*



their life prospects are more sharply curtailed.<sup>15</sup> Trafficking and sex tourism have contributed to the already-strong role of racial and ethnic discrimination in prostitution, with men from richer industrialized countries purchasing women from developing or impoverished regions.<sup>16</sup> Among prostituted women, it is often undocumented women trafficked from poor countries who suffer the worst exposure to the most harmful and unsafe practices within prostitution.<sup>17</sup> Prostitution is both cause and effect of cruel and entrenched inequalities.

Legalization does not stop the harms of prostitution. Legalization does not mean, for example, that parties in prostitution will stop engaging in unprotected sex. Because buyers are willing to pay more money for sex without condoms, extremely risky sex acts “can always be purchased.”<sup>18</sup> Nor can legalization protect prostituted persons from violent attacks by buyers. In an upscale legal brothel in Australia rooms are equipped with panic buttons, but a bouncer reports that the women’s calls for help can never be answered quickly enough to prevent violence by johns, which occurs regularly.<sup>19</sup>

Nor does legalization stop any of the other abuses associated with illegal prostitution, such as brutal physical violence against prostituted persons by pimps, the influence of organized crime in the sex industry, or the trafficking of women for purposes

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<sup>15</sup> W. Freed, “From Duty to Despair: Brothel Prostitution in Cambodia” in *Journal of Trauma Practice* Vol. 2, No. 3/4, 133-146 (2003).

<sup>16</sup> D. Leidholdt, “Prostitution and Trafficking in Women: An Intimate Relationship,” *Journal of Trauma Practice* Vol. 2 No. 3/4, 167-183 (2003).

<sup>17</sup> *Id.*

<sup>18</sup> B. Loff, C. Overs, and P. Longo, “Can Health Programmes Lead to Mistreatment of Sex Workers?” in *Lancet*, 36 1982-1983 (2003). See also H.P. Hynes and J. Raymond, “Put in Harm’s Way,” *Policing the National Body: Sex, Race, and Criminalization*, 217 (2002)(discussing the high percentage of sex industry buyers unwilling to use condoms and willing to pay extra for sex without condoms, the high physical and economic vulnerability of prostituted women and their corresponding low bargaining power regarding condoms, and the high percentage of prostituted women who have experienced condom breakage).

<sup>19</sup> S. Jeffreys, “The Legalisation of Prostitution: A Failed Social Experiment” in *Women’s Health Watch Newsletter* 64 8-11 (2003)(available at <http://www.womens-health.org.nz/publications/WHW/whwapr03.htm#legalisation>).

of prostitution. Indeed, countries where prostitution has been legalized in an effort to reduce its harms have experienced quite the opposite result: huge growth in the illegal sex industry. Following legalization of prostitution in Victoria, Australia, legal brothels proliferated, but the greatest expansion was in *illegal* brothels, which increased by 300% in one year.<sup>20</sup> This is because legalizing prostitution creates a hospitable environment for sex tourists and other buyers, thus driving up demand. Local women constitute an inadequate supply, so women and girls are trafficked in to meet the demand. There will always be buyers seeking women and girls who are younger, cheaper, and easier to control. The result is that legalization not only places the imprimatur of the state on violence and abuse intrinsic to the prostitution industry, but also increases both legal and illegal prostitution.<sup>21</sup>

Any idea that condom distribution is, by itself, sufficient to protect prostituted persons from HIV/AIDS is simply inconsistent with the realities of the sex industry. Pimps and sex traffickers commonly employ a range of techniques, ranging from emotional manipulation to vicious physical and sexual violence, in order to control the individuals being sold, and to impose whatever practices will maximize profits, including unprotected sex.<sup>22</sup> The prostituted individuals whose very presence in prostitution results

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<sup>20</sup> J. Raymond, "Ten Reasons for *Not* Legalizing Prostitution and a Legal Response to the Demand for Prostitution," *Journal of Trauma Practice* Vol. 2 No. 3/4, 320-321 (2003).

<sup>21</sup> D. Leidholdt, "Prostitution and Trafficking in Women: An Intimate Relationship," *Journal of Trauma Practice* Vol. 2 No. 3/4, 167-183 (2003).

<sup>22</sup> J. Raymond, D. Hughes, and C. Gomez, "Sex Trafficking of Women in the United States: Links Between International and Domestic Sex Industries," 72-73 (2001)(available at [www.catwinternational.org](http://www.catwinternational.org)); D. Leidholdt, "Prostitution and Trafficking in Women: An Intimate Relationship," *Journal of Trauma Practice* Vol. 2 No. 3/4, 167-183 (2003); M. Farley, "'Bad For the Body, Bad for the Heart': Prostitution Harms Women Even if Legalized or Decriminalized," *Violence Against Women* Vol. 10 No. 10, 1110 (2004).

from of a lack of options do not have the bargaining power that would make it possible to insist on consistent use of condoms.<sup>23</sup>

The lived experiences of those in prostitution reveal a wide array of physical and psychological harms that are interrelated and mutually reinforcing. Violence and harm are not separate problems that exist side-by-side with prostitution; they are intrinsic to the prostitution industry's very existence. Survivors of prostitution, including the ones who lead organizations appearing here as *amici*, are well acquainted with this array of harms. They are in a position to understand that an approach that simply treats one harm (the risk of HIV/AIDS infection) in isolation cannot effectively help prostitution victims.

Ultimately, the only truly effective way to protect against the harms of the prostitution industry is to assist its victims in getting out. Indeed prostituted people themselves know this. When a survey of 854 prostituted persons in nine countries asked the question "What do you need," the number one response—given by a staggering 89% of respondents—was to get out of prostitution.<sup>24</sup>

**POINT TWO**  
**Working to prevent HIV/AIDS while working to end prostitution**  
**is not only possible; it is the most effective way**  
**to combat the harms of the prostitution industry.**

Plaintiffs allege in their Complaint that organizations working to combat HIV/AIDS cannot oppose prostitution without stigmatizing and alienating its victims.<sup>25</sup>

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<sup>23</sup> D. Worth, "Sexual Decision Making and AIDS: Why Condom Promotion Among Vulnerable Women Is Likely To Fail," *Studies in Family Planning*, 20, 297-307; L. Gruskin et al, "Incidence of Violence Against HIV-Infected and Uninfected Women: Findings from the HIV Epidemiology Research (HER) Study," *Journal of Urban Health: Bulletin of the New York Academy of Medicine* 79/4 (2002).

<sup>24</sup> M. Farley et al, "Prostitution and Trafficking in Nine Countries" in *Journal of Trauma Practice* Vol. 2 No. 3/4, 33-72 (2003).

<sup>25</sup> See, e.g., Complaint p. 8 ("Both AOSI and OSI have, as their principles of governance, an adherence to the principles of an open society, including opposition to adopting any policy positions that would lead to

Nothing could be farther from the truth. For *amici*, the ability to provide prostituted persons with comprehensive services, including HIV/AIDS prevention, is fully compatible with and even dependent on staff members' willingness to acknowledge the full spectrum of harms suffered by those in prostitution, to ally themselves with prostituted persons against those who have abused them, and to collaborate with persons in prostitution on developing the ability to build a life out of prostitution. This approach can in no way be considered "stigmatizing" to the victims of prostitution, but in every way it reflects a profound opposition to the institution of prostitution.

Breaking Free is an Afro-centric social service agency with offices in predominantly African-American neighborhoods in St. Paul and Rochester, Minnesota. Eighty percent of the staff are African and African-American; half are survivors of prostitution as is its founder and Executive Director. Breaking Free provides comprehensive services to assist women in escaping prostitution; these services include HIV/AIDS prevention, emergency provision of food, shelter, and medical care; treatment for drug addiction; education; counseling; family and parenting classes; job training; housing services; health care; and education and information regarding various sexually transmitted diseases, including but not limited to HIV/AIDS. Ingrained in every aspect of these comprehensive services is an organizational commitment to understanding prostitution as a slavery-like form of exploitation for which the exploiters, not the victims, are blameworthy. Far from alienating prostituted women, this consciousness creates the basis for a sustained, trusting relationship in which the difficult and painful

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the stigmatization of socially marginalized groups. Adopting a policy opposing sex work violates this principle.”)

work of rebuilding a life can take place.<sup>26</sup>

Apne Aap is a community-based initiative of women in prostitution in India, founded in the red light district of Mumbai in 1998. Twenty-two women in prostitution started this organization, with the aim of ending their own exploitation and preventing other women from being exploited through sex trafficking. Their objectives include support for the community based initiatives of those trapped by the sex industry, mitigation of the circumstances of those caught in prostitution, and prevention of inter-generational prostitution. While considering prostitution to be a form of violence against women, Apne Aap uses a harm reduction model, providing services in a manner that is nonjudgmental toward and supportive of the women in prostitution. Women are not required to leave the sex industry in order to receive services. Yet services are integrated with an ongoing commitment to helping women exit prostitution and are grounded firmly in an opposition to the prostitution industry. Apne Aap community centers provide a safe space for women in prostitution, with free weekly medical check-ups and sexual health awareness programs, as well as literacy classes and vocational training to help women acquire the skills they need to enable them to escape prostitution.<sup>27</sup>

Breaking Free and Apne Aap are only two of many organizations whose work provides daily proof that it is possible to oppose prostitution without stigmatizing or alienating its victims, the individuals sold in prostitution. They demonstrate that harm reduction work is most effectively conducted within a program designed to eliminate the harm, not perpetuate it.

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<sup>26</sup> V. Carter, "Providing Services to African-American Prostituted Women," *Journal of Trauma Practice* Vol. 2 No. 3/4, 33-72 (2003).

<sup>27</sup> Apne Aap website at <http://www.apneaap.org>.

For the groups listed as *amici*, an opposition to prostitution is the essence of what it means to champion the rights of those who have been disadvantaged, marginalized, and powerless. The prostitution industry feeds upon and reinforces existing forms of inequality and injustice, including gender inequality. As with other forms of gender-based violence such as domestic violence and rape, it is impossible to provide truly effective services to the victims of the violence without addressing the system of gender-based harm that underlies the injuries suffered by individual victims. Julie Johnson, Ph.D., a survivor of prostitution who is a leading political organizer of non-profit groups serving persons in prostitution, explained that “contrary to what sex industry supporters have led many to believe, our work firmly rejects moralism as a paradigm. Instead, it emanates from a progressive paradigm of *basic human rights*.”<sup>28</sup>

### POINT THREE

**The requirement that organizations have a policy “opposing prostitution and sex trafficking” should be interpreted to require groups to oppose the “legalization and practice” of prostitution and sex trafficking. Such opposition does not stigmatize persons in prostitution.**

The United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, 22 U.S.C. §§ 7601-7682 (the “Act”), places two restrictions on the distribution of U.S. funding for HIV/AIDS prevention programs. First, the Act provides that “(n)o funds made available to carry out this Act or any amendment made by this Act, may be used to promote or advocate the legalization or practice of prostitution or sex trafficking.” 22 U.S.C. § 7631(e). Second, the Act provides that “(n)o funds made available to carry

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<sup>28</sup> Letter from Julie Johnson, Ph.D., Dec. 3, 2005 (on file with the Coalition Against Trafficking in Women).

out this Act, or any amendment made by this Act, may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking.” 22 U.S.C. § 7631(f).

When the Act is read as a whole, the requirements of Section 7631(e) shed light on the meaning of Section 7631(f); that is, a policy “opposing prostitution and sex trafficking” should be read to require opposition to the “legalization or practice” of prostitution or sex trafficking. Nothing in the Act suggests that an organization receiving federal funds should stigmatize or criticize the persons who are sold in prostitution. Nor does the Act suggest that organizations must advocate criminalization of persons sold in prostitution. And by explicitly linking opposition to prostitution with opposition to sex trafficking, the Act indicates that it is referring to practices carried out by the industry, not to its victims.<sup>29</sup> Indeed, *amici* are firmly opposed to placing criminal penalties or stigma of any kind upon prostituted persons. *Amici*’s position in this brief, and our contention that there are sound justifications for the provisions of the Act, are absolutely conditioned on a finding that Section 7631 does *not* require such stigmatization, criticism, or criminalization.

Our interpretation of the Act’s provisions is informed by our understanding, developed in the course of our work, of what it means to oppose prostitution and sex

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<sup>29</sup> Moreover, the USAID policy on prostitution and trafficking sets forth a standard provision for a grant, cooperative agreement, or subagreement, which explicitly approves the use of harm reduction techniques to assist persons in prostitution and which reads as follows: “(a) The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. **Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.**” Acquisition & Assistance Policy Directive (AAPD 05-04 issued June 9, 2005 - *Implementation of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 - Eligibility Limitation on the Use of Funds and Opposition to Prostitution and Sex Trafficking*) (emphasis added).

trafficking. *Amici* believe that in order to work effectively against the harms inflicted by prostitution, including exposure to HIV/AIDS, it is essential to identify the industry of prostitution for what it is – a system of abuse, of exploitation, of discrimination, of violence. It is essential to confirm victims’ belief that they are entitled to something better than a life in prostitution, and to avoid any appearance of condoning the systematic exploitation perpetrated by pimps and johns.

*Amici* are opposed to the imposition of criminal penalties upon prostituted persons, the victims whose bodies are bought and sold. The lack of options that impelled these victims into the sex industry in the first place are worsened, not remedied, by criminal prosecution. But *amici* are convinced that criminal and other sanctions must be used against the pimps and the buyers who derive profit and pleasure from prostitution. Accountability for those who create the demand for prostitution and sex trafficking is one necessary component of a societal strategy for stopping the spread of the abuse. Legalization, in countries where it has been tried, has not succeeded as a strategy for helping prostituted individuals.<sup>30</sup>

One approach that has proven an effective way to oppose prostitution and sex trafficking is the approach taken by the government of Sweden, where criminal penalties do not apply to the persons sold in prostitution but are directed against the pimps and the buyers.<sup>31</sup> The results to date have been salutary. Trafficking into Sweden has dropped to statistically negligible numbers, compared to the estimated 15,000 to 17,000 women and

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<sup>30</sup> S. Jeffreys, “The Legalisation of Prostitution: A Failed Social Experiment” in *Women’s Health Watch Newsletter* 64 8-11 (2003)(available at <http://www.womens-health.org.nz/publications/WHW/whwapr03.htm#legalisation>).

<sup>31</sup> *Penal Code* of Sweden, Chapter 6, § 8; Chapter 23; J. Raymond, “Ten Reasons for *Not* Legalizing Prostitution and a Legal Response to the Demand for Prostitution,” *Journal of Trauma Practice* Vol. 2 No. 3/4, 315-332 (2003).



girls trafficked annually into neighboring Finland.<sup>32</sup> No other nation's efforts to combat prostitution and sex trafficking have come even close to Sweden's results; 80% of Sweden's people have come to support their country's policy, and the country's police and prosecutors have come to be among the policy's strongest supporters.<sup>33</sup>

*Amici's* combined experience teaches that "opposing prostitution" means extending empathy and assistance to prostituted persons, while requiring accountability for pimps and buyers, and decrying -and working to stop- the harmful industry that pimps and buyers perpetuate. We believe that the purposes of Sections 7631(e) and (f) will be best served if the United States clarifies its implementation of these Sections in a manner that is consistent with the above-stated principles. Moreover, we urge the Court to interpret and apply Sections 7631(e) and (f) in this light.

#### **POINT FOUR**

#### **The provisions of Sections 7631(e) and (f) were enacted in the wake of specific abuses documented prior to the passage of the Act.**

The requirement of a "policy explicitly opposing prostitution and sex trafficking" was enacted not in a vacuum but in the wake of specific abuses by certain organizations that have used HIV/AIDS-prevention funds to support their own efforts to promote legalization of prostitution and acceptance of prostitution as legitimate employment for poor women. The requirements imposed by Sections 7631(e) and (f) are justified as a way to ensure that HIV/AIDS-prevention funds are used to support programs that distribute condoms and provide health services while seeking to eliminate prostitution

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<sup>32</sup> Women's Justice Center, "Sweden's Prostitution Solution: Why Hasn't Anyone Tried This Before?" Available at [www.justicewomen.com](http://www.justicewomen.com).

<sup>33</sup> *Id.*

rather than perpetuate it.

A vivid example is an organization in South Africa called SWEAT (Sex Workers' Education and Advocacy Taskforce), a case in which the pro-prostitution "advocates" and the sex industry have been one and the same. SWEAT received funding to do HIV/AIDS prevention work in AIDS-ravaged South Africa and used the funds not only to distribute condoms but to advocate decriminalization and legalization of the sex industry and to recruit new women and girls into prostitution.<sup>34</sup> In 1995, SWEAT distributed a pamphlet whose goal was to "assist you in your career in the [sex] industry."<sup>35</sup> Funded with HIV/AIDS prevention monies, SWEAT offered training in "sexual massage."<sup>36</sup>

The sex industry's deep involvement in pro-prostitution advocacy is also illustrated by a group called Cal-PEP, which, as of 1993, had received \$1.6 million in state and federal grants to work on HIV/AIDS-prevention among persons in prostitution. Cal-Pep was directed by its founder's former pimp, a felon convicted of running an interstate prostitution ring. As of 2003, the year the Act was enacted, this organization was still receiving state HIV/AIDS-prevention funding.<sup>37</sup>

Against this backdrop, it is even clearer that the United States has compelling reasons to adopt a policy that requires organizations working with persons in prostitution to oppose prostitution and sex trafficking.<sup>38</sup> Organizations advocating the legalization of

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<sup>34</sup> M. Farley, "'Bad For the Body, Bad for the Heart': Prostitution Harms Women Even if Legalized or Decriminalized," *Violence Against Women* Vol. 10 No. 10, 1113 (2004).

<sup>35</sup> *Id.* at 1113.

<sup>36</sup> *Id.* at 1113.

<sup>37</sup> *Id.* at 1114.

<sup>38</sup> Indeed, in an action filed in the United States District Court for the District of Columbia, in which the plaintiff's claims are similar to the ones at issue here, the plaintiff is DKT International. DKT International's president is Phil Harvey, who runs a multi-million dollar pornography business. *DKT*

prostitution are promoting the interests of the sex industry and, in cases such as the ones cited above, *are* the sex industry. Such groups cannot possibly be expected to address or acknowledge the full array of harms suffered by the sex industry's victims and so are compromised in their ability to provide the most effective, comprehensive kinds of help that will enable individuals to leave prostitution.

The United States has an interest in ensuring that federal money is spent on organizations that, while distributing condoms to reduce harm, will simultaneously attack the source of the harm, not defend it. In light of the extensive evidence of the devastation caused by prostitution, this interest is truly a compelling one.

### **CONCLUSION**

As organizations led by, informed by, and serving the survivors of prostitution, *amici* submit this memorandum of law in support of a principle that is fundamental to our work: that service providers can effectively help individuals in prostitution by providing harm reduction measures such as condom distribution in the short term, while calling the prostitution industry a system of abuse and helping prostituted persons escape it in the long term. This pro-victim, anti-industry approach that guides *amici* as service providers also guides the legal method whose effectiveness has been proven in Sweden, where criminal penalties apply not to prostituted individuals but to those who buy and sell them.

We respectfully urge the Court to consider these principles in the case at hand.

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*International, Inc. v. United States Agency for International Development et al*, Civ. Act. No. 05-01604; "U.S. Man's Porn Sales Helping Fight AIDS Overseas," Associated Press, Oct. 10, 2005.

Organizations can oppose the prostitution industry without stigmatizing the individuals bought and sold in it, and 22 U.S.C. §§ 7631(e) and (f) should be read to require just such an approach. We ask the court not to equate the phrase “opposing prostitution” with stigmatizing the victims of prostitution. The prostitution industry is inherently harmful to the individuals bought and sold in it, and inextricably linked to violence, inequality, and discrimination. Helping victims while opposing the industry that exploits them is the best way to prevent HIV/AIDS, the best way to advance human rights, and the best way to fulfill the intent of the Act. We ask the Court to interpret Sections 7631 (e) and (f) in light of these principles.

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Respectfully submitted,

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## APPENDIX A

### STATEMENTS OF INTEREST OF *AMICI CURIAE*

#### 1. **APNE AAP (Calcutta, Bihar, Delhi, and Mumbai, INDIA)**

Apne Aap is a survivor-led service provider, based in Calcutta, Bihar, Delhi, and Mumbai, in India. Apne Aap Women Worldwide began as a community-based initiative of women in prostitution in the Khetwadi/ Kamatipura red light area of Mumbai in 1998. Twenty-two women in prostitution, who had worked with Emmy award-winning journalist Ruchira Gupta, to make a documentary, “The Selling of Innocents,” started this organization to end their own exploitation and prevent their sisters from being exploited through sex trafficking. Apne Aap currently has community centers in Mumbai, Forbesgunge ( Bihar), Kolkata and Delhi that provide support, counseling, income-generating projects and referrals to women who have been trafficked and sold in prostitution.

#### 2. **ASSOCIATION IROKO (Turin, ITALY, and NIGERIA)**

Association IROKO is a survivor-led service provider THAT provides shelter, financial assistance, legal assistance, psychological support and counseling, language courses, cultural mediation, orientation for employment insertion, vocational training and other forms of assistance to victims of trafficking and other forms of sexual exploitation. It works to eliminate trafficking, prostitution and all forms of exploitation of women and children.

#### 3. **ASSOCIATION WOMEN IN CONTEMPORARY SOCIETY (AWCS) (Chisiniu, MOLDOVA)**

Association Women in Contemporary Society (AWCS) is a service provider that works against trafficking for sexual exploitation with special focus on victim services in countries of destination for victims trafficked especially from Moldova, but also from other countries. AWCS establishes contacts in countries of transit and destination, assesses the situation for victims and sends representatives into the jails of countries such as the United Arab Emirates to which large numbers of Moldovan women are trafficked and jailed for prostitution offenses. AWCS has obtained the release of hundreds of victims of trafficking and prostitution, repatriates them to Moldova and gives them job training and assistance.

4. **BAGONG KAMALAYAN COLLECTIVE (Quezon City, THE PHILIPPINES)**

BAGONG Kamalayan Collective is a survivor-led service provider that is organized by victims/survivors of trafficking and prostitution. The Collective has organized a HEAL program providing the following services: H- healing for the victims; E-education and training for women and their children; A-alternative livelihood programs; L-linkage building, networking and advocacy for victims/survivors.

5. **BILATERAL SAFETY CORRIDOR COALITION (BSCC) (U.S. – Mexico Border)**

Bilateral Safety Corridor Coalition (BSCC) is a service provider. An alliance of over 60 agencies in the United States and Latin America that works along the U.S.-Mexico border to combat slavery and human trafficking. BSCC works bilaterally. Among its many projects, it administers a variety of services for victims of sexual exploitation and human trafficking.

6. **BREAKING FREE (Minneapolis and St. Paul, Minnesota, U.S.)**

Breaking Free is a survivor-led service provider. Breaking Free is an Afro-Centric non-profit organization, launched in 1996, to serve women and girls involved in systems of prostitution and sex trafficking. Breaking Free works especially to overcome the sexual exploitation of African-American women and girls who are disproportionately represented among women in prostitution. Breaking Free provides shelter, support, counseling, HIV/AIDS outreach and prevention, including condoms, and referrals to victims of prostitution and trafficking.

7. **BUKLOD (Olongapo, THE PHILIPPINES)**

BUKLOD is a survivor-led service provider. BUKLOD ng Kababaihan was established in 1987 as a drop-in center for women in prostitution in Olongapo, former site of the U.S. Subic Naval Base. A core group of women in the bars, who were used in prostitution by the U.S. military men, organized to give aid to each other and promote solidarity among themselves. BUKLOD continues to provide services to women in the bars and clubs of Olongapo, working with women in prostitution to offer health services including HIV/AIDS counseling and prevention, emergency help, and income generating projects. BUKLOD's work with women in prostitution is based on the recognition that prostitution is a form of violence against women and a violation of women's human rights.

**8. CENTER FOR COUNSELING AND INFORMATION ON SEXUAL VIOLENCE (STIGAMOT) (Reykjavik, ICELAND)**

The Center for Counseling and Information on Sexual Violence (Stigamot) is a service provider. Stigamot is a counseling and information centre on sexual violence. Its two main goals are to support survivors of sexual violence and to raise awareness in society on a feminist platform. Stigamot provides counseling and referrals to victims of prostitution and trafficking and has a representative in the Icelandic Task Group against Trafficking organized by the Ministry of Justice and Ministry of Gender and Social Affairs. Stigamot has also testified on legislative bills regarding trafficking.

**9. COALITION AGAINST TRAFFICKING IN WOMEN, ASIA PACIFIC (CATW-AP) (Manila, THE PHILIPPINES)**

The Coalition Against Trafficking in Women, Asia Pacific (CATW-AP) is a service provider. CATW-AP is part of a network of feminist groups, organizations and individuals fighting the sexual exploitation of women, in particular prostitution and trafficking worldwide. CATW-Asia has partners in India, Indonesia, Cambodia, Korea, Nepal and Bangladesh. It documents cases of violence against women and children, trains and educates young men to combat the demand for sexual exploitation that promotes trafficking, and provides legal, economic and counseling services for women in prostitution. CATW-AP partners with survivor groups in their healing process and helps them to generate economic and livelihood activities and projects.

**10. GIRLS EDUCATIONAL AND MENTORING SERVICES (GEMS) (New York State, U.S.)**

Girls Educational and Mentoring Services (GEMS) is a survivor-led service provider and is the only organization in New York State providing specialized services to young women and girls ages 12-21 who have experienced commercial sexual exploitation and violence. GEMS was founded in response to the overwhelming need for services for young women at risk for, or involved in, sexual exploitation who were slipping through the cracks of traditional agencies. GEMS was specifically designed to provide empathetic, non-judgmental, consistent support and viable opportunities for positive change. GEMS' services include crisis intervention, individual and peer counseling, short-term family therapy, recreational groups, educational programs, internships, employment training, and referrals for legal, educational, vocational, and health services.

**11. INTERNATIONAL UNION –CENTER FOR FOREIGN CITIZENS AND MIGRANTS RIGHTS AND SECURITY (FCRS) (Tbilisi, GEORGIA)**

International Union –Center for Foreign Citizens and Migrants Rights and Security (FCRS) is a service provider. The FCRS was founded in 2000 as a Georgian human rights organization to protect the rights of illegal migrants and victims of trafficking. FCRS has spearheaded a hotline, shelter, clinic and legal aid for socially unprotected women, particularly single mothers, and women in prostitution, women who have been internally displaced refugees, and representatives of religious and ethnic minorities. The organization has projects that protect the rights of immigrants and foreigners in Georgia as well as Georgian citizens who have emigrated or been trafficked abroad. Currently, FCRS is also providing skills and job training for victims of trafficking. It has assisted more than 50 victims of trafficking in returning to Georgia.

**12. KVINNEFRONTEN (WOMEN’S FRONT) (Oslo, NORWAY)**

Kvinnefronten (Women’s Front) provides funding and support for programs offering support to victims. Kvinnefronten gives financial and technical support to NGOs that provide services to victims of prostitution and trafficking.

**13. MINORITIES AND SURVIVORS IMPROVING EMPOWERMENT (MASIE) (Bloomington, MINNESOTA)**

Minorities and Survivors Improving Empowerment (MASIE) is a survivor-led service provider that provides ongoing support and resources to victims of sexual exploitation and trafficking including women, men, gay, lesbian, bisexual and transgender, and immigrant victims. MASIE offers resources, counseling and referrals to victims.

**14. MIRAMED INSTITUTE (RUSSIA)**

MiraMed Institute is a service provider. Founded in 1999, MiraMed Institute partners with 300 Russian NGOs and organized Russia’s first anti-trafficking consortium, the Angel Coalition. MiraMed and the Angel Coalition operate Trafficking Victim Assistance Centers in Russia working internationally with law enforcement, NGOs and GOs, and the Russian Ministries of Foreign Affairs and Interior to rescue and repatriate Russian-speaking trafficking victims in Europe, the U.S., and the Middle East. MiraMed and the Angel Coalition provide training and direct support to nine regional safe house projects with helplines where victims of



trafficking receive shelter and reintegration services. These nine safe houses are the only dedicated shelters in Russia specifically for victims of trafficking.

**15. PANDORA (Antwerp, BELGIUM)**

Pandora is a survivor-led service provider committed to addressing the needs of individuals in prostitution.

**16. PROSTITUTION RESEARCH AND EDUCATION (PRE) (San Francisco, California, U.S.)**

Prostitution Research and Education (PRE) is a service provider. Direct services to survivors of prostitution and trafficking include consultations, referrals for services, and forensic evaluations. PRE also advocates abolishing prostitution while at the same time helping to provide alternatives to it, including emotional and physical health care for women in prostitution, and helping to document the perspectives of victims through research, public education and arts projects.

**17. STANDING AGAINST GLOBAL EXPLOITATION (The SAGE Project, Inc.) (San Francisco, California, U.S.)**

Standing Against Global Exploitation (The SAGE Project, Inc.) is a survivor-led service provider that has been continuously managed and staffed by prostitution survivors. Consistent with a harm reduction model, SAGE counselors attempt to meet women “where they are.” Services for women involved in and exiting prostitution include safer sex strategies such as HIV/AIDS prevention, counseling, health care, community education programs, intensive drug and mental health treatment, case management, emergency intervention, and job training and placement. Counselors seek to help women develop exit plans, which are implemented only when their clients elect to do so.

**18. SHELTER MOVEMENT SECRETARIAT (Oslo, NORWAY)**

Shelter Movement Secretariat provides services to victims. An organization of 33 shelters and emergency hotlines founded in 1994 working to address the problems of abused women throughout Norway. The shelter also gives various forms of help and protection to female victims of trafficking in Norway. In a project called ROSA (Re-establishment – Organizing safe places to stay - Security – Assistance), the Shelter Movement offers an emergency and information hotline, shelter and information to victims of trafficking. It also provides information and assistance to governments, NGOs

and lawyers.

**19. VERONICA'S VOICE (Kansas City, Missouri, U.S.)**

Veronica's Voice is a survivor-led service provider named after Veronica April Neverdusky, a twenty-one-year-old prostituted woman, and the mother of three young children, who was found murdered in Penn Valley Park, Kansas City, MO. Veronica's Voice is the only prostitution recovery program in the Kansas City metropolitan area. The goal of Veronica's Voice is to empower women in prostitution to reclaim their lives, escape the violence of prostitution, and make healthy life choices. Veronica's Voice provides peer counseling, support groups, and on-site HIV-testing and counseling, and collaborates with other agencies to ensure that clients' basic survival, health, and safety needs are met.