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Sexualized Police Violence & Bias: Are Black Males Most Vulnerable?

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SEXUALIZED POLICE VIOLENCE AND BIAS: ARE BLACK MALES MOST VULNERABLE?

SAMUEL VINCENT JONES*

It is sometimes mistakenly thought that the black male experience represents a mere racial variation on the white male experience and that black men suffer from discrimination only because they are black. Conceptualizing separate over-lapping black and male categories has sometimes interfered with the recognition that certain distinctive features of being black and male serve as the target for discrimination.

-Lynn Adelman, U.S. District Judge**

I.	INTRODUCTION	628
II.	MEN AND BOYS SUFFER FROM SEXUAL ABUSE AT RATES COMPARABLE TO WOMEN AND GIRLS.....	634
	A. Data Indicate that the Number of Male and Female Victims of Sexual Abuse are Virtually Equal.....	636
	B. Harmful Narratives regarding Masculinity and Sexual Abuse.	642
III.	ANTI-BLACK MALE BIAS AND HARMFUL POLICING.....	651
	A. Anti-Black Male Bias Operates as a Catalyst for Casting Black Men as Sexual Predators.....	652
	B. Police Anti-Black Male Bias and Sexual Violence .	661
	1. Darren Manning	663
	2. Abner Louima.....	663
	3. Coprez Coffee	663
	4. Angel Perez	664
	5. Andre Little.....	664
	6. Corey Green.....	664
	7. Elijah Pontoon.....	665
	8. James Mitchell.....	665
	9. Kevin Campbell.....	665
	10. Robert Douglas.....	666
	11. Juan Johnson	666
	12. Joshua Rashid Radwan	666
IV.	CONCLUSION	667

I. INTRODUCTION

The horrific police killings of Tyre Nichols,¹ George Floyd,² Eric Garner,³ Tamir Rice,⁴ Philando Castille,⁵ and numerous other Black males—coupled with episodes of police targeting Black males like Kenneth Walker,⁶ whose encounter with police led to the tragic death of Breonna Taylor,⁷—create a reasonable inference that anti-Black male bias permeates law enforcement and is a constitutive element of American culture.⁸ As police violence saturates the daily

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***Kimble v. Wisconsin Dep't of Workforce Dev.*, 690 F. Supp. 2d 765, 770 (E.D. Wis. 2010).

1. Kiara Alfonseca, Nakylah Carter, & Ivan Pereira, *Tyre Nichols: A Timeline of the Investigation of his Death*, ABC NEWS (Feb. 17, 2023), www.abcnews.go.com/US/tyre-nichols-timeline-investigation-death/story?id=96695791 [perma.cc/8FM3-B8KZ].

2. Tara McKelvey, *George Floyd: The Murder that Drove America to the Brink*, BBC NEWS (Apr. 21, 2021), www.bbc.com/news/world-us-canada-56825822 [perma.cc/G47Q-FEAV].

3. Martin Pengelly, *Eric Garner's Family To Receive \$5.9 Million from New York City*, THE GUARDIAN (July 13, 2015), www.theguardian.com/us-news/2015/jul/13/new-york-city-pays-59m-in-settlement-with-family-of-eric-garner [perma.cc/3YJT-CUCA].

4. Neil Vigdor, *Two Cleveland Officers Avoid Federal Charges in Killing of Tamir Rice*, CNN (Feb. 2, 2021), www.cnn.com/2020/12/29/us/tamir-rice-shooting-no-federal-charges/index.html [perma.cc/CMU7-WB8X].

5. Phil Helsel & Jacquellena Carrero, *Philando Castile, Killed By Police During Traffic Stop, Remembered as Gentle Man*, NBC NEWS (July 7, 2016), www.nbcnews.com/news/us-news/philando-castile-killed-police-during-traffic-stop-remembered-gentle-man-n605581 [perma.cc/HGN3-S7B9].

6. Eduardo Medina, *Louisville to Pay \$2 Million to Breonna Taylor's Boyfriend, Lawyers Says*, N.Y. TIMES (July 12, 2022), www.nytimes.com/2022/12/12/us/breonna-taylor-settlement-kenneth-walker.html [perma.cc/CPU4-UTUB].

7. Ivan Pereira, *Kenneth Walker, Boyfriend of Breonna Taylor, Sues Police and City of Louisville for Immunity*, ABC NEWS (Sept. 1, 2020), www.abcnews.go.com/US/kenneth-walker-boyfriend-breonna-taylor-sues-police-city/story?id=72754382 [perma.cc/L4EH-AJFQ].

8. TOMMY J. CURRY, *THE MAN-NOT: RACE, CLASS, GENRE, AND THE DILEMMAS OF BLACK MANHOOD* 143 (Temple Univ. Press 2017); *see also* *Chicago Police Union Leader Warns of Resignations, "Blood in the Streets" if Brandon Johnson is Elected Mayor*, NBC CHICAGO (Mar. 29, 2023), www.nbcchicago.com/chicago-mayoral-election-2023/chicago-police-union-

leader-warns-of-resignations-blood-in-the-streets-if-brandon-johnson-is-elected-mayor/3106162/ [perma.cc/MZ28-8KTH] (reporting that Chicago police union leader warns that scores of Chicago police officers will resign if Black male candidate wins 2023 Chicago mayoral runoff); Eli Hager & Weihua Li, *White US police Union Bosses Protect Officers Accused of Racism*, THE GUARDIAN (June 10, 2020), www.theguardian.com/us-news/2020/jun/10/police-unions-black-officers-white-leaders [perma.cc/FA8Z-BTJH] (noting that police union leadership in the largest cities are almost exclusively White and routinely defend officers accused of racism against Blacks); Samuel Vincent Jones, *Law Enforcement and White Power: An FBI Report Unraveled*, 41 T. MARSHALL L. REV. 103, 104 - 05 (2015) [hereinafter Jones, *Unraveled*] (discussing numerous circumstances in which White supremacists serve in police departments); Brianna Hathaway, *A Necessary Expansion of State Power: A "Pattern or Practice" of Failed Accountability*, 44 N.Y.U. REV. L. & SOC. CHANGE 61, 67 (2019) (pointing to studies indicating "black males aged 15-34 were 9 times more likely than other Americans to be killed by law enforcement" and "in thirteen of the one hundred largest U.S. cities--where 27% of policing killings occurred from January 2013 to December 2016--the police killed Black individuals at higher rates than the national murder rate"); Robin K. Magee, *The Myth of the Good Cop and the Inadequacy of Fourth Amendment Remedies for Black Men: Contrasting Presumptions of Innocence and Guilt*, 23 CAP. U. L. REV. 151, 216 (1994) (noting that courts have legitimized police violence against Black men in a fashion that virtually encourages juries to invalidate the "perceptions and statements of black men" and facilitates "anti-Black male bias"); I. Bennett Capers, *Rethinking the Fourth Amendment: Race, Citizenship, and the Equality Principle*, 46 HARV. C.R.-C.L. L. REV. 1, 33 (2011) (noting that U.S. Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968), operates as "a springboard for modern police methods that target black men and others for arbitrary and discretionary intrusions"); Nancy Leong & Aaron Belzer, *The New Public Accommodations: Race Discrimination in the Platform Economy*, 105 GEO. L.J. 1271, 1322 n. 103 (2017) (pointing to a study indicating "police kill black men ages 15-19 twenty-one times more often than their white counterparts"); Sonia M. Suter, *All in the Family: Privacy and DNA Familial Searching*, 23 HARV. J.L. & TECH. 309, 369 (2010) (discussing a study that revealed that "an astonishing 92 percent of the black men arrested by police on drug charges were subsequently released for lack of evidence or inadmissible evidence" and that although "the marijuana arrest rates for blacks to whites are eight to one in New York City ... government statistics have consistently shown that for all categories of age ranges, marijuana use among blacks is significantly lower than for whites, sometimes about half"); Benjamin Levin, *What's Wrong with Police Unions?*, 120 COLUM. L. REV. 1333, 1336 (2020) (observing that "police unions still represent predominantly white workers and frequently take public stands that are hostile to racial justice or that express outright racism"); Perry L. Moriearty & William Carson, *Cognitive Warfare and Young Black Males in America*, 15 J. GENDER RACE & JUST. 281, 284 (2012) (noting that even when crime rates among black youth have dropped, "lawmakers and their constituents continue to support laws and policies that they know disproportionately punish and incapacitate young black males"); Lakeidra Chavis & Geoff Hing, *The War on Gun Violence Has Failed. And Black Men Are Paying the Price*, THE MARSHALL PROJECT (Mar. 23, 2023) (reporting that "[a]lthough Black people comprise less than a third of the city's population, they were more than 8 in 10 of those arrested for unlawful possession in the timeframe we reviewed. The number of Black people arrested could fill every seat at a Chicago Bulls game and then some; the majority are men in their 20s and 30s"); *Police Fatal Force Database*, WASH. POST., www.washingtonpost.com/graphics/investigations/police-shootings-database/ [perma.cc/6UHU-

lives of many Black males,⁹ particularly heterosexual Black males, who generally lack the political, educational, and financial support their female and LGBTQ+ counterparts deservedly receive,¹⁰ anti-Black male bias flourishes in other facets of society. Jurisprudential critique of police violence against Black males is almost exclusively limited to killings, leaving virtually untouched any recognition of sexualized police violence or widespread mistreatment of Black males.¹¹

N7BR] (last accessed Apr. 10, 2023) (reporting that of the 26% (1,859) of all people killed by police since January 1, 2015, 96% were Black males and Black females (1,929) killed by police since January 1, 2015).

9. CURRY, *THE MAN-NOT*, *supra* note 8, at 144.

10. See, e.g., Alexander Kacala, *Biden Launches 'As You Are,' a LGBTQ Family Acceptance Campaign*, NBC NEWS (Aug. 8, 2018), www.nbcnews.com/feature/nbc-out/biden-launches-you-are-lgbtq-family-acceptance-campaign-n898 [perma.cc/V75J-PUY2] (providing President Biden's address regarding the harm family rejection causes for members of the LGBTQ+ community); Jeanette Settembre, *Google to Provide 100,000 Black Women with Digital Career Training*, FOX BUSINESS (Feb. 12, 2021), www.foxbusiness.com/lifestyle/google-provide-100000-black-women-career-digital-skills-training [perma.cc/XZC9-N9PL] (noting Google's initiative to provide 100,000 Black women career development and digital skills training); Erika Beras, *Goldman Sachs to Invest Billions in Black Women*, MARKETPLACE (Mar. 12, 2021), www.marketplace.org/2021/03/12/goldman-sachs-to-invest-billions-in-black-women/amp/ [perma.cc/B763-6JCV]; *100 Black Women Business Owners Selected for 25K from American Express*, PHIL. WOMEN (Nov. 30, 2020), www.philanthropywomen.org/gender-lens-corporate/100-black-business-women-selected-for-25-k-from-american-express/ [perma.cc/UEF2-RGFL] (noting the Goldman Sachs' commitment to provide \$10 billion over next decade towards economic opportunities for Black women); Danielle Agugliaro, *31 Companies With Impactful Initiatives to Support Their LGBTQ Employees*, RIPPLEMATCH (Sept. 21, 2021), www.ripplematch.com/insights/companies-with-impactful-initiatives-to-support-their-lgbtq-employees-ce4be06a/ [perma.cc/CY7K-EEC5] (stating that 31 companies will launch initiatives to support LGBTQ employees); Sunny Betz, *23 Companies Supporting LGBTQ+ Community Every Day*, BUILT IN (June 16, 2022), www.builtin.com/diversity-inclusion/companies-that-support-lgbtq [perma.cc/X2DK-LPQB] (noting Los Angeles companies that seek to address the lack of resources, poor protection, and ignorance that impact LGBTQ employees).

11. CURRY, *THE MAN-NOT*, *supra* note 8, at 142-43. By "sexualized police violence," the author means "police sexual misconduct" or "any behavior by an officer that takes advantage of the officer's position in law enforcement to misuse authority and power (including force) in order to commit a sexual act, initiate sexual contact with another person, or respond to a perceived sexually motivated cue (from a subtle suggestion to an overt action) from another person." See Samuel Vincent Jones, *Police, Heroes and Child Trafficking: Who Cries When Her Attacker Wears Blue?*, 18 NEV. L. J. 1007, 1010 (2018) [hereinafter Jones, *Police, Heroes and Child Trafficking*]. Police sexual misconduct, thus, may include, "sexual assault or rape," "extorting sexual favors in exchange for not ticketing or arresting a citizen," "inappropriate or unnecessary searches, frisks or pat-downs," "officer-initiated sexual contacts while on duty," "engaging in citizen-initiated sexual contact while on duty," "masturbation, viewing and/or distributing pornographic images, sexting," "looking in windows of residences for sexually motivated reasons," "unwarranted call backs to crime victims, making a traffic stop to get a closer

For instance, Black males fare worse than Whites and their female counterparts relative to unemployment, life expectancy, graduation, and incarceration rates.¹² Black males are more likely to be searched, arrested, or killed by police;¹³ and are the only demographic group where police killings are a leading cause of death.¹⁴ Despite distinct manifestations of societal anti-Black male bias that relegates Black males to alarming levels of incessant oppression, intersectionality theorists have advanced empirically unsubstantiated claims that Black males are disadvantaged only by racism, but privileged because of maleness.¹⁵ Social and academic

look at the driver for non-professional reasons,” or “inappropriate and unauthorized use of department resources and/or information systems for other than legitimate law enforcement purposes.” *Id.*; see also Timothy Maher, *Police Sexual Misconduct*, in CONTEMPORARY POLICING: CONTROVERSIES, CHALLENGES, AND SOLUTIONS: AN ANTHOLOGY 327-38 (Quint Thurman ed., 2004) (enunciating various examples of law enforcement sexual misconduct).

12. CURRY, THE MAN-NOT, *supra* note 8, at 139; see also Jason Lalljee, *Companies Still Aren't Hiring Black Men, Despite 10.6 million Open Jobs in the U.S. It's Costing the Economy \$50 Billion*, INSIDER (Jan. 5, 2022), www.businessinsider.com/black-men-unemployment-economic-cost-45-million-jobs-labor-shortage-2022-1 [perma.cc/54AT-B5P4] (noting that the unemployment rate for Black men is 7.3%); Brian Bridges, *African Americans and College Education by the Numbers*, UNCF, www.uncf.org/the-latest/african-americans-and-college-education-by-the-numbers [perma.cc/7AJP-DR8G] (last visited Apr. 2, 2023) (providing details of barriers faced by Black students at universities); Ciera Graham, *Why is Black Male Enrollment in Decline?*, BEST COLLEGE'S (Feb. 23, 2022), www.bestcolleges.com/blog/black-male-enrollment/ [perma.cc/2YXM-QHN4] (“[n]oting that college enrollment rates for Black men have been declining precipitously for over a decade because Black men face discrimination and obstacles that can inhibit their ability to enroll and then remain in college. The reasons for the enrollment decline and low numbers are often historically systemic rooted in a continued dehumanization and exclusion of Black men in America”); M. Jermaine Bond & Allen A. Herman, *Lagging Life Expectancy for Black Men: A Public Health Imperative*, 106 AM. J. PUB. HEALTH. 1167, 1167 (July 2016) (stating “Black men continue to have substantially lower life expectancy at birth than Black women and White women and men.”).

13. Richard Reeves, Sarah Nzau, & Ember Smith, *The Challenges Facing Black Men and the Case for Action*, BROOKINGS INST. (Nov. 20, 2020), www.brookings.edu/blog/up-front/2020/11/19/the-challenges-facing-black-men-and-the-case-for-action/ [perma.cc/HH3H-DETY].

14. TOMMY J. CURRY, *He Never Mattered: Poor Black Males and the Dark Logic of Intersectional Invisibility*, in THE MOVEMENT FOR BLACK LIVES: PHILOSOPHICAL PERSPECTIVES 59, 59 (Oxford Univ. Press) (2021) [hereinafter CURRY, *He Never Mattered*].

15. See Athena D. Mutua, *Multidimensionality Is to Masculinities What Intersectionality Is to Feminism*, 13 NEV. L. J. 341, 345 (2013) (recognizing that despite black men suffering higher incidents of profiling and being especially targeted for it not only because they are black but also because they are men, intersectionality suggests Black men are “privileged by gender and subordinated by race”); *Craig v. Yale Univ. Sch. of Med.*, 838 F.Supp.2d 4, 9 (D. Conn. 2011) (recognizing that “race plus” or “intersectional claims” of discrimination against Black males can exist even without proof of discrimination against African-American women or against white males);

discourse are so suffused with assertions that Black males, like White males, occupy positions of privilege because of their maleness that this genus of anti-Black male bias is rarely challenged and, if challenged, is perceived as “anti-female or anti-queer,”¹⁶ or met with accusations of misogyny.¹⁷

Consequently, the notion that Black maleness, and maleness generally, may render men and boys vulnerable to persistent degrees of sexual violence, including at the hands of police officers, likely strikes most observers as ludicrous. Such a claim conflicts with deeply rooted notions of male privilege and patriarchy.¹⁸ The conventional wisdom is that sexual violence against males, particularly at the hands of police officers, is virtually nonexistent and, thus, poses no significant public safety threat.¹⁹

This Article challenges the conventional wisdom by making what some might consider a brash claim. Relying on objective assessments of legal strictures and investigative findings, this Article reasons, among other things, that Black males suffer from sexual violence at rates comparable to females, but are less likely to be identified as victims, and more likely to be wrongly convicted of sexual violence. It confronts contemporary assumptions about male vulnerability to sexual violence. In so doing, it reasons that societal narratives regarding sexual violence, masculinity, and race, improperly situate culpability in ways that vilify Black males, while elevating the social status and privileges of other groups.

The intent of this Article is not to expound on all historical accounts of sexual abuse of men and boys, police sexual violence or manifestations of anti-Black male bias. Rather, the aim is to contribute to an extant body of sexual victimization and intersectional jurisprudence that has long ignored the struggle of Black males to escape calamitous societal manifestations of anti-Black male bias.

The reasoning underlining this critique proceeds with the

Kimble v. Wis. Dept. of Workforce Development, 690 F.Supp.2d 765, 770–71 (E.D. Wis. 2010) (recognizing that conceptualization of “black and male categories has sometimes interfered with the recognition that certain distinctive features of being black and male serve as the target for discrimination” and that “Black males are subject to distinct stereotypes.”).

16. Paul Butler, *Black Masculinity and the Government*, 2022 U. CHI. LEGAL F. 21, 40 (2022) (reasoning that attempts to recognize the “intersectional identities of Black men” is perceived as “anti-female or anti-queer.”).

17. CURRY, *THE MAN-NOT*, *supra* note 8, at 141.

18. Christine Rosen, *The Psychological War on Masculinity*, COMMENTARY (Feb. 2019), www.commentary.org/articles/christine-rosen/psychological-war-masculinity/ [perma.cc/S5G8-RGXC].

19. Jones, *Police, Heroes and Child Trafficking*, *supra* note 11, at 1011 (first citing David Young, *Top Cops: A Few Bad Apples Don't Spoil the Whole Bunch, Officials Say*, GREELEY TRIB. (Jan. 18, 2008), then citing Richard Fossey & Todd A. DeMitchell, *Let the Master Answer: Holding Schools Vicariously Liable When Employees Sexually Abuse Children*, 25 J. L. & EDUC. 575, 580 (1996) (describing police sexual misconduct as “uncommon. . .”).

expectation that recognition of male vulnerability to sexual violence does not threaten the rights of women and girls to live free from the festering perils of sexual violence. There is no question that women and girls have historically endured significant levels of sexual harm, particularly at the hands of men, and that preventing sexual abuse of women and girls is, and should remain, a priority of law enforcement and serious academic inquiry. Nonetheless, because males, particularly Black males, experience comparable degrees of sexual violence from men and women, including police officers, it is critically necessary to examine preexisting and emerging cultural norms that facilitate sexualized police violence against men and boys.²⁰

The discussion advances in two substantive parts. Part II offers an elaborate survey of male sexual victimization rates with particular emphasis on boy victims. In so doing, it considers a growing body of literature that indicates males suffer from sexual violence at rates comparable to females. It also weighs societal narratives regarding sexual violence and masculinity against the backdrop of male vulnerability to sexual exploitation from traffickers, relatives, teachers, and other authority figures. Part III discusses the ignominy of Black masculinity, and how presumptions about Black masculinity and sexual violence render Black males increasingly susceptible to sexual exploitation and abuse. It briefly critiques the troubling, but largely unexplored, practice of police officer anal cavity searches of Black male motorists and pedestrians, which some scholars have categorized as rape.²¹ Part III also questions the legitimacy and motives surrounding the disproportionate arrest and prosecution of Black males for domestic sex trafficking.

20. See discussion *infra* notes 35–53, 61–69 and accompanying text (discussing how policies purportedly aimed at helping women and girls fail to address the needs of men and boys); Samuel Vincent Jones, *Law Schools, Cultural Competency and Anti-Black Racism: The Liberty of Discrimination*, 21 BERKELEY J. AFR. AM. L. 84, 90 (2021).

21. The Fourth Amendment has been interpreted to authorize body cavity searches for law enforcement purposes. *Bell v. Wolfish*, 441 U.S. 520, 559–60 (1979). Police officer anal searches have been limited to a police officer’s visual inspection of a Black male’s anus without touching him, such as having him bend over or squat and cough while naked, but the practice has evolved into police officer’s physical penetration of the male’s anus, under the guise of conducting an investigative search for contraband on the public streets. *Gonzalez v. City of Schenectady*, 728 F.3d 149, 158–61 (2d Cir. 2013); see also *Evans v. Stephens*, 407 F.3d 1272, 1279–80 (11th Cir. 2005) (stating that a police officer violated a driver’s constitutional “right to be free from an unreasonable search when he performed an investigatory strip search for drugs” and that an officer may need “higher than reasonable suspicion in situations where the search includes “touching genitalia and penetrating anuses”); Paul Butler, *Stop and Frisk and Torture-Lite: Police Terror of Minority Communities*, 12 OHIO ST. J. CRIM. L. 57, 62 (2014) (describing body cavity searches as disguised rape).

II. MEN AND BOYS SUFFER FROM SEXUAL VIOLENCE AT RATES COMPARABLE TO WOMEN AND GIRLS

A decade ago, after discovering that research regarding the experiences of male victims of human trafficking was grossly undeveloped and comparatively non-existent in academic literature, I wrote *Invisible Man: The Conscious Neglect of Men and Boys in the War on Human Trafficking* (“*Invisible Man*”).²² *Invisible Man* rested upon a series of jurisprudential and qualitative findings that established the falsity of the nation’s conventional wisdom that human trafficking, including sex trafficking, is a categorical offense primarily perpetrated against women and girls.²³ It reasoned that the constant portrayal of sex trafficking as an offense primarily perpetrated against women and girls, coupled with incessant descriptions of males as “criminals, cheaters, offenders, or victimizers of girls” encouraged legislatures to allocate resources firmly for women and girl victims, while not only ignoring male victims, but recasting them as victimizers.²⁴

Invisible Man noted that the Trafficking Victims Protection Act

22. Samuel Vincent Jones, *The Invisible Man: The Conscious Neglect of Men and Boys in the War on Human Trafficking*, 4 UTAH L. REV. 1143, 1145 (2010) [hereinafter Jones, *Invisible Man*] (highlighting the widespread neglect of male sex trafficking victims); *Invisible Man* was followed by Samuel Vincent Jones, *Ending Bacha Bazi: Boy Sex Slavery and the Responsibility to Protect Doctrine*, 25 IND. INT’L & COMP. L. REV. 63 (2015) [hereinafter Jones, *Bacha Bazi*] (addressing the alarming practice of sex trafficking of boys in U.S. occupied Afghanistan and cited by the United Nations Human Rights Council in U.N. Doc. A/HRC/31/NGO/X). *Bacha Bazi* was cited by the United Nations to address this particular sex trafficking. U.N. Gen. Assembly Hum. Rts. Council Statement on Ending the Disturbing Violation of Rights that is *Bacha Bazi* at Its Thirty-First Session, U.N. Doc. A/HRC/31/NGO/X (Feb 15, 2016).

23. See Jones, *Invisible Man*, *supra* note 22, at 1143-46; Samuel Vincent Jones, *The Invisible Women: Have Conceptions About Femininity Led to the Global Dominance of the Female Human Trafficker?*, 7 ALB. GOV’T L. REV. 143, 148-49 (2014) (noting that “[t]he notion that primarily women and girls are victims of exploitation and violence has special resonance in human trafficking discourse” and that, “[t]he great weight of...purported public awareness commentary has been centered on female victims.”).

24. See Jones, *Invisible Man*, *supra* note 22, at 1166-67; Samuel Vincent Jones, *Men and Boys and the Ethical Demand for Social Justice*, 20 WASH. & LEE J. CIV. RTS. & SOC. JUST. 507, 539 (2014) [hereinafter Jones, *Men and Boys*]; Adam Voiland, *The ‘Silent Phenomenon’ of Male Sexual Abuse*, U.S. NEWS & WORLD REP.’S (Sept. 8, 2008), health.usnews.com/health-news/blogs/on-men/2008/09/08/the-silent-phenomenon-of-male-sexual-abuse [perma.cc/K5YW-GABF] (positing that because American culture assumes that sexual abuse only happens to women, many men are sexually abused, but the abuse goes unreported); see, e.g., Marci Hamilton, *Is Penn State the Catholic Church?*, THE HUFFINGTON POST (Nov. 8, 2011), www.huffingtonpost.com/marci-hamilton/is-penn-state-the-catholi_b_1082595.html [perma.cc/R4NK-RZCR] (discussing how young men were victimized in both educational and religious settings and further victimized by the institutional leaders’ concealment of the scandal).

(“TVPA”),²⁵ while gender-neutral in text, failed “to protect male victims of human trafficking.”²⁶ The work reasoned that the TVPA’s ineffectiveness at protecting male victims flowed directly from law enforcement professionals and service providers interpreting the sole purpose of the TVPA to be for the benefit of women and girls.²⁷ *Invisible Man* examined the degree male victims were woefully unaccounted for in victim data-reporting sources, national statistics, and law enforcement data.²⁸ It argued that the lack of attention afforded male victims of sex trafficking further contributed to the surreptitious trafficking of boys to feed “the high demand for child pornography,” which depicted more boys than girls in most circumstances.²⁹

Invisible Man explained that men and boys “frequently do not report their abuse” because socially imposed constructions of masculinity pressured men and boys to act self-reliant and invulnerable.³⁰ Those findings, coupled with a well-entrenched societal distrust of males, generally,³¹ resulted in (1) a lack of funding for male oriented anti-sex trafficking programs,³² (2) a dearth of male victim treatment centers and shelters, and (3) routine use of definitional standards that excluded male-victims, all of which amounted to a societal neglect of male victims of sexual abuse.³³

25. Trafficking Victims Protection Act of 2000 (“TVPA”), Pub. L. No. 106-386, 114 Stat. 1466 (codified as 22 U.S.C. § 7101-7114).

26. Jones, *Invisible Man*, *supra* note 22, at 1176 (citing WARREN FARRELL, *THE MYTH OF MALE POWER* 221 (1993)).

27. *Id.*

28. *Id.* at 1163-64.

29. *Id.* at 1149.

30. *Id.* at 1145, 1151, 1175 (citing ANN WOLBERT BURGESS & CHRISTINE A. GRANT, *Children Traumatized In Sex Rings*, in NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN 4 (1988); Cynthia L. Wolken, *Feminist Legal Theory and Human Trafficking in the United States: Towards a New Framework*, 6 UNIV. MD. L. J. RACE, RELIGION, GENDER & CLASS 407, 426 (2006)).

31. Jones, *Invisible Man*, *supra* note 22, at 1176 (citing FARRELL, *supra* note 26).

32. *Id.* at 1166-67 (describing the table of anti-trafficking organizations receiving funding from the State Department and USAID, with fifteen organizations aimed at helping women, girls, or “women and children,” and only two organizations aimed at men or boys and 222 funding agencies with only two focusing on boys).

33. *Id.* at 1151 (“When boys do report abuse, they face severe stigmatization, which increases the likelihood that they will suffer psychosocial problems. . . listing other possible reasons, such as fear of losing independence and unsupervised activities, the stigma surrounding homosexuality, and media depictions of sexual abuse.”).

A. *Data Indicates that the Number of Male and Female Victims of Sexual Violence are Virtually Equal.*

Since *Invisible Man*, a number of tragic occurrences have increased awareness regarding the wide degree that men and boys experience sexual violence.³⁴ More than 40 former Black male students reported being sexually molested by a University of Michigan physician.³⁵ Over 12,000 boys reported being sexually abused as Boy Scouts.³⁶ In excess of 162 male students reported being sexually assaulted by a school official at Ohio State University.³⁷ A shocking report that famed #MeToo leader, Asia Argento, had sexual relations with a male child provided new insight regarding the extent males experience sexual violence.³⁸

The U.S. Department of State has now aligned itself with the findings advanced in *Invisible Man* by its recognition that “men and boys represent nearly half of the total number of human trafficking victims,” but are more likely “to be neglected by government and service providers” because such programs are earmarked almost

34. See Deborah Gibbs et al., *Assessing the Under-Reporting of Minor Victim Sex Trafficking*, NAT'L INST. OF JUST. (2019), www.ncjrs.gov/pdffiles1/nij/grants/253456.pdf [perma.cc/G56E-5HJE] (recognizing that although young victims of human trafficking who may encounter the criminal justice system are disproportionately female, child welfare studies relative to runaways and homeless children “suggest that males may be equally likely to be trafficking victims”); Jones, *Invisible Man*, *supra* note 22, at 1149–58 (detailing and explaining the neglect of males victims of human trafficking in data collection and anti-trafficking measures, globally); see also Hanna Rosin, *When Men Are Raped: A New Study Reveals That Men Are Often The Victims Of Sexual Assault, And Women Are Often The Perpetrators*, SLATE (Apr. 29, 2014), www.slate.com/human-interest/2014/04/male-rape-in-america-a-new-study-reveals-that-men-are-sexually-assaulted-almost-as-often-as-women.html [perma.cc/BE7Q-FNGW] (discussing a 2013 *National Crime Victimization Survey* involving 40,000 households in the U.S. that “uncovered that 38 percent of [rape] incidents were against men”); U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* (June 2020) (indicating there has been a decrease in the number of human trafficking prosecutions in 2019, compared to 2018 (213) and an decrease in convictions from 2019 (475 traffickers) and 2018 (526 traffickers)).

35. *40 Black Men Come Forward to Say U-M Doctor Sexually Assaulted Them*, FOX 2 DETROIT (April 20, 2020), www.fox2detroit.com/news/40-black-men-come-forward-to-say-u-m-doctor-sexually-abused-them [perma.cc/L7SK-CCHP].

36. Eliana Dockterman, *These Men Say the Boy Scouts' Sex Abuse Problem is Worse Than Anyone Knew*, TIME (June 1, 2019), time.com/longform/boy-scouts-sex-abuse/ [perma.cc/5SDM-4QSD].

37. Connor Perrett, *Ohio State University Will Pay Out \$41 Million To 162 Men Who Say They Were Sexually Abused By A Long Time Team Doctor*, BUS. INSIDER (May 9, 2020), www.businessinsider.com/ohio-state-41-million-richard-strauss-sexual-assault-2020-5# [perma.cc/CTT4-ULAD].

38. Kim Severson, *Asia Argento, #MeToo Leader Made a Deal with Her Own Accuser*, N.Y. TIMES (Aug. 19, 2018), www.nytimes.com/2018/08/19/us/asia-argento-assault-jimmy-bennett.html [perma.cc/JS8C-8JF5].

exclusively for women and girls.³⁹ Similarly, a growing number of sexual victimization studies, along with approximately twenty-six scholarly publications since *Invisible Man*, have examined the plight of male survivors of sexual violence and also posited that the conventional wisdom that sexual offenses are male perpetrated crimes principally committed against females is patently false.⁴⁰

39. *Assisting Male Survivors of Human Trafficking*, U.S. DEP'T. OF STATE (June 2017), www.state.gov/wp-content/uploads/2019/02/Assisting-Male-Survivors-of-Human-Trafficking.pdf [perma.cc/K2WD-JV3N].

40. *See id.* (“The most frequently cited global statistics on human trafficking indicate that men and boys represent nearly half of the total number of human trafficking victims.”). Research reveals that since *Invisible Man*, there have been approximately twenty-six publications dedicated to examining and exploring the perilous plight of male victims of human trafficking. *See generally* Jennifer Lyons & Elisa Romano, *Childhood sexual abuse profiles and psychological functioning in adult males*, J. OF CHILD SEXUAL ABUSE 1, 20 (2019); David Eichert, “*It Ruined My Life*”: *Fosta, Male Escorts, and the Construction of Sexual Victimhood in American Politics*, 26 VA. J. SOC. POL’Y & L. 201, 244 (2019); Emmanuelle Saliba, Euronews, & Lauren Prince, *Invisible Boys: Inside the Push to Help Unseen Victims of the Sex Trade*, U.S. NEWS (Jan. 26, 2016), www.nbcnews.com/news/us-news/invisible-boys-inside-push-help-unseen-victims-sex-trade-n503921 [perma.cc/Z7RF-FD9C]; Perry Chiaramonte & Andrew Keiper, *Boys are Invisible Victims in Sex Trafficking*, FOX NEWS (June 8, 2019), www.foxnews.com/us/boys-are-invisible-victims-in-sex-trafficking [perma.cc/L7SM-9CWG]; Perry Chiaramonte & Andrew Keiper, *Trafficking’s Invisible Victims: Boys Trapped In The Sex Trade*, FOX NEWS (June 8, 2019), www.foxnews.com/us/invisible-victims-boys-trapped-in-the-sex-trade [perma.cc/L32W-J8L5]; Bowen Xiao, *The Silent Victims: A Hidden World Where Boys Are Trafficked*, U.S. NEWS (June 12, 2019), www.theepochtimes.com/the-silent-victims-a-hidden-world-where-boys-are-trafficked_2958903.html [perma.cc/C68D-ER89]; Irma M. Barron & Colleen Frost, *Men, Boys, and LGBTQ: Invisible Victims of Human Trafficking*, in HANDBOOK OF SEX TRAFFICKING 73-84 (2018); Christiana Desrosiers, *The Consideration of Male Victims of Sexual Violence as a Subset of the Particular Social Group Homosexual in Adjudicating Asylum Claims*, 30 PACE INT’L L. REV. 279 (2018); Jennifer Cole, *Service Providers’ Perspectives on Sex Trafficking of Male Minors: Comparing Background and Trafficking Situations of Male and Female Victims*, 35 CHILD & ADOLESCENT SOC. WORK J. 423 (2018); Joanna Schroeder, *Yes, men can be sexually assaulted. Gender stereotypes make it hard to talk about. The alleged encounter between Asia Argento and Jimmy Bennett is an example*, VOX (Aug. 23, 2018), www.vox.com/first-person/2018/8/23/17772712/asia-argento-news-jimmy-bennett [perma.cc/DKZ9-SL23]; Tim Swarens, *Boys – The Silent Victims of Sex Trafficking*, USA TODAY (Feb. 8, 2018), www.usatoday.com/story/opinion/nation-now/2018/02/08/boys-silent-victims-sex-trafficking/1073799001/ [perma.cc/CJS2-A3K5]; David M. Perry, *#HimToo Should Be a Conversation About Male Victims of Sexual Assault*, PACIFIC STANDARD (Oct. 19, 2018), www.psmag.com/social-justice/himtoo-and-male-victims-of-sexual-assault [perma.cc/B5CA-L4U9]; Heather Sells, *Long-Term Shelter Opens for Boy Victims of US Sex Trafficking*, CBN NEWS (Oct. 31, 2018), www2.cbn.com/news/us/long-term-shelter-opens-boy-victims-us-sex-trafficking [perma.cc/N5LH-3A5M]; Lauren Farris, *Wait, I Thought That Didn’t Happen to Guys?*, DRESSEMBER (Sept. 26, 2018), www.dressember.org/blog/wait-i-thought-that-didnt-happen-to-guys [perma.cc/H8ZQ-KEH2]; *Male Victims of CSEC*, YOUTH COLLABORATORY (Nov. 12, 2018), www.youthcollaboratory.org/resource/shining-light-toolkit-male-victims-csec [perma.cc/D9Y4-TE5V]; Heather R.

For instance, noted masculinities theorist, Tommy Curry, reasons that, “men comprise a significant number, if not half, of rape victims in the United States,” and that “men and women report similar rates of nonconsensual sex.”⁴¹ Jennifer Lyons and Elisa Romano point to several studies to support their claim that boys suffer from sexual abuse at rates near or equal to women and girls.⁴² Their study examined the childhood sexual experiences of men in Canada and the United States. It revealed over 41% of the male participants reported being sexually exploited before reaching the age of 16, often by either a relative or an authority figure.⁴³ Another study revealed that of all child prostitutes in the U.S., “31% of the juveniles were male,”⁴⁴ and an analogous study regarding male victims of sexual abuse revealed that “nearly half of the victims were male.”⁴⁵ Similarly, a survey of current or former child victims

Hlavka, *Speaking of Stigma and the Silence of Shame: Young Men and Sexual Victimization*, 20 MEN & MASCULINITIES 482 (2017); Jean Von Hohendorff, Luisa Fernanda Habigzang, & Silvia Helena Koller, “A Boy, Being A Victim, Nobody Really Buys That, You Know?": Dynamics Of Sexual Violence Against Boys, 70 CHILD ABUSE & NEGLECT 53 (2017); Rebecca Fairley Raney, *Unseen Victims Of Sex Trafficking*, 48 AM. PSYCH. ASSN. 22 (2017); Laura A. Hebert, *Always Victimiziers, Never Victims: Engaging Men and Boys in Human Trafficking Scholarship*, 4 J. HUM. TRAFFICKING 281-96 (2016); Dylan Preston, *Screening and Stigma: Lack of Male Representation in Childhood Sexual Abuse Research and Literature* 2 (Apr. 22, 2016) (B.A. thesis, Bridgewater State University); Yu Sun Chin, *Trafficked Boys Overlooked*, JUV. J. INFO. EXCH. (Apr. 14, 2014), www.jjie.org/2014/04/14/trafficked-boys-overlooked-underrepresented/106/ [perma.cc/WH3E-6WXL]; Lara Stemple & Ilan H. Meyer, *The sexual victimization of men in America: New data challenge old assumptions*, 104 AM. J. PUB. HEALTH, e19–e26 (2014); Rosin, *supra* note 34; Michael T. Tien, *Human Trafficking: The Missing Male Victim*, 18 PUB. INT. L. REP. 207 (2013); Jodie Gummow, *Demystifying the Commercial Sexual Exploitation of Boys – Our Forgotten Victims*, ALTERNET (Oct. 18, 2013), www.alternet.org/2013/10/demystifying-commercial-sexual-exploitation-boys-our-forgotten-victims/ [perma.cc/2EJN-ZDZL]; Cameron Conaway, *The Forgotten Many: Sex Trafficked Boys*, GOOD MEN PROJECT (Dec. 5, 2012), www.goodmenproject.com/featured-content/social-justice-sex-trafficking-boys/ [perma.cc/V7AW-VJFC]; Stephanie Pappas, *Male Victims of Sexual Abuse Face Unique Challenges*, LIVE SCI. (Feb. 18, 2011), www.livescience.com/12909-senator-scott-brown-male-sexual-abuse-stigma.html [perma.cc/X3FN-27HC].

41. Tommy J. Curry, *Expendables for Whom: Terry Crews and the Erasure of Black Male Victims of Sexual Assault and Rape*, 42 WOMEN'S STUD. IN COMMC'N 287, 297 (2019) [hereinafter Curry, *Crews*].

42. Jennifer Lyons & Elisa Romano, *Childhood sexual abuse profiles and psychological functioning in adult males*, 28 J. OF CHILD SEXUAL ABUSE 544, 545-46 (2019).

43. *Id.* at 556. The study consisted of 215 participants, 35% Canadian and 65% U.S. residents. *Id.* at 548.

44. Jennifer Cole, *Service Providers' Perspectives on Sex Trafficking of Male Minors: Comparing Background & Trafficking Situations of Male & Female Victims*, CHILD & ADOLESCENT SOC. WORK J. 423, 424 (2018) (citing David Finkelhor & Richard Ormrod, *Child Pornography: Patterns from NIBRS*, JUVENILE JUSTICE BULL. (Dec. 2004)).

45. *Id.* (citing Ric Curtis, Karen Terry, Meredith Dank, Kirk Dombrowski, & Bilal Khan, *Commercial Sexual Exploitation of Children in New York City*:

of sex trafficking in five Midwestern cities revealed that at least 21.7% were male.⁴⁶ Jennifer Cole points to an analysis of the National Incident Based Reporting System, regarding the population of child victims of sexual exploitation in the U.S., which revealed that “38% of the juvenile victims. . . were male.”⁴⁷

Other observers point to a comprehensive 2016 study that found boys comprise at least “36% of children caught up in the U.S. sex industry.”⁴⁸ A 2013 *National Crime Victimization Survey* involving 40,000 households in the U.S., revealed that “38 percent of incidents [involving rape] were against men.”⁴⁹ In addition, a 2014 study of 284 men and boys in college and high school found that 43% of them reported being sexually coerced, with the majority of coercive incidents resulting in unwanted sexual intercourse, and 95% of the males reporting the perpetrators were female.⁵⁰ Lastly,

The CSEC Population New York City: Size, Characteristics, and Needs, CTR. FOR CT. INNOVATION 7 (Dec. 2008)).

46. Lisa Fedina et al., *Risk Factors for Domestic Child Sex Trafficking in the United States*, 34 J. INTERPERSONAL VIOLENCE 2653, 2661 (2019).

47. Cole, *supra* note 44, at 424; *see also* Ric Curtis, Karen Terry, Meredith Dank, Kirk Dombrowski, & Bilal Khan, *Commercial Sexual Exploitation of Children in New York City: The CSEC Population New York City: Size, Characteristics, and Needs*, CTR. FOR CT. INNOVATION 7 (Dec. 2008), www.ojp.gov/pdffiles1/nij/grants/225083.pdf [perma.cc/ZNV4-4THZ] (finding that during a federally funded citywide study of the Commercial Sexual Exploitation of Children (“CSEC”) in New York City, researchers found that of “the total estimated CSEC population, 53.5% were male, 42% were female and 4.5% were transgender,” and a similar study revealed that when researchers examined the population of homeless children in New York City, they found that 30 to 50% of the children were engaged in sex work without any disparities in their gender); Cathy Young, *CDC’s Rape Numbers Are Misleading*, TIME (Sept. 17, 2014), www.time.com/3393442/cdc-rape-numbers/ [perma.cc/EC4U-BRWR] (noting a study that revealed that “12.3 percent of female victims of rape were 10 years old or younger at the time of their first completed rape victimization compared to 27.8 percent for male victims of rape.”).

48. Tim Swarens, *Boys-The Silent Victims of Sex Trafficking*, USA TODAY (Feb. 8, 2018), www.usatoday.com/story/opinion/nation-now/2018/02/08/boys-silent-victims-sex-trafficking/1073799001/ [perma.cc/6U7X-KNS4]; *see also* Sarah Rosario, *He Was Targeted Through His Mom. Now, He Shares His Story to Help Others*, 10 TAMPA BAY (May 15, 2019), www.wtsp.com/article/news/local/trafficking-boys-the-silent-victims-of-human-trafficking/67-9d294d1d-13f6-4ce2-b451-66c17b7e2b8b [perma.cc/45H9-UET3] (reporting that boys comprise “thirty six percent” of child sex trafficking victims).

49. Jennifer L. Truman & Lynn Langton, *Criminal Victimization, 2013*, BUREAU JUST. STAT.’S BULL. (Sept. 2014), www.bjs.ojp.gov/content/pub/pdf/cv13.pdf [perma.cc/CRE9-LPTN] (analyzing results of the Bureau of Justice Statistics, National Crime Victimization Survey, 1993-2013).

50. Conor Friedersdorf, *The Understudied Female Sexual Predator*, THE ATLANTIC (Nov. 28, 2016), www.theatlantic.com/science/archive/2016/11/the-understudied-female-sexual-predator/503492/ [perma.cc/CDQ9-E7BA] (“[A] 2014 study of 284 men and boys in college and high school found that 43 percent reported being sexually coerced, with the majority of coercive incidents resulting in unwanted sexual intercourse. Of them, 95 percent reported only female perpetrators.”). *See also* Rebecca Stewart, *CDC Says Men are Half of All Victims of Sexual Violence*, SAVE (Apr. 5, 2021), www.saveservices.org/2021/04/

a survey of 13,294 adolescents enrolled in grades seven to twelve in the U.S., revealed that 68% of students engaged in child prostitution were male.⁵¹

What is particularly salient regarding the aforementioned findings is that although they indicate male sexual victimization rates generally hover around 35 to 68 percent, logic suggests that male sexual victimization rates may be higher for at least two reasons. First, males routinely conceal their sexual abuse because of anti-masculine shame, the fear of being wrongly casted as willing participants in their own sexual abuse, or being the object of ridicule.⁵² Second, for too many years Center for Disease Control (“CDC”) studies regarding the prevalence of “rape,” in the U.S., included only males who reported having “been forced into anal sex or made to perform oral sex on another male.”⁵³ A significant

pr-cdc-says-men-are-half-of-all-victims-of-sexual-violence/ [perma.cc/3H37-N22G] (stating “The National Intimate Partner and Sexual Violence Survey reports that nearly identical numbers of men and women experience sexual violence. Each year, 1.92 million men are made to sexually penetrate, and 1.93 million women are victims of rape ... [and] [i]n 82.6% of the ‘made to penetrate’ cases, the perpetrator was a female.”).

51. Rachel Swaner et al., *Youth Involvement in the Sex Trade: A National Study*, CTR. FOR CT. INNOVATION 79 (2016), www.ncjrs.gov/pdffiles1/ojdp/grants/249952.pdf [perma.cc/JMB4-EHPL]; see also Brenda V. Smith, *Boys, Rape, and Masculinity: Reclaiming Boys’ Narratives of Sexual Violence in Custody*, 93 N.C. L. REV. 1559, 1566 (2015) (noting studies that indicate girls and boys in detention are sexually victimized at “equal” rates and that female staff in youth detention centers victimized youth at rates equal to men).

52. Aubrey McMahan, *Males: The Silent Victims of Human Trafficking*, ANTI-TRAFFICKING INT’L (Aug. 26, 2019), www.preventht.org/editorial/males-the-silent-victims-of-human-trafficking/ [perma.cc/G9Z2-BRPG] (noting that “[f]ar too often, and more than their female counterparts, males who are trafficking victims suffer in silence” because “self-denial or self-victim-blaming are the initial hurdles preventing them from receiving the help that they need”); Tim Swarens, *Boys-The Silent Victims of Sex Trafficking*, USA TODAY (Feb. 8, 2018), www.usatoday.com/story/opinion/nation-now/2018/02/08/boys-silent-victims-sex-trafficking/1073799001/ [perma.cc/6RRS-KL4C] (describing how a boy survivor of sex trafficking was raped, abused and sold to men for sex before the brutality ended when he was 15, but the boy survivor didn’t seek help or disclose the harm and trauma he suffered); Heather R. Hlavka, *Speaking of Stigma and the Silence of Shame: Young Men and Sexual Victimization*, 20 MEN & MASCULINITIES 482 (2017); Pappas, *supra* note 40 (noting that “breaking the silence is key to prevention”); Hohendorff et al., *supra* note 40, at 55; Bennett Capers, *On Violence Against Men*, 13 OHIO ST. J. CRIM. L. 347, 353 (2016) (noting that even “more than female victims, male rape victims are likely to encounter disbelief or derision when they report their victimization”); Elizabeth J. Kramer, *When Men Are Victims: Applying Rape Shield Laws to Male Same Sex Rape*, 73 N.Y.U. L. REV. 293 (1998) (noting that “[m]ale rape victims attract little attention because few report the crimes. They rarely report the crimes because they often face mockery, disbelief and disdain from law enforcement and the community at large.”).

53. NAT’L CTR. INJ. PREVENTION & CTRL. CTR.’S DISEASE CONTROL & PREVENTION, NAT’L INTIMATE PARTNER & SEXUAL VIOLENCE SURVEY: 2016/2017 REP. ON SEXUAL VIOLENCE 1 (June 2022), www.cdc.gov/violenceprevention/pdf/nisvs/nisvsReportonSexualViolence.pdf

number of male victims of sexual violence who reported being “made to penetrate” another person – usually in reference to vaginal intercourse, receiving oral sex, or performing oral sex on a woman, were “not classified as rape.”⁵⁴ Even feminist commentators acknowledge that existing data indicates that “if being made to penetrate someone was counted as rape,” the data would reveal “that women rape men as often as men rape women.”⁵⁵ Indeed, at least one CDC study regarding intimate partner violence revealed that “the rates of nonconsensual sexual contact basically equalized, with 1.270 million women and 1.267 million men claiming to be victims of sexual violence.”⁵⁶ The landmark study commonly referred to as the National Intimate Partner and Sexual Violence Survey in 2010 encompassed a long ignored category of sexual violence called, “being made to penetrate,” which included “victims who were forced to penetrate someone else with their own body parts, either by physical force or coercion, or when the victim was drunk or high or otherwise unable to consent...”⁵⁷

For decades, male victims of sexual violence were largely excluded from many studies and crime statistics involving sexual violence because it was not until 2012 that the Federal Bureau of Investigation (“FBI”) modified its definition of rape to include male victims.⁵⁸ Prior to that time, the nation’s top law enforcement agency released data regarding rape that wrongly excluded male rape victims.⁵⁹ The more inclusive definition of rape now accounts

[perma.cc/2ELQ-AWH4].

54. Young, *supra* note 47.

55. *Id.*

56. Rosin, *supra* note 34; MICHELE C. BLACK, ET AL., NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT, DEP’T OF J. (Nov. 2011), www.nij.ojp.gov/library/publications/national-intimate-partner-and-sexual-violence-survey-2010-summary-report# [perma.cc/994T-DGQV].

57. BLACK, ET AL., *supra* note 56.

58. Lindsay Goldwert, *FBI Scraps Long-Standing Definition Of Rape To Include Men As Victims*, N.Y. DAILY NEWS (Jan. 6, 2012), www.nydailynews.com/life-style/health/fbi-scraps-long-standing-definition-rape-include-men-victims-article-1.1001900 [perma.cc/HD6X-WAB4] (noting that in “a landmark decision that advocates say has been long overdue, the FBI has changed its definition of rape to include males”); Press Release, U.S. Dep’t of Justice, Office of Public Affairs, Attorney General Eric Holder Announces Revisions to Uniform Crime Report’s Definition of Rape (Jan. 6, 2012) (on file with author) (“The new definition of rape is: “[t]he penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.”).

59. Akiba Solomon, *Males Can’t Be “Forcibly Raped” According to the FBI*, COLORLINES (Feb. 4, 2011), www.colorlines.com/article/males-cant-be-forcibly-raped-according-fbi/ [perma.cc/Q3YA-HS3N]; Conor Friedersdorf, *The Understudied Female Sexual Predator*, THE ATLANTIC (Nov. 28, 2016), www.theatlantic.com/science/archive/2016/11/the-understudied-female-sexual-predator/503492/ [perma.cc/D37Q-VHRA] (“[A] 2014 study of 284 men and boys in college and high school found that 43 percent reported being sexually coerced, with the majority of coercive incidents resulting in unwanted sexual intercourse. Of them, 95 percent reported only female perpetrators”); *see*

for male victims. This much needed modification to criminal jurisprudence is particularly notable in light of harmful discoveries regarding Jerry Sandusky's sexual abuse of multiple male students at Pennsylvania State University,⁶⁰ and emerging studies that indicate homosexual men commit sexual assault at rates at least comparable to that of heterosexual men.⁶¹

B. Harmful Narratives regarding Masculinity and Sexual Violence.

A significant degree of political, academic, and social discourse is interspersed with claims that women and girls are especially vulnerable to sexual exploitation.⁶² Through relentless and courageous social messaging, commentators and survivor advocates have skillfully defended the right of women and girls to live free of sexual violence and have positioned the protection of women and girls as a societal imperative.⁶³

Sexual victimization scholars observe, nonetheless, that implicit in the narrative that women and girls are routinely subjected to systemic forms of sexual violence are false presumptions that position males as almost always the “perpetrators” and rarely the “victims.”⁶⁴ Heather Hlavka notes

generally *Crime/Law Enforcement Stats (Uniform Crime Reporting Program)*, FED. BUREAU INVESTIGATION, www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/ucr [perma.cc/B4BC-CLEP] (last accessed Apr. 11, 2023).

60. *Timeline: The Child Sex Abuse Case of Jerry Sandusky*, DAILY COLLEGIAN (Dec. 10, 2021), www.collegian.psu.edu/sandusky/timeline-the-child-sex-abuse-case-of-jerry-sandusky/article_a0c48260-52e0-11ec-b65e-2bd1a3594e2b.html [perma.cc/8QN8-X5JE] (detailing the allegations against the former football coach); Richard B. Felson & Patrick R. Cundiff, *Sexual Assault as a Crime Against Young People*, ARCHIVES SEXUAL BEHAV. (Mar. 30, 2013), richardfelson.files.wordpress.com/2013/06/sex-assault-archives_onlinepdf.pdf [perma.cc/7D62-F73S] (noting that “homosexual men were at least as likely as heterosexual men to commit sexual assault.”).

61. *Id.*; see Yaron Steinbuch, *Gay Couple Charged with Molesting Their Adopted Sons Also Pimped Them Out to Pedophile Ring, Report Claims*, MSN (Jan. 20, 2023), www.msn.com/en-us/news/crime/gay-couple-charged-with-molesting-their-adopted-sons-also-pimped-them-out-to-pedophile-ring-report-claims/ar-AA16zyzh [perma.cc/7B4E-K3P2] (discussing the child sexual abuse).

62. Jones, *Police, Heroes and Child Trafficking*, *supra* note 11, at 1009.

63. *Id.*

64. Lara Stemple & Llan Meyer, *The Sexual Victimization of Men in America: New Data Challenge Old Assumptions*, 104 AM. J. PUB. HEALTH 6 (2014) (“The conceptualization of men as perpetrators and women as victims remains the dominant sexual victimization paradigm”); CURRY, *Crews*, *supra* note 41, at 5; Joe Stennis, Jr., *Equal Protection Dilemma: Why Male Adolescent Students Need Federal Protection from Adult Female Teachers Who Prey on Them*, 35 J.L. & EDUC. 395, 400 (2006) (describing the leniency that female teachers receive in the courtroom and sentencing due to the perception that a female’s “sexual escapades with a male student” are less serious).

that boys are rarely viewed as victims of sexual violence because the great weight of social messaging dedicated to men and boys falsely casts them as self-reliant or privileged.⁶⁵ Repetitive claims of male privilege and female suffering, Hlavka reasons, has led to a “hierarchy of sexual harm” within American culture that prioritizes the prevention of sexual violence against women and girls, while ignoring sexual violence against men and boys.⁶⁶ As a consequence, stakeholders know comparatively very little about how men and boys experience sexual violence.⁶⁷

Curry notes that a significant degree of academic literature is fueled by “various myths” that sexual violence is largely gender specific and findings that run contrary to the “female victim-male perpetrator” narrative are “politically unpalatable.”⁶⁸ Cole points to narratives that casts innocent males as pimps, purchasers of sexual services, or willing participants in their own sexual abuse – rather than victims of sexual violence, as central to the marginalization of male victims.⁶⁹ Other commentators reason that current narratives are shaped by a societal intent to brand masculinity as intrinsically “toxic” so that males behave more “feminized.”⁷⁰

65. Hlavka, *supra* note 40, at 500; Bowen Xiao, *The Silent Victims: A Hidden World Where Boys Are Trafficked*, U.S. NEWS (June 12, 2019), www.theepochtimes.com/the-silent-victims-a-hidden-world-where-boys-are-trafficked_2958903.html [perma.cc/LL4Z-UF3M] (“It’s not supposed to happen to [boys], we’re supposed to be able to stop it, or we’re supposed to say no, or we’re supposed to be stronger than girls—and it’s preposterous”); Schroeder, *supra* note 40 (noting that gender stereotypes portraying men as aggressive and “always wanting sex” inhibits discussions that men are victims of sexual assault).

66. Hlavka, *supra* note 40, at 498.

67. *Id.* at 483; Meredith Dank et al., *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities*, URB. INST. RSCH. REP. 1, 11 (2014) (noting that “[s]takeholders acknowledge that men and boys are involved in the sex trade; however, they know very little about how that part of the market is structured”); *id.* at 101 (noting that “[a]lthough stakeholders mentioned men and boys who trade sex in San Diego, they knew very little about that market and their overall involvement in the UCSE. Stakeholders are aware that the UCSE is thriving in San Diego, but it is difficult to determine its size”); Stennis, Jr., *supra* note 64. *See, e.g.*, Aleanna Sicaon, *Ex-Rochester HS Teacher Accused of Sex Acts With Students Posts \$200K Bond*, DETROIT FREE PRESS (Jan. 12, 2019), www.freep.com/story/news/local/michigan/oakland/2019/01/12/rochester-teacher-fired-kathryn-houghtaling/2558207002/ [perma.cc/DX5B-9X9A] (describing a female teacher who was arraigned on six counts of third-degree criminal sexual with two teenage students and was released on a bond of only \$200,000.00).

68. Curry, *Crews*, *supra* note 41, at 9.

69. *See* Cole, *supra* note 44, at 435 (pointing to a National Juvenile Prostitution Study that revealed law enforcement personnel are more likely to arrest and charge boy victims of sex trafficking with prostitution-related offense than girls).

70. Ben Shapiro, *The ‘Toxic Masculinity’ Smear*, NAT’L REV. (June 7, 2017), www.nationalreview.com/2017/06/masculinity-not-toxic-stop-blaming-men-everything/ [perma.cc/BK8R-8Q4V].

Mentally and emotionally constrained by societal narratives that position sexual violence against males as a rare occurrence, and contentions that real men “man up,” male victims of sexual violence often misperceive themselves as falling outside societal expectations of masculinity.⁷¹ Consequently, male victims of sexual violence suffer in silence to avoid the shame, stigma, emasculation, or fear of being perceived as gay or weak,⁷² which typically occurs when males disclose their sexual victimization.⁷³ In some cases, societal narratives prompt some males to believe they cannot be sexually exploited.⁷⁴

The severe harm caused by a male’s misinterpretation of his sexual victimization increases the possibility of the male becoming a victimizer,⁷⁵ or a runaway, which amplifies the probability of the boy becoming a child prostitute, particularly, if he is between ages eleven and thirteen –the average age that boys typically become child prostitutes.⁷⁶ Research reveals that male runaways that walk the streets are attractive targets to sexual predators or sex traffickers because the dire circumstances boys encounter often compel boy runaways to have sex in exchange for resources they need to stay alive.⁷⁷ Runaways comprise “the largest population of child victims of sex trafficking,”⁷⁸ accounting for an “estimated 75% of all child prostitutes,”⁷⁹ with approximately half being boys.⁸⁰

Cole notes that boy prostitutes today are significantly more likely to misinterpret their sexual abuse as merely “hanging out”⁸¹ because it aligns with their psychological need to cope with the socially imposed shame boy victims experience and their strong

71. *Id.* (citing Christina Hoff Sommers statement that “telling a boy to ‘man up’ can be harsh and degrading.”).

72. Hlavka, *supra* note 40, at 483; Cole, *supra* note 44, at 430.

73. Hlavka, *supra* note 40. *See also* Hohendorff et al., *supra* note 40, at 53-64 (recognizing that the “low social visibility of sexual abuse against males, traditional masculine gender norms of males being strong and invulnerable may decrease the likelihood of disclosure of sexual victimization.”).

74. Megan Annitto, *Consent, Coercion, and Compassion: Crafting a Commonsense Approach to Commercial Sexual Exploitation of Minors*, 30 YALE L. & POL’Y REV. 1, 5-8 (2011).

75. Jones, *Invisible Man*, *supra* note 22, at 1151.

76. Jones, *Police, Heroes & Child Trafficking*, *supra* note 11, at 1016.

77. Cole, *supra* note 44, at 424-25.

78. Jones, *Police, Heroes & Child Trafficking*, *supra* note 11, at 1016 (citing Amanda Walker-Rodriguez & Rodney Hill, *Human Sex Trafficking*, 80 FBI L. ENF’T BULL. 1, 2 (2011)).

79. Linda Smith & Samantha Vardaman, *A Legislative Framework for Combating Domestic Minor Sex Trafficking*, 23 REGENT UNIV. L. REV. 265, 292 (2011) (stating that “runaways and throwaways constitute 75% of all juvenile prostitutes.”).

80. Brandon Gaille, *45 Uncommon Teenage Runaway Statistics* (May 21, 2017), www.brandongaille.com/44-teenage-runaway-statistics/ [perma.cc/ZB5T-GXMB]; *Homeless Youth*, NAT’L COAL. FOR THE HOMELESS (Aug. 2007), www.nationalhomeless.org/publications/facts/youth.pdf [perma.cc/HKR5-DMEC].

81. Cole, *supra* note 44, at 424.

desire to align with societal expectations of masculinity as virtually invulnerable.⁸²

So entrenched is the narrative that males are seldom vulnerable to the vagaries of sexual violence that legal guardians and relatives have been found to openly flaunt the sexual abuse of their own children.⁸³ In one case, a gay couple, William and Zachary Zullo, allegedly molested their two elementary school-aged adopted sons, blatantly used social media platforms to prostitute their sons, and openly invited people to participate in sexually abusing the young boys.⁸⁴ One man told investigators that one of the husbands sent him Snapchat messages, including one that read, “I’m going to f— my son tonight. Stand by,” which was accompanied by pictures of the husband sexually abusing his adopted son.⁸⁵

Such tragedies occur too often because boys who report sexual violence to child services workers may be ignored and returned to the custody of the foster parents that sexually abused them.⁸⁶ Even when sexually abused boys report sexual abused by a family member to another family member, it is not inconceivable that the

82. *Id.* at 430.

83. Larry D. Davis, *Georgia Mother Pleads Guilty To Sex Trafficking Her 5, 6-Year-Old Daughters*, KUTV (May 9, 2018), www.kutv.com/news/nation-world/georgia-mother-pleads-guilty-to-sex-trafficking-her-young-daughters [perma.cc/9NNL-NWGE]; Kaitlin Reilly, *Demi Moore Was Told Her Mother Sold Her To Rapist For \$500*, REFINERY 29 (Sept. 23, 2019), www.refinery29.com/en-us/2019/09/8466784/demi-moore-mother-sold-her-to-rapist-for-money [perma.cc/7XDC-HWSK]; Victoria Uwumarogie, *Indiana Woman Pleads Guilty To Selling Her Infant Child And Toddler For Sex*, MADAM NOIRE (Jan. 28, 2014), www.madamenoire.com/344920/woman-sells-her-children-for-sex/ [perma.cc/5PB7-QBT7]; *Mother Convicted Of Selling Son To Pedophiles On Dark Web*, ABC 8 NEWS (Aug. 7, 2018), www.wric.com/news/mother-convicted-of-selling-son-to-pedophiles-on-dark-web/ [perma.cc/42P2-73X3]; Roksana Panashchuk, *Ukrainian Mother ‘Sold Videos Of Sex With Four-Year-Old Son’ Arrested*, DAILY MAIL (Mar. 15, 2019), www.dailymail.co.uk/news/article-6809657/Ukrainian-mother-sold-videos-sex-four-year-old-son-arrested.html [perma.cc/6794-Q4TE]; Dianne Wood, *Mother Confesses To Sex With Sons*, CAN. CHILD’S RTS. COUNCIL (Oct. 3, 2004), www.canadiancrc.com/newspaper_articles/Tor_Star_Mother_confesses_sex_with_sons_03OCT04.aspx [perma.cc/SQR3-T6AS].

84. Steinbuch, *supra* note 61.

85. *Id.*

86. Lindsey Basye & Brendan Keefe, *Teen Boys on Demand: DFCS Unknowingly Supplied Sex Victims to Foster Mom*, 11ALIVE (February 25, 2020), www.11alive.com/article/news/investigations/the-reveal/teen-boys-on-demand-dfcs-supplied-sex-victims-to-foster-mom/85-a75226e1-df44-4fee-a8fe-6e555738e0c0 [perma.cc/7M26-P2WY] (noting that Daniel Huertas reports that he lost his virginity at 15 years old to his foster mom, Sherry Wilkes, who was charged with multiple counts of child molestation involving multiple boys, whom she reportedly requested be placed with her, and that he reported his abuse to his caseworker, who sent him back to Wilkes); *see also* Casey Glynn & Mistie Atkinson, *Woman Accused of Having Sex with Estranged Teenage Son, Strikes Plea Deal*, CBS NEWS (May 17, 2012), www.cbsnews.com/news/mistie-atkinson-woman-accused-of-having-sex-with-estranged-teenage-son-strikes-plea-deal/ [perma.cc/553N-LPLZ].

boy will be instructed that his sexual abuse is not a “big deal.”⁸⁷ Cole warns that, “mothers on drugs allowing men to sleep with their boys for drugs,” unstable homes, or compromised parenting, are pathways to boy sexual victimization.⁸⁸ In some cases, boys are so confused about the tension between their sexual victimization and persistent societal narratives depicting males as perpetrators rather than as victims that they often confide in the person that is sexually abusing them.⁸⁹ For instance, in a case in which a boy’s mother trafficked him for sex, the boy continued visiting her after he was removed from the mother’s custody because he wanted to see her despite being afraid of her.⁹⁰ In other cases, well-intended parents or legal guardians may be dangerously unsuspecting of the lingering threat child sex trafficking rings pose to their male children.

The mother of a male victim who was trafficked for sex for years without her knowledge, resolved that her son committed suicide because “[h]e couldn’t deal with the torture and the shame of being prostituted.”⁹¹ The mother discovered that her son was a sex trafficking victim only after arrests of the sex traffickers were made public.⁹² When describing the “hopelessness and despair” her son silently endured before his death, the mother acknowledged that “the pain of not being able to help [her] son...was insurmountable.”⁹³ The mother’s exceptionally tragic experience, at a minimum, underscores the suffering mother’s experience as a result of misguided social narratives regarding sexual violence. It also shows the grave degree that sexual violence relegates boy victims to near perpetual states of isolation, despair, anxiety, depression, substance abuse, post-traumatic stress disorder,⁹⁴ and other manifestations of sexual torture.⁹⁵ It comes as no surprise that

87. Garfield Hylton, *Yes, Sexual Abuse of Black Boys is a Problem – and We Need to Pay Attention*, M LEVEL (Oct. 23, 2017), level.medium.com/the-sexual-abuse-of-black-boys-9e21d1134679 [perma.cc/XZR9-L9TE].

88. Cole, *supra* note 44, at 427; *see also Texas Mother Accused of Selling Son Gets 6 Years in Prison*, FOX NEWS (Apr. 7, 2019) (detailing Esmeralda Garza convicted for selling her 7-year-old son for \$2,500).

89. Sarah Rosario, *He Was Targeted Through His Mom. Now, He Shares His Story to Help Others*, WTSP NEWS (May 15, 2019), www.wtsp.com/article/news/local/he-was-targeted-for-human-trafficking-through-his-mom-now-he-shares-his-story-to-help-others/67-9d294d1d-13f6-4ce2-b451-66c17b7e2b8b [perma.cc/M2BR-5EL4].

90. Cole, *supra* note 44, at 428.

91. Dave Collins, *Case Reveals Shame, Trauma of Male Sex Trafficking Victims*, AP NEWS (Nov. 15, 2018), www.apnews.com/article/ct-state-wire-us-news-ap-top-news-arrests-connecticut-a7d41311016c415390477750e369f8f9 [perma.cc/5UVM-HA5Q].

92. *Id.*

93. *Id.*

94. Jones, *Invisible Man*, *supra* note 22, at 1185; Hlavka, *supra* note 40, at 48; Hohendorff et al., *supra* note 40, at 55.

95. Samuel V. Jones, *Human Trafficking Victim Identification: Should Consent Matter?*, 45 IND. L. REV. 483, 488 (2012); Jones, *Invisible Man*, *supra*

out of the nearly “two thousand [annual] suicides among fifteen to nineteen-year olds, 85 percent are boys.”⁹⁶

For Black boys, their youth experiences are subject to a unique brand of perilous social conditions because they typically are denied the imprint of childish innocence their White counterparts enjoy.⁹⁷ Despite their desire to be seen as masculine, strong or self-reliant,⁹⁸ their struggle to attain manhood is dependent on them constricting their masculinity so that others feel comfortable enough not to perceive them as a threat.⁹⁹ Undeservedly viewed as “sexual brutes,” Black boy victims of sexual violence are rarely accepted as victims, and, consequently, denied support when they disclose their sexual abuse.¹⁰⁰ Ultimately, some Black boys come to believe their death or sexual victimization is only a matter of time and that they are of nobody’s concern.¹⁰¹

The incessant manifestation of anti-Black male bias that Black boys experience lead them to endorse harmful anti-Black male stereotypes that increases their vulnerability to sexual violence.¹⁰² Their vulnerability to sexual violence correlates with their increased rates of indiscriminate arrests at an early age that lead to their being sent to facilities where they are routinely raped or sexually assaulted.¹⁰³ Scholars note that “among diverse groups of men, young Black males experience statutory rape, sexual coercion, and sexual manipulation more than other groups.”¹⁰⁴

note 22, at 1148; Jones, *Police, Heroes & Child Trafficking*, *supra* note 11, at 1015.

96. Jones, *Men and Boys*, *supra* note 24, at 530; NANCY E. DOWD, *THE MAN QUESTION: MALE SUBORDINATION AND PRIVILEGE* 41-42 (2010).

97. Phillip Atiba Goff, *Black Boys Viewed as Older, Less Innocent Than Whites*, *Research Finds*, AM. PSYCH. ASSN. (2014), www.apa.org/news/press/releases/2014/03/black-boys-older [perma.cc/NG8U-SSMS].

98. Steve Quam, et al, *Racial Identity, Masculinities, and Violence Exposure: Perspectives From Male Adolescents in Marginalized Neighborhoods*, 67 J. ADOLESCENT HEALTH 638, 640 (Nov. 2020).

99. WILLIAM GRIER & PRICE COBBS, *BLACK RAGE* 59 (Basic Books, Inc. 1968).

100. George Johnson, *Let’s Talk About the Sexual Abuse of Black Boys*, BLAVITY (May 12, 2022), www.blavity.com/lets-talk-about-the-sexual-abuse-of-black-boys?category1=opinion [perma.cc/G27Z-9FEC]; *see also* Jones, *Invisible Man*, *supra* note 22, at 1184.

101. Reny Taylor, *Indicted Victims: Black Males, Monocularity, and Sexual Violence*, REZISTANSWA (July 31, 2020), www.medium.com/@RenyTay/while-we-may-disown-the-racist-caricatures-of-black-men-and-boys-as-super-predators-we-c3f8d3a38715 [perma.cc/NS2R-V8LT].

102. Curry, *Crews*, *supra* note 41, at 12; *see also* Owusu, *infra* note 171 and accompanying discussion (describing experiences from a Black male where he was fired for refusing to acquiesce to the sexual desires of a White female superior at work).

103. Nikitta Foston, *Behind the Pain Nobody Talks About: Sexual Abuse of Black Boys*, EBONY MAG. (June 2003), www.ncdsv.org/images/BehindPainNobodyTalksSexualAbuseBlackB.pdf [perma.cc/XP7J-R24S].

104. Curry, *Crews*, *supra* note 41, at 12; *see also* Johnson, *supra* note 100 (noting that well known Black male celebrities, such as Lil Wayne, DeRay

Despite freely accessible data that indicates the alarming degree to which Black boys suffer because of their maleness, racial justice discourse focuses squarely on harm relative to race or ethnicity, leaving the sexual violence that Black boys experience unexplored.¹⁰⁵ Consequently, the daily lives of Black boys is diminished by the perpetual threat of sexual violence. This constant state of oppression is exacerbated by the fact that mothers of many Black boys are “not able to turn to middle class safety nets in the same way as their white counterparts” because police officers, and other authority figures, are perceived as “potential predators” who threaten the survival or emotional well-being of their Black sons.¹⁰⁶ The tragedies too many mothers endure, in part, because of anti-Black male bias, accentuates the need for greater cultural awareness regarding the methods sexual predators use to target potential male victims, which have proven to be enormously threatening in scope.

For instance, in 2018, police officials discovered the existence of a sex trafficking ring in Connecticut that had been preying on boys for more than two decades.¹⁰⁷ Officials identified at least fifteen victims, but believed the sex trafficking ring sexually exploited dozens more.¹⁰⁸ The traffickers specifically targeted boys who were developmentally disabled, mentally impaired, or addicted to drugs, and often lured boys from drug rehabilitation centers.¹⁰⁹ They provided the boys with highly addictive drugs, such as heroin or cocaine, and then took the impaired boys to perform sex for older men in exchange for payment to the sex trafficker.¹¹⁰

Child pornography also operates as a catalyst for the sex trafficking of boys.¹¹¹ The United States accounts for approximately 37% of all child sexual abuse internet sites¹¹² that facilitate sex

Davis, DaBaby, and Raz B, like other Black boys, were reportedly sexually abused as children).

105. CURRY, *The MAN-NOT*, *supra* note 8, at 145.

106. *Mothers Say Middle Class Status Little Protection Against Gendered Racism for Black Boys*, SYRACUSE UNIV. (Apr. 11, 2016), www.phys.org/news/2016-04-mothers-middle-class-status-gendered-racism.html [perma.cc/FN55-J7KV]; CURRY, *THE MAN-NOT*, *supra* note 8, at 143-45 (reasoning that Black males are publicly assaulted and exposed to the sexual coercion by law enforcement officers in their daily lives).

107. Collins, *supra* note 91.

108. *Id.*

109. *Id.*

110. *Id.*

111. Jones, *Police, Heroes & Child Trafficking*, *supra* note 11, at 1018 (noting that, “a person that feeds the demand for child pornography fuels the burgeoning child sex trafficking industry and the associated bondage, molestation, and torture of children”); Jones, *Invisible Man*, *supra* note 22, at 1149.

112. *Latest Interest Watch Foundation Report Shows Europe Now Hosts 60% of Child Abuse Webpages*, IWF (Apr. 2017), www.iwf.org.uk/news/latest-internet-watch-foundation-report-shows-europe-now-hosts-60-of-child-sexual-abuse [perma.cc/9CR4-CG2N].

trafficking.¹¹³ Despite established prohibitions against child pornography, there has been a global increase in the manufacture and distribution of child pornography over the last decade, as tens of millions of child sexual abuse images and videos are shared every year.¹¹⁴ Today, global child pornography rings that specialize in targeting boys continue to be discovered.¹¹⁵ In some regions, boys comprise the majority of child victims.¹¹⁶

To cite but one example, after *Invisible Man* revealed the degree to which boys are vulnerable to child pornography rings,¹¹⁷ the U.S. Immigrations and Customs Enforcement (“ICE”) and Homeland Security officials discovered, “one of the largest [child pornography] operations ever uncovered,” which involved use of a secret website to victimize at least 250 children, mostly boys, and approximately 27,000 subscribers.¹¹⁸ At the time authorities dismantled the child pornography ring, the website contained “more than 2,000 shared webcam-captured videos of mostly juvenile boys,” between the ages of three and seventeen, from thirty-nine States, with twenty-three of the child victims hailing from other countries.¹¹⁹ U.S. officials maintained that never in the history of ICE had the agency located so many victims during the course of a single child commercial sexual exploitation investigation.¹²⁰ Discovery of the vast child pornography network is representative of the thriving public safety threat child pornography poses to males. Nonetheless, research regarding the impact of child pornography rings on males remains glaringly underdeveloped in today’s purported climate of sexual violence awareness.

Despite credible data that indicates males comprise a statistically comparable percentage of victims of sexual violence, the notion that males suffer high rates of sexual abuse likely strikes

113. Sarah Primrose, *Killing the Messenger: The Intersection between Sex Trafficking, Planned Parenthood & the Marginalization of Youth Victims*, 22 UNIV. FLA. J. L. & PUB. POL’Y 299, 307 (2011) (noting that the internet is fueling the rise of trafficking).

114. Cris R. Revaz, *The Optional Protocols of the UN Convention on the Rights of the Child on Sex Trafficking and Child Soldiers*, 9 HUM. RTS. BRIEF 13, 15 (2001).

115. Adrian Mojica, *FBI Issues Sobering Statistics on Child Pornography in the U.S., Dark Web*, FOX (Apr. 26, 2017), www.fox17.com/news/local/fbi-issues-sobering-statistics-on-child-pornography-in-the-united-states-dark-web [perma.cc/U96H-SFQ4].

116. Pappas, *supra* note 40 (noting that “[b]oys were also more likely to have been exposed to pornography during the abuse, and to have had pornography made of them”); Jones, *Invisible Man*, *supra* note 22, at 1149 (noting that pornography depicts more boys than girls).

117. Jones, *Invisible Man*, *supra* note 22, at 1149.

118. *US Police Break Up Ring Sharing Indecent Images of Children*, BBC NEWS (Mar. 18, 2014), www.bbc.com/news/world-us-canada-26639092 [perma.cc/Z9CE-3VLC].

119. *Id.*

120. *Id.*

most as absurd because it contradicts modern day expressions of male privilege.¹²¹ Consequently, the sex trafficking of males has little or no presence in historical or contemporary anti-trafficking legislation. Neither the TVPA,¹²² the Preventing Sex Trafficking and Strengthening Families Act of 2014,¹²³ nor the Justice for Victims of Trafficking Act of 2017,¹²⁴ despite being meritorious achievements, specifically require gender inclusivity or direct child services agencies or law enforcement personnel to safeguard against anti-male bias so that male victims are not ignored. Some states even require male child victims of statutory rape to pay child support upon reaching adulthood for any offspring resulting from sexual abuse by an adult.¹²⁵

Although the U.S. State Department 2020 Trafficking in Persons Report (“TIP”) makes clear that there is a serious need to “increase access to victim services” for men and boys in the U.S., observers have found that there are “zero screening tools that have been developed specifically to screen males for sexual abuse.”¹²⁶ Consequently, sexual abuse victim treatment programs that address physical and mental health needs unique to male victims of

121. Hlavka, *supra* note 40, at 483 (noting that heteronormative culture depicts boys and invulnerable sexual aggressors, which leaves no room to imagine women as perpetrators).

122. Pub. L. No. 106-386, 114 Stat. 1466 (2000) (codified at 22 U.S.C. § 7101).

123. Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, 128 Stat. 1919 (2014) (codified at 42 U.S.C. § 1305) (imposing mandates on child welfare agencies to identify, document, and determine appropriate services for child victims of sex trafficking); Jamie Cork, *Sex Trafficking and Child Welfare*, 12 UNIV. ST. THOMAS J. L. & PUB. POL’Y 16, 20 (2017).

124. Justice for Victims of Trafficking Act of 2015 (“JVTA”), Pub. L. No. 114-22, 129 Stat. 227 (codified in scattered sections of 18 U.S.C.) (requiring states to amend their child abuse statutes to declare the trafficking of children to be a form of child abuse and neglect); *see* Bob Murphy, *Child Abuse Includes Sex Trafficking Under CAPTA*, AM. BAR. ASSN. (Oct. 31, 2017), www.americanbar.org/groups/litigation/committees/childrens-rights/practice/2017/child-abuse-includes-sex-trafficking-under-capta/ [perma.cc/WCL4-2BJ9]. Prior to the JVTA, welfare professionals failed to characterize sex trafficking as child abuse in such fashion because the offense was not committed by a parent or significant relative in the home or an authority figure. Cork, *supra* note 123, at 20.

125. Jones, *Invisible Man*, *supra* note 22, at 1184; Myrisha S. Lewis, *Sex and Statutory Uniformity: Harmonizing the Legal Treatment of Semen*, 7 CHARLESTON L. REV. 235, 281 (2013); Michael J. Higdon, *Marginalized Fathers and Demonized Mothers: A Feminist Look at the Reproductive Freedom of Unmarried Men*, 66 ALA. L. REV. 507, 518-19 (2015).

126. Dylan Preston, *Screening and Stigma: Lack of Male Representation in Childhood Sexual Abuse Research and Literature 2* (Apr. 22, 2016) (B.A. thesis, Bridgewater State University) (on file with author) (noting that, today there are “zero screening tools that have been developed specifically to screen males for sexual abuse”); U.S. STATE DEP’T, *TRAFFICKING IN PERSONS REPORT* (June 2020), www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf [perma.cc/63MU-4Z7E].

sexual violence continue to be virtually nonexistent.¹²⁷ A 2012 survey of child sex trafficking provider organizations revealed that while 36% were exclusively for female victims, none of the programs were exclusively for boys, and of thirty-three operational residential programs identified, only two accepted male victims.¹²⁸ Likewise, when opening a shelter in North Carolina for male victims of sex trafficking, journalist Heather Sells found that only one other shelter existed for male children in the United States.¹²⁹ Judge Jane Cork, who presides over cases in Minnesota involving male victims of sex trafficking, observed that there is “a complete lack of services for male victims” of sex trafficking and only “one of four... shelters has a bed for boys, but most of the shelters do not even take boys.”¹³⁰

III. ANTI-BLACK MALE BIAS AND HARMFUL POLICING

The prevalence of sexual violence against males is inextricably linked to the failure of police officials to properly identify male victims or fully comprehend how males experience sexual violence.¹³¹ Today’s police officer is more likely to charge a boy victim of sex trafficking with prostitution rather than rescue the boy.¹³² Some police officers have linked the failure of law enforcement efforts to properly detect and rescue boy victims of sexual violence to the law enforcement community’s inability to “break into” and dismantle the “secret society” created by male sex trafficking networks.¹³³ Other police officers explain that the law enforcement community’s failure to prevent male sexual violence is due to the sheer allegiance of some legislators and police officials to the *female victim-male perpetrator* oriented approach to combatting

127. Jones, *Invisible Man*, *supra* note 22, at 1166-67.

128. Cole, *supra* note 44, at 424-25; *Assisting Male Survivors of Human Trafficking*, *supra* note 39 (stating that the sex trafficking of boys and men continues to be hidden and underreported, and there is some shortage of programs to meet their needs).

129. Heather Sells, *Long-Term Shelter Opens for Boy Victims of US Sex Trafficking*, CBN NEWS (Oct. 31, 2018), www2.cbn.com/news/us/long-term-shelter-opens-boy-victims-us-sex-trafficking [perma.cc/XD44-TRYQ].

130. Cork, *supra* note 123, at 16; Sells, *supra* note 129 (detailing the second shelter to open in the U.S. that exclusively helps teenage boys who have been victims of sex trafficking by providing holistic, faith-based care); *see Assisting Male Survivors of Human Trafficking*, *supra* note 39 (“When [males] do escape their trafficking situations they are likely to be neglected by government, and service providers.”).

131. Hlavka, *supra* note 40, at 482; Pappas, *supra* note 40 (noting that “breaking the silence is key to prevention.”).

132. Cole, *supra* note 44, at 424; Swaner et al., *supra* note 51, at 73.

133. Pappas, *supra* note 40 (noting that “law enforcement statistics don’t provide good estimates”); Meredith Dank et al., *supra* note 67, at 116 (sharing an admission from a law enforcement officer that despite their knowing that a significant percentage of boys are “commercially sexually exploited,” the trafficking of boys is a “secret society” and law enforcement officials have been unable to “break into it.”).

sexual violence.¹³⁴ For example, when a police officer was questioned about the need for law enforcement officials to avoid criminalizing boy victims of sex trafficking in favor of redirecting their efforts to rescuing boy victims, the police officer bluntly confessed that legislators have no interest in allocating funds to prevent the sex trafficking of boys.¹³⁵ The officer stated, “[i]t would be impossible to convince white, male state senators to pass a law that does not criminalize youth in the sex trade if you tell them that boys are involved....”¹³⁶ Simply put, despite men and boys suffering from sexual violence at rates comparable to women and girls, there appears to be a profound lack of interest in using the full range of government to prevent male sexual abuse.¹³⁷ For Black men and boys, the harmful consequences of governmental mistreatment is far more pronounced,¹³⁸ in part because Black masculinity is socially positioned as a societal threat.

A. Anti-Black Male Bias Operates as a Catalyst for Casting Black Males as Sexual Predators

Despite being contradicted by virtually incontrovertible official data, the stereotypical Black male in the US is “a savage beast incapable of controlling his sexual urges.”¹³⁹ In recognition of this

134. Swaner et al., *supra* note 51, at 79.

135. *Id.*

136. *Id.*

137. Mary Graw Leary, *Fighting Fire with Fire: Technology in Child Sex Trafficking*, 21 DUKE J. GENDER LAW & POL’Y 289, 299-300 (2014) (noting that “*The End Sex Trafficking Act of 2013* makes it abundantly clear that purchasers of sex are indeed traffickers and should be pursued under federal anti-trafficking efforts”); Jones, *Police Heroes, & Child Trafficking*, *supra* note 11, at 1018-19 (noting case involving police officer charged with child sex trafficking after reportedly providing the child money and having sexual contact with the child).

138. Shelby Mitchell, *The Societal and Prosecutorial Undervaluation of Sexual Offenses Against Black Men*, 23 RUTGERS RACE & L. REV. 479, 486 (2022) (recognizing that “for Black men, being a victim of sexual abuse or rape is often laughed about or looked at as harmless or preparatory. As a result, this country often ignores the potential damage inflicted on Black males, leaving one to wonder how many other male victims of sexual assault or rape felt they would be blamed, not be believed, or stigmatized for reporting.”).

139. Sherry F. Colb, *The Three Faces of Evil*, 86 GEO. L.J. 677, 723 n. 163 (1998); Marques P. Richeson, *Sex, Drugs, and . . . Race-to-Castrate: A Black Box Warning of Chemical Castration’s Potential Racial Side Effects*, 25 HARV. BLACKLETTER L.J. 95, 112 (2009) (noting “[t]he judicial hypersexualization of black men...in court opinions, which routinely portrayed black males as savage aggressors”); Kathryn K. Russell, *The Racial Hoax As Crime: The Law As Affirmation*, 71 IND. L.J. 593, 599 (1996) (recognizing that, “[t]he Black male has always been perceived as a physical threat; however, until recently, that threat was portrayed in sexual terms. Historically, he was viewed as a threat to the purity of the White female. In the past twenty years, the image of the Black male as rapist has evolved into the image of the Black male as the symbolic pillager of all that is good and pure. The criminal blackman stereotype persists,

oppressive feature of American culture, the late feminist theorists bell hooks reasoned:

Seen as animals, brutes, natural born rapists and murderers, black men have no real dramatic say when it comes to the way they are represented. They have made few interventions on the stereotype. As a consequence, they are victimized by stereotypes that were first articulated in the nineteenth century but hold sway over the minds and imagination of citizens of this nation in the present day.... At the center of the way black male selfhood is constructed in white-supremacy patriarchy is the image of the brute, untamed, uncivilized, unthinking and unfeeling.¹⁴⁰

In line with hooks' posture, Achille Mbembe, opines in his highly noted work, *Black Reason*, that through the process of disseminating false and destructive narratives of Black males, a "massive coating of nonsense, lies, and fantasies" arises that operates as a cultural "envelope whose function" is to "substitute for the being, the life, the work and language of Black males" to situate them as a societal "problem."¹⁴¹ The performative outcome of the narratives Mbembe and hooks describe is a coercive social arrangement that restricts Black male social mobility and freedom, purportedly for the public good.¹⁴² Relentless portrayals of Black males as criminals have so effectively disparaged their identity that Black males remain relegated to incomparable and undeserved levels of lethal policing, poverty, school expulsion, homelessness, and incarceration.¹⁴³ For many Black males, feelings of "hopelessness, inequality and blocked opportunities" are a way of life.¹⁴⁴ For astute commentators, no other group is more disadvantaged at birth than Black males.¹⁴⁵

even though it is contradicted by official data"); Beth Schwartzapfel, *When Does Murder Make the News? It Depends on the Victim's Race*, THE MARSHALL PROJECT (Oct. 28, 2020), www.themarshallproject.org/2020/10/28/when-does-murder-make-the-news-it-depends-on-the-victim-s-race [perma.cc/PV9W-SLM9].

140. BELL HOOKS, *WE REAL COOL: BLACK MEN AND MASCULINITY*, at xii (New York Routledge, 2004) (emphasis added).

141. *Id.*; ACHILLE MBEMBE, *CRITIQUE OF BLACK REASON* 39 (Duke Univ. Press 2017).

142. MBEMBE, *supra* note 141, at 39, 111, 153.

143. Jones, *Men and Boys*, *supra* note 24, at 543; Rebecca C. Hetey & Jennifer L. Eberhardt, *The Numbers Don't Speak for Themselves: Racial Disparities and the Persistence of Inequality in the Criminal Justice System*, 27 ASSOC. FOR PSYCH. SCI. 183, 185 (2018); Akiva M. Liberman & Jocelyn Fontaine, *Reducing Harms to Boys and Young Men of Color from Criminal Justice System Involvement*, URB. INST. RSCH. REP. 4 (Feb. 4, 2015), www.urban.org/research/publication/reducing-harms-boys-and-young-men-color-criminal-justice-system-involvement [perma.cc/9Z2P-97BL].

144. Shervin Assari & T.J. Curry, *More Money and Education Isn't Reducing Racism and Depression for Black Men, Study Confirms*, NEWS ONE (July 22, 2020), newsone.com/3981497/black-men-racism-depression-wealth-education-study/ [perma.cc/HX5X-BUUB].

145. Jones, *Men and Boys*, *supra* note 24, at 526; *Report of The Sentencing*

Disadvantages unique to Black masculinity have historical roots dating back to the advent of the African slave trade. Black males were characterized as “sexual predators whose primary desire was to violate [W]hite women.”¹⁴⁶ The irony surrounding the persistent nature of the “Black male sexual predator” claim has attracted attention. Scholars observe that although the majority of alleged perpetrators of sexual violence identified during the “#MeToo movement” were “powerful White men,” it was “White men [who] largely created the myth that black men should be feared, as a means of dehumanizing them and keeping them enslaved.”¹⁴⁷ Victimology theorists have noted that, historically, women have often been “pressured by white men to falsely accuse black men of rape so that the alleged suffering of the victim could be seized upon to justify the execution or lynching of the accused [black male], and by extension to legitimize the segregation and repression of all black men.”¹⁴⁸ Despite the meritless underpinnings of the “Black male sexual predator” myth, it has held profound relevance in American legal history. In *Long v. Hooks*, justices even acknowledged that “the history of policing sexual contact between Black men and white women—including using accusations of inappropriate or violent conduct, from wolf whistles to rapes, to imprison or lynch Black men—is a long and troubling one in this country.”¹⁴⁹

Severely biased legal proceedings against Black males perceived as heterosexual, such as those involving the Scottsboro

Project to The United Nations Special Rapporteur of Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance, THE SENTENCING PROJECT 3 (Mar. 2018), www.sentencingproject.org/app/uploads/2022/08/UN-Report-on-Racial-Disparities.pdf [perma.cc/25PY-AMA4].

146. Dahleen Glanton, *Can the #MeToo movement free black men of the sexual predator stereotype?*, CHI. TRIBUNE (Dec. 12, 2017), www.chicagotribune.com/columns/dahleen-glanton/ct-met-glanton-metoo-black-men-20171211-story.html [perma.cc/F764-X9VD].

147. *Id.*; see also Richard Brody, *The Worst Thing about “Birth of a Nation” is How Good It Is*, NEW YORKER (Feb. 1, 2013), www.newyorker.com/culture/richard-brody/the-worst-thing-about-birth-of-a-nation-is-how-good-it-is [perma.cc/8488-FNLF] (noting that the notoriously popular, “Birth of a Nation” depicted Black men as newly freed vengeful slaves that sexually preyed White women).

148. Brett Erin Applegate, *Prior (False?) Accusations: Reforming Rape Shields to Reflect the Dynamics of Sexual Assault*, 17 LEWIS & CLARK L. REV. 899, 902 (2013) (citing ANDREW KARMEN, CRIME VICTIMS: AN INTRODUCTION TO VICTIMOLOGY 260 (6th ed. 2007)).

149. 972 F.3d 442, 489 (4th Cir. 2020).

Boys,¹⁵⁰ Groveland Four,¹⁵¹ or Central Park Five,¹⁵² are scant examples of the wide-ranging degree the mythological Black male sexual predator stereotype provides a false justification for the incarceration or killing of innocent Black males. This ignominious genus of anti-Black male bias also enables the \$300 billion criminal justice system, comprised mostly of Whites, to exert control over a comparatively large percentage of Black males under the guise of protecting society from the purported threat of Black male savagery.¹⁵³

So entrenched is the nation's notoriously harsh vilification of Black males that it is widely accepted that the easiest criminal allegation to make in the U.S. is one against a Black male because the accuser will almost invariably be presumed innocent, and the Black male perceived as the wrongdoer, without significant consequence to the false accuser.¹⁵⁴ Commentators note that

150. Elise Cose, *The Saga of the Scottsboro Boys*, ACLU (July 27, 2020), www.aclu.org/issues/racial-justice/saga-scottsboro-boys [perma.cc/R9BD-9LKM].

151. Sara Weisfeldt, *4 Black Men Exonerated More Than 70 Years After Being Wrongly Accused of Raping a White Teen Girl*, CNN (Nov. 23, 2021), www.cnn.com/2021/11/22/us/groveland-four-exonerated-florida/index.html [perma.cc/8G4L-69QV].

152. Tandy Lau, *The Central Park Five Become the Exonerated Six*, AMSTERDAM NEWS (July 27, 2022), www.amsterdamnews.com/news/2022/07/27/central-park-five-become-the-exonerated-six/ [perma.cc/NZ8V-2RPC].

153. ANDRIENNE D. DAVIS, BLACK SEXUAL ECONOMIES, RACE AND SEX IN A CULTURE OF CAPITAL 41 (2019); Assari & Curry, *supra* note 144 (stating “[m]any of the racists ideas white Americans have of Black people are driven by the negative stereotypes white Americans have of Black men being more violent, sexual promiscuous and [more] dangerous than other race/sex groups”); Tara O’Neill Hayes, *The Economic Cost of the Criminal Justice System*, AM. ACTION F. (July 16, 2020), www.americanactionforum.org/research/the-economic-costs-of-the-u-s-criminal-justice-system/ [perma.cc/87JD-F8H6] (stating the U.S. spends \$300 billion annually to police people around the country and incarcerate 2.2 million people).

154. Phillip Atiba Goff & Matthew Christian Jackson, *The Essence of Innocence: Consequences of Dehumanizing Black Children*, J. PERSONALITY & SOC. PSYCH. 526, 527 (2014); S. B. Starr & M. M. Rehavi, *Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker*, 123 YALE L. J. 2, 4 (2013); *Media portrayals of black men contribute to police violence, study says*, RUTGERS UNIV. (Nov. 29, 2018), www.phys.org/news/2018-11-media-portrayals-black-men-contribute.html [perma.cc/TY63-A2E9]; Oliver Laughland, *When They See Us: behind the harrowing Netflix drama about the Central Park Five*, THE GUARDIAN (May 30, 2019), www.theguardian.com/tv-and-radio/2019/may/30/when-they-see-us-netflix-central-park-five [perma.cc/GK76-3XJX] (demonstrating Hollywood’s preoccupation with dramatizing accounts of Whites falsely accusing black males, and criminal justice statistics); Christina Carrega, *‘Because They Can Get Away With it, Why African Americans are Blamed for Crimes They Didn’t Commit: Experts*, ABC NEWS (May 31, 2020), abcnews.go.com/US/african-americans-blamed-crimes-commit-experts/story?id=70906828 [perma.cc/4UMM-TG7Q] (noting that people false accuse Blacks because they can do so with impunity under the current criminal justice system); *see*

although “feminist movements” have tended to ignore this particular manifestation of anti-Black male bias and “White supremacy,” it cannot be reasonably denied that numerous “instances of modern-day women weaponizing their womanhood by using police and law enforcement” have had tragic consequences for Black males.¹⁵⁵ Legal scholars note that the disturbing effect and historiography of Black males being falsely accused of crimes is so well documented, it is “undisputed.”¹⁵⁶

As signified by the aforementioned cases involving the Groveland Four, Scottsboro Boys, Central Park Five, and too many others, criminal cases against Black males do not typically turn on the weight of the evidence, accuracy of facts, or character of witnesses, as would be the circumstance for many non-Black males.¹⁵⁷ Rather, criminal cases against the Black male are too often a product of the anti-Black male bias harbored by prosecutors, judges, police, juries, medical examiners, and so forth.¹⁵⁸ Not surprisingly, 54% of wrongful convictions are attributed to government misconduct, such as witness tampering, threats and manipulation, misconduct during interrogations, fabricated official evidence interrogations, fabricated official evidence (forensic fraud, fake crimes, and fictitious confessions), concealment of exculpatory evidence, and misconduct during the trial (police perjury and misconduct by prosecutors).¹⁵⁹

Because of anti-Black male bias positions non-black males to use the Black male sexual predator stereotype to their advantage, one can reasonably predict the legal outcome of a case involving sexual violence and an accused Black male in virtually every

generally Jones, *Invisible Man*, *supra* note 22 (explaining various incidents and data regarding false accusations of sexual violence).

155. Shirin Ananda Dias, *Nice White Ladies: The Truth about White Supremacy, Our Role in It, and How We Can Help Dismantle It*, EUR. CTR. POPULISM STUD. (Mar. 1, 2022), www.populismstudies.org/nice-white-ladies-the-truth-about-white-supremacy-our-role-in-it-and-how-we-can-help-dismantle-it/ [perma.cc/DKW6-BZV3] (citing Jessie Daniels’ noted work, “Nice White Ladies”); *see also* Allison Wiltz, *Do Black Men Need to Be Careful Around White Women*, MEDIUM (Nov. 30, 2022), www.medium.com/afrosapiophile/do-black-men-need-to-be-careful-around-white-women-6d6e0db11299 [perma.cc/2FEQ-6ZYL] (noting multiple instances where “White women...have weaponized their whiteness to harm Black men.”).

156. Donald F. Tibbs, *From Tiktok to Racial Violence: Anti-Blackness in the Gendered Sphere*, 33 ST. THOMAS L. REV. 198, 202 (2021).

157. Samuel R. Gross, Maurice Possley, Kaitlin Jackson Roll, & Klara Stephens, *Government Misconduct & Convicting the Innocent*, NAT’L REG. OF EXONERATIONS 1 (Sep. 1, 2020).

158. Ephraim Unell, *A Right Not to Be Framed: Preserving Civil Liability of Prosecutors in the Face of Absolute Immunity*, 23 GEO. J. LEGAL ETHICS 955, 970 (2010) (recognizing that “prosecutorial misconduct has strong racial and class implications” and “is more pronounced in the conviction of innocent black men” (citing JIM DWYER ET AL., ACTUAL INNOCENCE: WHEN JUSTICE GOES WRONG AND HOW TO MAKE IT RIGHT 318 (2000))).

159. Gross, Possley, Roll, & Stephens, *supra* note 157, at iii – iv.

circumstance. Black males are “three and half times more likely to be innocent when accused of sexual assault.”¹⁶⁰ According to data reported by the National Registry of Exonerations, a prisoner serving time for sexual assault is 3.5 times more likely to be innocent if he is a Black male than White.¹⁶¹ Although roughly 13% of White victims of sexual assault were attacked by Black men, and 70% of White victims of sexual assault were attacked by White men, Black men account for 57% of exonerees falsely accused of sexual assault.¹⁶² It comes as no surprise that a Black male defendant convicted of sexually assaulting a White woman is approximately eight times more likely to be innocent than a White male.¹⁶³ In addressing the historic nature of false rape allegations against Black males, legal theorist Angela Davis, noted:

In the history of the United States, the fraudulent rape charge stands out as one of the most formidable artifices invented by [gendered] racism. The myth of the Black rapist has been methodically conjured up whenever recurrent waves of violence and terror against the Black community have required convincing justification.¹⁶⁴

Despite well known cases involving notoriously false allegations against Black males, such as cases involving Charles Stuart,¹⁶⁵ Susan Smith,¹⁶⁶ Patricia Ripley,¹⁶⁷ Sherry Hall,¹⁶⁸ and too many others, false allegations against Black males persist with great latitude without any apparent abatement in frequency.¹⁶⁹

160. Carrega, *supra* note 154.

161. Gross, Possley, Roll, & Stephens, *supra* note 157, at 2.

162. *Id.* at 12.

163. *Id.* at 15.

164. ANGELA DAVIS, *Rape, Racism, and the Myth of the Black Rapist*, in *WOMEN RACE & CLASS* (1983).

165. Diane Bernard, ‘They were Treated Like Animals’: The Murder and Hoax that Made Boston’s Black Community a Target 30 Years Ago, *WASH. TIMES* (Jan. 4, 2020), www.washingtonpost.com/history/2020/01/04/they-were-treated-like-animals-murder-hoax-that-made-bostons-black-community-target/ [perma.cc/ZL5C-2U4X].

166. Don Terry, *A Woman’s False Accusation Pains Many Blacks*, *N.Y. TIMES* (Nov. 6, 1994), www.nytimes.com/1994/11/06/us/a-woman-s-false-accusation-pains-many-blacks.html [perma.cc/2BRC-7WZC].

167. Amir Vera & Hollie Silverman, *Woman Who Confessed To Killing Her 9-Year-Old Son Pushed Him Into Florida Canal, Affidavit Says*, *CTV NEWS* (May 24, 2020), www.ctvnews.ca/world/woman-who-confessed-to-killing-her-9-year-old-son-pushed-him-into-florida-canal-affidavit-says-1.4952223 [perma.cc/KA2N-XQF9].

168. Tom Jackman, *Police officer Sentenced To 15 Years For Falsely Claiming She Was Shot*, *WASH. POST* (Oct. 4, 2018), www.washingtonpost.com/crime-law/2018/10/04/police-officer-sentenced-years-falsely-claiming-she-was-shot/ [perma.cc/Q54G-8WZU].

169. Alex Sundby, *White Woman in Viral NYC Video Allegedly Made False Assault Claim Against Black Man In Second 911 Call*, *CBS NEWS* (Oct. 14, 2020), www.cbsnews.com/news/amy-cooper-false-claim-assault-black-man-christian-cooper-second-911-call/ [perma.cc/3ZCG-VPLG]; *see also* Jessica Schladebeck, *Former Florida Police Officer Admits to Framing Two Black Men*

Although Black males are as likely as females to be victims of sexual violence --as detailed in Part II-- Black males are more likely to be falsely accused and wrongly convicted of offenses involving sexual violence.¹⁷⁰ Alarming degrees of unjust Black male incarceration, discrimination, and lethal policing, make clear that there is virtually no limit to the harm an individual or government official may attempt to inflict upon a Black male.¹⁷¹

For example, the Black male sexual predator myth has served as a pretext for the disproportionate arrest and incarceration of Black males on grounds that they are “domestic sex traffickers, commonly referred to as pimps.”¹⁷² Police appear so obsessed with

Amid False Arrest Scandal, N.Y. DAILY NEWS (Jul. 27, 2018), www.nydailynews.com/news/national/ny-news-police-officer-framing-black-men-false-arrest-scandal-20180727-story.html [perma.cc/7HL8-2AGP] (noting a police officer’s admission regarding a police chief accused of ordering staff to frame innocent black men to boost department’s arrest record).

170. *Innocent Black People Significantly More likely to be Wrongfully Convicted of Sexual Assault*, MONT. INNOCENCE PROJECT (2023), mtinnocenceproject.org/innocent-black-people-significantly-more-likely-to-be-wrongfully-convicted-of-sexual-assault/ [perma.cc/Z97N-6W79] (noting that “more than half of all wrongful convictions can be traced back to a false allegation or false testimony” and “[f]alse allegations—particularly about Black men being rapists—have been reinforced over and over again in our history. While shameful, America embraced the allegation a century ago, and America embraces the allegation today.”). See also Deborah L. Brake, *Fighting the Rape Culture Wars Through the Preponderance of the Evidence Standard*, 78 MONT. L. REV. 109, 153 (2017) (noting our “country’s specific history of false accusations and unfair convictions of black men for rape”); Estelle B. Freedman, *The Manipulation of History at the Clarence Thomas Hearings*, 65 S. CAL. L. REV. 1361, 1362 (1992) (noting that “Black men have been especially vulnerable to false accusations of sexual assault” because “American racial stereotypes have traditionally projected animalistic sexual desires onto black men to justify a system of racial subordination.”).

171. Brake, *supra* note 170 at 153 (noting “the general social disadvantage that black men continue to carry in our culture can make it easier for everyone in the adjudicative process to put the blame on them”); Paul Butler, *Black Masculinity and the Government*, 2022 U. CHI. LEGAL F. 21, 22 (2022) (noting that blaming Black males for the “deprivations they suffer, discounts the force of structural racism.”). See, e.g., Derek Owusu, *I Had to Submit to Being Exoticised by White Women, If I Didn’t I was Punished*, THE GUARDIAN (Feb. 28, 2019), www.theguardian.com/world/2019/feb/27/white-privilege-is-used-by-women-against-black-men-as-a-tool-of-oppression [perma.cc/PV95-Z4FC] (describing experiences of a Black male in which he was fired for refusing to acquiesce to the sexual desires of a female superior at work); Kevin Harrish, *Woman Filed Horrible False Lawsuit Against NFL Star*, MSN (Mar. 21, 2023) www.msn.com/en-us/sports/nfl/woman-filed-horrible-false-lawsuit-against-nfl-star/ar-AA18T717?ocid= [perma.cc/84DP-EGL3] (discussing a woman that falsely accused a Black NFL player of giving her genital herpes as part of a series of “knowingly-false claims” and “attempts to extort money from him.”).

172. Lindsay Strauss, *Adult Domestic Trafficking and the William Wilberforce Trafficking Victims Protection Reauthorization Act*, 19 CORNELL J.L. & PUB. POL’Y 495, 536 n. 81 (2010). See Emma Coreno, *Finding the Line Between Choice and Coercion: An Analysis of Massachusetts’s Attempt to Define Sex Trafficking*, 13 NE. U.L. REV. 125, 160–61 (2021) (indicating that national

arresting Black males for allegedly being pimps that they often arrest victims of sexual violence for the purpose of targeting a pimp or use safe houses to coach victims on how to testify against an alleged pimp rather than to help the victim.¹⁷³ Despite legal prohibitions against police officers requiring child victims of sex trafficking to cooperate with police investigations, some police officers will refrain from arresting a child victim only “if [the child] gives up the name of [a] pimp.”¹⁷⁴ In some cases, police officers pressure women to break up consensual relationships and claim to be victims of sex trafficking so that a Black male can be arrested on grounds that he is a pimp.¹⁷⁵ In other cases, accusations against unsuspecting Black males arose only after foreign White females residing in the U.S. who did not want to be deported, agreed, at the behest of police officers, to accuse an innocent Black male of being their pimp.¹⁷⁶

Simply put, police officers and “other white authority” figures in some jurisdictions routinely arrest innocent Black men for allegedly being “pimps” that “[have] never sold a girl in their lives.”¹⁷⁷ The disproportionate targeting of innocent Black men for alleged domestic sex trafficking, nonetheless, is not limited to local police operations. Scholars who have examined federal prosecution practices posit that the customary aim in federal sex trafficking investigations or trials is to cast Black males as coercive and controlling, despite the range of evidence to the contrary.¹⁷⁸

In a nationwide study of cases prosecuted under the TVPA,¹⁷⁹ Black males represented 80 to 90% of the defendants, though Black

data shows that Black men are “the individuals most prosecuted” for sex trafficking); Daniel S. Harawa, *Lemonade: A Racial Justice Reframing of the Roberts Court’s Criminal Jurisprudence*, 110 CAL. L. REV. 681, 727 (2022) (noting that Black men being vastly overrepresented in sex trafficking prosecutions); Blanche Bong Cook, *Stop Traffic: Using Expert Witnesses to Disrupt Intersectional Vulnerability in Sex Trafficking Prosecutions*, 24 BERKELEY J. CRIM. L. 147, 164–65 (2019) (noting that judge’s concern that “government would use the newly minted federal sex trafficking statute to overcriminalize black men.”).

173. Swaner, et al., *supra* note 51, at 80.

174. Wendi J. Adelson, *Child Prostitute or Victim of Trafficking?*, 6 UNIV. ST. THOMAS L. J. 96, 125 (2008).

175. Kathleen Williamson & Antony Marcus, *Black Pimps Matter: Racially Selective Identification and Prosecution of Sex Trafficking in the U.S.*, in *THIRD PARTY SEX WORK AND PIMPS IN THE AGE OF ANTI-TRAFFICKING* 178, 187 (2017).

176. Swaner, et al., *supra* note 51, at 100.

177. Williamson & Marcus, *supra* note 175, at 187; Robin K. Magee, *The Myth of the Good Cop and the Inadequacy of Fourth Amendment Remedies for Black Men: Contrasting Presumptions of Innocence and Guilt*, 23 CAP. U. L. REV. 151, 210–11 (1994) (stating that “Black men are often labeled and treated as criminals by police, even where no criminal activity is suspected” and that Black men disproportionately suffer from “racist police attitudes.”).

178. Williamson & Marcus, *supra* note 175, at 184.

179. Pub. L. No. 106-386, 114 Stat. 1466 (2000) (codified at 22 U.S.C. § 7101).

males account for roughly only 6.5% of the U.S. population.¹⁸⁰ In Oregon, researchers found that “49/58 (85%) of the Oregon federal defendants were black males” though Black males comprise “less than one percent” of Oregon’s general population.¹⁸¹ Observers also note that in some cases, the catalyst for arresting and prosecuting Black males has little to do with genuine efforts to curtail sex trafficking.¹⁸² Rather, the prosecution of Black males has more to do with federal prosecutors trying to position themselves for political offices with convictions of Black males so that they can boast that under their leadership convictions grew “from zero per year to ten.”¹⁸³

Once convicted of being a pimp, Black males are routinely sentenced to over thirty years in prison and do not receive comparable plea agreements as White defendants charged with identical or comparable offenses.¹⁸⁴ Researchers have found that, “an alarmingly large and growing number of black men have been prosecuted and received what are effectively life sentences for crimes that are barely noticed when committed by white men or non-Black males.”¹⁸⁵ As police officers and prosecutors know quite

180. *Human Trafficking Arrests*, FED. BUREAU OF INV. (2019), ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/additional-data-collections/human-trafficking/human-trafficking/table-3.xls [perma.cc/8FPD-R7YG].

181. Williamson & Marcus, *supra* note 175, at 193.

182. *Id.*

183. *Id.* at 188.

184. *Id.* at 189.

185. *Id.* at 178; see Vanessa Bouche & Mark Daku, *Who’s Disproportionately Prosecuted For Human Trafficking? Young Black Men*, WASH. POST (Jan. 11, 2019), www.washingtonpost.com/news/monkey-cage/wp/2019/01/11/young-black-men-are-disproportionately-likely-to-be-prosecuted-for-human-trafficking-this-explains-why/ [perma.cc/JFS3-TSHZ] (noting that “the type of trafficking case that carries the highest penalties and most likely to be prosecuted—are significantly more likely to be young, black and male”); Jones, *Invisible Man*, *supra* note 22, at 152; see also Williamson & Marcus *supra* note 175, at 189 (noting that Massage parlors, Latino brothels, frequented hotels, strip clubs, escort services, delivery services that provide transportation or upscale online sex services have received scant attention from police officials despite anti-sex crime legislation). For example, although *The End Sex Trafficking Act of 2013* makes it abundantly clear that purchasers of sex should be pursued under federal anti-sex trafficking legislation, in some cases, police identify, arrest and release purchasers of sex or, “Johns,” they capture as a result of sex trafficking operations. *Id.* at 182; End Sex Trafficking Act, H.R. 2805, 113th Cong. (2013); Leary, *supra* note 137, at 299-300. In at least one “sex trafficking” sting operation, “Johns” were arrested and sentenced to misdemeanor punishments of days and months for purchasing sex from children. See Williamson & Marcus, *supra* note 175, at 182. In another sex trafficking sting operation in Cook County, Illinois, police officials arrested approximately “157 buyers,” as part of the National Johns Suppression Initiative, which included 19 law enforcement departments. Elizabeth Matthews, *Cook County Sex Trafficking Sting Results in Over 150 Arrests*, FOX 32 (Feb. 4, 2020), www.fox32chicago.com/news/cook-county-sex-trafficking-sting-results-in-over-150-arrests [perma.cc/Y4RC-5WC3]. None of the “Johns” or purchasers of sex were “criminally charged.” *Id.*

well, when Black males are sent to jails or prisons, they are “routinely raped or sexually assaulted.”¹⁸⁶

B. Police Anti-Black Male Bias and Sexual Violence

Perhaps the most alarming non-lethal manifestations of anti-Black male bias in law enforcement are police violent attacks on the sexual organs of Black male suspects, including the practice of conducting warrantless anal cavity searches of Black male motorists and pedestrians for the purported purpose of searching for contraband. Although a comprehensive discussion of these heinous police practices goes beyond the scope of this Article, because sexualized police violence has persisted largely unexamined by sexual victimization theorists, several points of discussion are warranted.

First, courts and legislators have largely closed jurisprudential gaps in criminal law that once gave police officers near unfettered rights to invade or exploit a suspect’s most intimate and sexual body parts in ways that blurred the line between effective policing and sexualized police violence.¹⁸⁷ Federal police officers and local police officers in many states are now prohibited from having sex with arrestees or people in custody.¹⁸⁸ Correction officers are now prohibited from having sex with inmates.¹⁸⁹ Police officers are no longer authorized to have sex with prostitutes under the guise of collecting evidence of criminal behavior to arrest them.¹⁹⁰

Consistent with this jurisprudential trend, courts have established that in order for a police officer to manually search a male’s anus, the police officer must first obtain a search warrant.¹⁹¹

186. Mitchell, *supra* note 138, at 491 (stating “Black men are indiscriminately sent at higher rates to jails, prisons, youth detention centers, group homes, foster homes, or rehabilitative centers, and while there, routinely raped or sexually assaulted.”).

187. Jones, *Police, Heroes and Child Traffickers*, *supra* note 11, at 1010.

188. Albert Samaha, *Congress Has Closed the Loophole that Allowed Federal Officers to Claim Sex with a Detainee is Consensual*, BUZZFEED (Mar. 16, 2022), www.buzzfeed.com/albertsamaha/congress-close-police-consent-loophole-law [perma.cc/D6J9-K7XG] (observing the U.S. Congress passed the “Closing the Law Enforcement Consent Loophole Act” that banned federal law enforcement officers from having sex with people in their custody and noting that New York, Maryland, Kansas, New Hampshire, Illinois, and Vermont passed similar bans).

189. Peter J. Tomasek, *Incarcerated People Can’t Legally Consent to Sex With Prison Guards*, INTERROGATING JUSTICE (Dec. 2021), www.interrogatingjustice.org/prisons/incarcerated-people-cant-legally-consent-to-sex-with-prison-guards/ [perma.cc/X5H6-P3KW] (stating that federal law makes it illegal for prison guards to have sex with incarcerated people).

190. Mark Memmott, *Cops Can’t Have Sex With Prostitutes, Hawaiian Lawmakers Say*, NPR (Mar. 2014), www.npr.org/sections/thetwo-way/2014/03/22/292820898/cops-cant-have-sex-with-prostitutes-hawaiian-lawmakers-say [perma.cc/J39L-C7FK].

191. *People v. Hall*, 10 N.Y.3d 303, 305 (N.Y. App. 2008).

Some jurisdictions, if not all, have even mandated that all anal searches be conducted in sanitary environments by a physician, nurse, or emergency medical technician.¹⁹² Although the use of anal cavity searches are lawful in limited circumstances, courts have acknowledged that an anal cavity search is “degrading” to the person probed and an affront to a suspect’s “dignitary interest” because the procedure targets “an area of the body that is highly personal and private.”¹⁹³

Second, it is widely accepted that all states and the District of Columbia have expanded their definitions of rape and sexual assault,¹⁹⁴ in such a way that most standards include prohibitions against touching of sexual organs, and anal penetration, with most allowing for more than just the male sex organ to be the penetrating object.¹⁹⁵ Sexual assault generally includes any contact or penetration, however slight.¹⁹⁶ The DOJ has also expanded its definitions of rape, forcible rape, forcible sodomy, and sexual assault, to include “[t]he penetration, no matter how slight, of the vagina or anus.”¹⁹⁷ Put succinctly, anti-rape and anti-sexual assault laws are inclusively designed to protect male victims from anal penetration.¹⁹⁸

Third, rape and sexual assault are globally accepted as forms of torture, the prohibition of which is deemed fundamental to civilized nations.¹⁹⁹ The right to live free from sexual violence, such as rape or sexual assault, is a non-derogable human right that is

192. *Schmerber v. California*, 384 U.S. 757, 771 (1966).

193. *United States v. Gray*, 669 F.3d 556, 564 (5th Cir. 2012).

194. Victoria Brown, et al., *Rape & Sexual Assault*, 21 GEO. J. GENDER & L. 367, 372-73 (2020).

195. *Overview of Rape and Sexual Assault*, NAT’L INST. OF JUST. (Oct. 2010), www.nij.ojp.gov/topics/articles/overview-rape-and-sexual-violence.

[perma.cc/8CFC-2G77]; *People v. Martinez*, 903 P.2d 1037, 1041 (1995) (defining the California offense of sexual battery as one involving the touching of “sexual organ, anus, groin, or buttocks of any person”); *Castle v. State*, 402 S.W.3d 895, 901 (Tex. App. 2013) (stating the Texas offense of sexual assault proscribes the “penetration or contact” of a person’s “anus” or “sexual organ.”).

196. Kimberly Martin, *Sexual Assaults Recorded by Law Enforcement, 2019 – Methodology*, BUREAU JUST. STAT. (July 2021), www.bjs.ojp.gov/nibrs/reports/sarble/sarble19-methodology [perma.cc/S8U5-M2K3] (stating that, “[i]n 2013, the FBI UCR Program began collecting summary counts of rape using a new definition: “the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.”).

197. Press Release, Office of Att’y General, An Updated Definition of Rape (Jan. 6, 2012) (on file with author).

198. *Rape*, FED. BUREAU OF INV. (2017), ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/rape.pdf [perma.cc/EQH8-USDP]; Sophia Gaulkin, *Rectal Feeding, Rape, and Torture in the U.S. Interrogation and Detention Program*, 42 U. PA. J. INT’L L. 487, 497–500 (2020).

199. Jones, *Police, Heroes and Child Trafficking*, *supra* note 11, at 1019 (2018) (stating that rape is generally viewed as an offense for which there is no experiential equal).

absolute and not subject to derogation or exception, even in time of war or emergency.²⁰⁰

The conventional wisdom is that the risk of becoming a victim of sexualized police violence when traveling public streets is virtually nonexistent. The following examples illustrate, nonetheless, that Black males are stopped on public streets and subjected to disturbing acts of sexualized police violence:²⁰¹

1. *Darren Manning*

Darren Manning, a sixteen-year-old Black male and a straight-A student, was castrated by a female police officer after she allegedly stopped him because she found him suspicious.²⁰² While allegedly conducting a body cavity search, the police officer squeezed Manning's testicles so hard, "they ruptured with an audible pop."²⁰³

2. *Abner Louima*

Abner Louima, a Haitian man, was forced into a police station bathroom, where Officer Volpe grabbed his testicles, kicked him in the groin, and then anally penetrated him with a bathroom plunger.²⁰⁴ Afterwards, Officer Volpe "paraded the plunger around the station as proof of his conquest."²⁰⁵

3. *Coprez Coffee*

After stopping Coprez Coffee, Officer Scott Korhonen and Officer Gerald Lodwich anally penetrated Coprez Coffee with a screwdriver under the guise of searching for illegal drugs.²⁰⁶

200. Stephen Schwartz, *Rape As A Weapon of War in the Former Yugoslavia*, 5 HASTINGS WOMEN'S L.J. 69, 81–82 (1994) (recognizing that "rape constitutes torture and is a violation of a non-derogable right, the most basic right to human dignity and physical integrity"); *Rule 93: Rape and Other Forms of Sexual Assault*, INT'L HUMANITARIAN LAW DATABASES, Vol II, ch. 32 § G(93).

201. CURRY, *He Never Mattered*, *supra* note 14, at 59; Robin Lee Fenton, *The Constitutionality of Policies Requiring Strip Searches of All Misdemeanants and Minor Traffic Offenders*, 54 U. CIN. L. REV. 175, 187 (1985); Jordyn Livingston, *Predator or Prey: The Analysis of Gender and Race on the Perception of Black Men as Sexual Assault Victims*, CARAVEL UNDERGRADUATE RSCH. J. (2021).

202. Josh Sager, *Police Castrate Honor Student During Stop and Frisk*, PROGRESSIVE CYNIC (Jan. 24, 2014), www.theprogressivecynic.com/2014/01/24/police-castrate-honor-student-during-stop-and-frisk/ [perma.cc/4RDP-9D2M].

203. *Id.*

204. CURRY, *THE MAN-NOT*, *supra* note 8, at 143.

205. *Id.*

206. *Id.* at 144.

4. *Angel Perez*

Chicago Police officers allegedly took an unsuspecting Perez into a warehouse building in Chicago's Homan Square and inserted a pistol into his anus. In describing what he referred to as "sexual assault," Perez reported:

He's [a police officer] saying that, you know, when you're in jail and you get penetrated by an African American, that it feels just like a gun going up your rear end. While he's doing all this, he ends up pulling down my pants, and he gets near my rear end, I guess you can say, and that's when I just felt something cold and hard just, I guess, penetrate me. And that's when I just jerked, and I freaked out, and I just went into full panic attack. I couldn't even talk.²⁰⁷

One police officer reportedly yelled, "I hear that a big [B]lack n---r dick feels like a gun up your ass."²⁰⁸

5. *Andre Little*

Officer Kristopher Tong approached a teenager who was merely standing on a public platform and threatened the teen after he reportedly refused to move to another part of the platform.²⁰⁹ After a brief exchange, Officer Tong pointed his taser at the scrotum of the teen.²¹⁰ The teen screamed, "Don't tase me, bro! Please don't tase me in the balls! You don't have to do this!"²¹¹ Officer Tong responded by tasing the teen in his scrotum and then turning him onto his stomach and tasing the teen in his back.²¹²

6. *Corey Green*

Corey Green, a 33-year pest exterminator, had to undergo surgery to restore blood flow to his genitals after a police officer in the city's Brooklyn borough reportedly kicked Green in his groin" while searching for a robber.²¹³ Despite Green not being identified

207. Spencer Ackerman, *As Chicago Pays Victims of Past Torture, Police Face New Allegations of Abuse at Homan Square*, DEMOCRACY NOW (May 15, 2015), www.democracynow.org/2015/5/15/as_chicago_pays_victims_of_past [perma.cc/WA48-GA48].

208. Spencer Ackerman, Christian Bennett, & Zach Stafford, *Angel Perez: Unarmed and Unassuming Until Alleged Homan Square Assault*, THE GUARDIAN (May 14, 2015), www.theguardian.com/us-news/2015/may/14/angel-perez-unarmed-and-unassuming-before-alleged-homan-square-assault [perma.cc/DM44-4SY8]; CURRY, THE MAN-NOT, *supra* note 8, at 144.

209. Angela Watkins, *Officer May be Liable for Tasing Teen's Scrotum*, COURTHOUSE NEWS SERVICE (Oct. 22, 2013), www.courthousenews.com/officer-may-be-liable-for-tasing-teens-scrotum/ [perma.cc/9HR5-E3BB].

210. *Id.*

211. *Id.*

212. *Id.*

213. Aaron Morrison, *Police Brutality 2015: NYPD Officer Accused of Stomping Suspect's Genitals*, INT'L BUS. TIMES (December 22, 2015),

by the victim as the culprit, a police officer threw Green to the ground and another police officer began “stomping on his groin with a boot, crushing his scrotum.”²¹⁴

7. *Elijah Pontoon*

Police officers conducted a probe of Elijah Pontoon’s anus for three minutes while he was handcuffed under the guise of looking for illegal drugs that were never found.²¹⁵ The sodomy was so violent and outside the bounds of human decency that one police officer, while penetrating his anus, confused Pontoon’s anal hemorrhoid for drugs, stating: “[i]f that’s a hemorrhoid that’s a hemorrhoid, all right? But that don’t feel like no hemorrhoid to me.”²¹⁶

8. *James Mitchell*

After being stopped for a minor traffic violation, Deputies Jacob Goforth and Daniel Wilkey ordered James Mitchell out of a vehicle, and then punched and kicked him, mercilessly.²¹⁷ After Mitchell complained of hernia pain, a police officer grabbed his genitals, and then sodomized him under the guise of conducting an anal cavity search for drugs.²¹⁸

9. *Kevin Campbell*

Allen Park police officer, Daniel Mack, stopped Campbell’s car and ordered Campbell to produce his driver’s license and registration.²¹⁹ After Campbell protested the officer’s conduct, he was taken to a police station.²²⁰ At the station, Campbell was ordered to “get naked” and “drop” his “drawers,”²²¹ and subjected to

www.ibtimes.com/police-brutality-2015-nypd-officer-accused-stomping-suspects-genitals-2236282 [perma.cc/BS7D-JW8K].

214. *Id.*; CURRY, THE MAN-NOT, *supra* note 8, at 143.

215. Complaint at 9, 2015-CP 02-02231, *Elijah Pontoon and Lakeya Hicks v. Chris Medlin, et al.*, (Court of Common Pleas, Aiken County, South Carolina, Sept. 21, 2015).

216. *Id.*

217. See Leah Simpson, *Cops Being Sued for Forcibly Baptizing a Woman is Also being Sued for a Forced Anal Cavity Search on Another Person on the Same Day*, DAILY MAIL (Oct. 17, 2019), www.dailymail.co.uk/news/article-7585425/Tennessee-cop-sued-forcibly-baptizing-woman-sued-day-mans-anal-cavity-search.html [perma.cc/D26Q-EG9Q] (stating Mitchell was reportedly stopped because of a window tint violation).

218. *Id.*

219. Heather Catalo, *Allen Park Police Sued After Man Said he Underwent an Illegal Body Cavity Search*, WXYZ DETROIT (Sept. 16, 2016), www.wxyz.com/news/monday-at-11-disturbing-video-captures-dehumanizing-jailhouse-incident [perma.cc/29UT-H4PP].

220. *Campbell v. Mack*, 777 F. App’x 122, 124-27 (6th Cir. 2019).

221. *Id.*

repeated probing of his genitals and anus against his verbal objections.²²²

10. *Robert Douglas*

Robert Douglas was stopped by undercover police officers and shackled to the window bars of a nearby home in public.²²³ A police officer then pulled down his pants, bent him over and “search[ed] his buttocks.”²²⁴

11. *Juan Johnson*

In *Johnson v. District of Columbia*, the court considered a case involving, Juan Johnson, an off-duty police officer, who was mistaken for a criminal.²²⁵ After police officers failed to notice Johnson signaling that he was a fellow police officer, the police officers repeatedly kicked and stomped his groin and buttocks while he lied in a prone position with his arms and legs spread.²²⁶ Neither the court nor defense counsel were able to discern how “repeatedly kicking a surrendering suspect in the groin--produced some law enforcement benefit that might outweigh the serious harm.”²²⁷ The *Johnson* court reasoned that the offending police officer was not entitled to qualified immunity.²²⁸

12. *Joshua Rashid Radwan*

In *Radwan v. County of Orange*, video footage revealed that despite Radwan being placed in handcuffs and leg irons and posing no threat to officers at the scene of his arrest, a police officer grabbed his testicles and threw him to the ground.²²⁹ The court reasoned that Radwan clearly established “an excessive force violation of his Fourth Amendment rights.”²³⁰

In each of the aforementioned warrantless circumstances, the offending police officer knowingly had offensive contact with a sexual organ or intimate body part of the victim; knew or had reason to know that the contact would likely cause serious bodily and

222. *Id.* at 125-27.

223. *Lawsuit Accuses Officer of Illegal Strip Searches*, NBC 5 CHICAGO (Jan. 29, 2014), www.nbcchicago.com/news/national-international/lawsuit-accused-cpd-officers-of-illegal-strip-searches/59353/ [perma.cc/NQH9-9PGX].

224. *Id.*

225. 528 F.3d 969, 972 (D.C. Cir. 2008) (decided June 20, 2008).

226. *Id.*

227. *Id.* at 973.

228. *Id.* at 973-75.

229. *Radwan v. County of Orange*, No. SACV 08-0786 AG, 2010 WL 3293354, at *16 (C.D. Cal. Aug. 18, 2010), *aff'd*, 519 F. App'x 490 (9th Cir. 2013).

230. *Id.* at *18.

psychological injury; and the victim was helpless to prevent the sexual act. The offending officer used force or the threat of deadly bodily harm to perpetrate the sexualized violence, and did so intentionally, knowingly or with reckless regard for the law, dignitary interest or welfare of the victim. Under such circumstances, it cannot be reasonably denied that the abovementioned illustrations of sexualized police violence fit squarely within the jurisprudential strictures of sexual battery, if not sexual assault or rape.²³¹

Simply put, despite clear legal frameworks that mandate compliance with constitutional safeguards, such as the duty to obtain a warrant before conducting an anal cavity search, some police officers ignore mandates by engaging in disturbing acts of sexualized violence against Black males with apparent impunity. If legal prohibitions against sexual violence are to connote moral authority, there must be a genuine expectation that they are observed across all spectrums of society.²³² Freedom from sexual violence is an individual and societal imperative that non-Black males courageously assert and expect for themselves.²³³ A failure to recognize the right of Black males to also live free of sexualized violence, particularly at the hands of police officers, compromises the legitimacy of anti-sex crime frameworks and law enforcement practices, generally.

IV. CONCLUSION

Because of their race and gender, innocent Black males are routinely viewed as threats, criminals, lazy, incompetent, or sexual predators. Readily obvious, but rarely discussed, this strand of anti-Black male bias unites virtually every American institution, from our courts and corporations to our political offices and universities.²³⁴

231. *State v. Gentry*, No. E2003-01069-CCA-R3CD, 2004 WL 979117, at *17 (Tenn. Crim. App. May 6, 2004) (setting forth elements of sexual battery)

232. Samuel Vincent Jones, *Darfur, the Authority of Law, Unilateral Humanitarian Intervention*, 9. U. TOL. L. REV. 97, 111 (2007) (noting that a directive or initiative may lack authority if it lacks moral strength).

233. Samuel Vincent Jones, *The Ethics of Letting Civilians Die in Afghanistan: The False Dichotomy between Hobbesian and Kantian Rescue Paradigms*, 59 DEPAUL L. REV. 899, 927-28 (2010) (noting that one's affinity towards a specific group greatly influences their capacity to apply Immanuel Kant's noted Universality Principle).

234. Piper Hansen, *Black Professor Wins Discrimination Lawsuit Against ASU, Abor*, THE STATE PRESS (Aug. 20, 2021), www.statepress.com/article/2021/08/black-asu-professor-wins-diversity-discrimination-lawsuit-abor-nicholas-alozie [perma.cc/7BJ7-GJP5]; Ryan Quinn, *In Black Professor's Firing, AAUP Finds 'Racist Tropes.'* INSIDEHIGHERED (Jan. 23, 2023), www.insidehighered.com/news/2023/01/30/racism-alleged-ius-nw-campus-firing-black-professor [perma.cc/3X2A-WW3T] (stating Black male tenured professor, Mark McPhail, reportedly fired for protesting racism at Indiana University Northwest).

Granted, we have witnessed notable improvements in laws that proscribe sexual violence and police brutality and embraced the need for greater awareness concerning the harmful effects of conscious and unconscious bias. Black male victims of sexual violence, nonetheless, continue to suffer without any apparent abatement in the degree of sexual violence they experience, often at the hands of police officers. For too many Black males, manifestations of anti-Black male bias, such as sexualized police violence, undeserved police targeting, and false accusations, facilitate incomparable levels of depression, homelessness, poor health, incarceration, unemployment, poor education, a lack of social mobility, and even death.

There is no question that Black males have not benefitted from emerging displays of societal shame linked to America's long history of legalized slavery and racial segregation. To a large degree, the plight of Black males has worsened for at least two reasons. First, institutions often earmark funding, educational privileges, and employment opportunities for members of virtually every minority group but Black males, under the guise of curtailing past or current discrimination.

Second, objections to Black male exclusion or attempts to address the dire needs of Black males, generally, are routinely met with claims that doing so reinforces discrimination against non-Black males. Recognizing the hazard that may envelope them unless they disparage or exclude Black males, organizations use such contentions to justify the continued repression of Black males. In doing so, institutions prevent Black males from competing for critical resources and opportunities, while, simultaneously, elevating the status, privileges, and rights of non-Black males.

As this Article has demonstrated, the unparalleled disadvantages confronting Black males because of widespread anti-Black male bias are not a figment of the imagination. They persist with rigor, ostensibly, to the satisfaction of many. Sadly, few appear willing to discuss or even acknowledge the existence or catastrophic effect of anti-Black male bias. Perhaps there is a fear that doing so will only alienate groups that benefit from anti-Black male bias. Regardless of the rationale behind our social acquiescence to Black male oppression, the end result is a society with a maligned and self-regarding false construction of itself.