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(Original Signature of Member)

118TH CONGRESS
1ST SESSION

H. R. _____

To provide for the vacating of certain convictions and expungement of certain arrests of victims of human trafficking.

IN THE HOUSE OF REPRESENTATIVES

Mr. FRY introduced the following bill; which was referred to the Committee on _____

A BILL

To provide for the vacating of certain convictions and expungement of certain arrests of victims of human trafficking.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Trafficking Survivors
5 Relief Act of 2023”.

1 **SEC. 2. FEDERAL EXPUNGEMENT FOR VICTIMS OF TRAF-**
2 **FICKING.**

3 (a) IN GENERAL.—Chapter 237 of title 18, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 **“§ 3772. Motion to vacate; expungement; mitigating**
7 **factors**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘child’ means an individual who
10 has not attained 18 years of age;

11 “(2) the term ‘covered prisoner’ means an indi-
12 vidual who—

13 “(A) was convicted of a level A offense or
14 level B offense;

15 “(B) was sentenced to a term of imprison-
16 ment for the offense described in subparagraph
17 (A); and

18 “(C) is imprisoned under such term of im-
19 prisonment;

20 “(3) the terms ‘employee’ and ‘officer’ have the
21 meanings given the terms in section 2105 of title 5;

22 “(4) the term ‘Federal offense’ means an of-
23 fense that is punishable under Federal law;

24 “(5) the term ‘level A offense’ means a Federal
25 offense that is not a violent crime;

26 “(6) the term ‘level B offense’—

1 “(A) means a Federal offense that is a vio-
2 lent crime; and

3 “(B) does not include a Federal offense
4 that is a violent crime of which a child was a
5 victim;

6 “(7) the term ‘level C offense’ means any Fed-
7 eral offense that is not a level A offense;

8 “(8) the term ‘victim of trafficking’ has the
9 meaning given that term in section 103 of the Traf-
10 ficking Victims Protection Act of 2000 (22 U.S.C.
11 7102); and

12 “(9) the term ‘violent crime’ has the meaning
13 given that term in section 103 of the Juvenile Jus-
14 tice and Delinquency Prevention Act of 1974 (34
15 U.S.C. 11103).

16 “(b) MOTIONS TO VACATE CONVICTIONS OR EX-
17 PUNGE ARRESTS.—

18 “(1) IN GENERAL.—

19 “(A) CONVICTIONS OF LEVEL A OF-
20 FENSES.—A person convicted of any level A of-
21 fense (or an attorney representing such a per-
22 son) may move the court that imposed the sen-
23 tence for the level A offense to vacate the judg-
24 ment of conviction if the level A offense was

1 committed as a direct result of the person hav-
2 ing been a victim of trafficking.

3 “(B) ARRESTS FOR LEVEL A OFFENSES.—

4 A person arrested for any level A offense (or an
5 attorney representing such a person) may move
6 the district court of the United States for the
7 district and division embracing the place where
8 the person was arrested to expunge all records
9 of the arrest if the conduct or alleged conduct
10 of the person that resulted in the arrest was di-
11 rectly related to the person having been a vic-
12 tim of trafficking.

13 “(C) ARRESTS FOR LEVEL C OFFENSES.—

14 A person arrested for any level C offense (or an
15 attorney representing such a person) may move
16 the district court of the United States for the
17 district and division embracing the place where
18 the person was arrested to expunge all records
19 of the arrest if—

20 “(i) the conduct or alleged conduct of
21 the movant that resulted in the arrest was
22 directly related to the movant having been
23 a victim of trafficking; and

24 “(ii)(I) the movant was acquitted of
25 the level C offense;

1 “(II) the Government did not pursue
2 or dismissed criminal charges against the
3 movant for the level C offense; or

4 “(III)(aa) the charges against the
5 movant for the level C offense were re-
6 duced to an offense that is a level A of-
7 fense; and

8 “(bb) the movant was acquitted of the
9 level A offense, the Government did not
10 pursue or dismissed criminal charges
11 against the movant for the level A offense,
12 or any subsequent conviction of the level A
13 offense was vacated.

14 “(2) CONTENTS OF MOTION.—A motion de-
15 scribed in paragraph (1) shall—

16 “(A) be in writing;

17 “(B) describe any supporting evidence;

18 “(C) state the offense; and

19 “(D) include copies of any documents
20 showing that the movant is entitled to relief
21 under this section.

22 “(3) HEARING.—

23 “(A) MANDATORY HEARING.—

24 “(i) MOTION IN OPPOSITION.—Not
25 later than 30 days after the date on which

1 a motion is filed under paragraph (1), the
2 Government may file a motion in opposi-
3 tion of the motion filed under paragraph
4 (1).

5 “(ii) MANDATORY HEARING.—If the
6 Government files a motion described in
7 clause (i), not later than 15 days after the
8 date on which the motion is filed, the court
9 shall hold a hearing on the motion.

10 “(B) DISCRETIONARY HEARING.—If the
11 Government does not file a motion described in
12 subparagraph (A)(i), the court may hold a
13 hearing on the motion not later than 45 days
14 after the date on which a motion is filed under
15 paragraph (1).

16 “(4) FACTORS.—

17 “(A) VACATING CONVICTIONS OF LEVEL A
18 OFFENSES.—The court may grant a motion
19 under paragraph (1)(A) if, after notice to the
20 Government and an opportunity to be heard,
21 the court finds, by a preponderance of the evi-
22 dence, that—

23 “(i) the movant was convicted of a
24 level A offense; and

1 “(ii) the participation in the level A
2 offense by the movant was a direct result
3 of the movant having been a victim of traf-
4 ficking.

5 “(B) EXPUNGING ARRESTS FOR LEVEL A
6 OFFENSES.—The court may grant a motion
7 under paragraph (1)(B) if, after notice to the
8 Government and an opportunity to be heard,
9 the court finds, by a preponderance of the evi-
10 dence, that—

11 “(i) the movant was arrested for a
12 level A offense; and

13 “(ii) the conduct or alleged conduct
14 that resulted in the arrest was directly re-
15 lated to the movant having been a victim
16 of trafficking.

17 “(C) EXPUNGING ARRESTS FOR LEVEL C
18 OFFENSES.—The court may grant a motion
19 under paragraph (1)(C) if, after notice to the
20 Government and an opportunity to be heard,
21 the court finds, by a preponderance of the evi-
22 dence, that—

23 “(i) the movant was arrested for a
24 level C offense and the conduct or alleged
25 conduct that resulted in the arrest was di-

1 rectly related to the movant having been a
2 victim of trafficking; and

3 “(ii)(I) the movant was acquitted of
4 the level C offense;

5 “(II) the Government did not pursue
6 or dismissed criminal charges against the
7 movant for the level C offense; or

8 “(III)(aa) the charges against the
9 movant for the level C offense were re-
10 duced to a level A offense; and

11 “(bb) the movant was acquitted of the
12 level A offense, the Government did not
13 pursue or dismissed criminal charges
14 against the movant for the level A offense,
15 or any subsequent conviction of that level
16 A offense was vacated.

17 “(5) OTHER EVIDENCE.—

18 “(A) IN GENERAL.—For purposes of this
19 section, in determining whether the movant is a
20 victim of trafficking, the court may consider
21 any other evidence the court determines is of
22 sufficient credibility and probative value, includ-
23 ing an affidavit or sworn testimony of the mov-
24 ant.

1 “(B) AFFIDAVIT OR SWORN TESTIMONY OF
2 MOVANT SUFFICIENT EVIDENCE.—The affidavit
3 or sworn testimony of the movant described in
4 subparagraph (A) shall be sufficient evidence to
5 vacate a conviction or expunge an arrest under
6 this section if the court determines that—

7 “(i) the affidavit or sworn testimony
8 is credible; and

9 “(ii) no other evidence is readily avail-
10 able.

11 “(6) CONVICTION OR ARREST OF OTHER PER-
12 SONS NOT REQUIRED.—It shall not be necessary
13 that any person other than the movant be convicted
14 of or arrested for an offense before the movant may
15 file a motion under paragraph (1).

16 “(7) DENIAL OF MOTION.—

17 “(A) IN GENERAL.—If the court denies a
18 motion filed under paragraph (1), the denial
19 shall be without prejudice.

20 “(B) REASONS FOR DENIAL.—If the court
21 denies a motion filed under paragraph (1), the
22 court shall state the reasons for the denial in
23 writing.

24 “(C) REASONABLE TIME TO CURE DEFI-
25 CIENCIES IN MOTION.—If the motion was de-

1 nied due to a curable deficiency in the motion,
2 the court shall allow the movant sufficient time
3 to cure the deficiency.

4 “(8) APPEAL.—An order granting or denying a
5 motion under this section may be appealed in ac-
6 cordance with section 1291 of title 28.

7 “(c) VACATUR OF CONVICTIONS.—

8 “(1) IN GENERAL.—If the court grants a mo-
9 tion to vacate a conviction of a level A offense under
10 subsection (b), the court shall immediately—

11 “(A) vacate the conviction for cause;

12 “(B) set aside the verdict and enter a
13 judgment of acquittal;

14 “(C) enter an expungement order that di-
15 rects that there be expunged from all official
16 records all references to—

17 “(i) the arrest of the movant for the
18 level A offense;

19 “(ii) the institution of criminal pro-
20 ceedings against the movant relating to the
21 level A offense; and

22 “(iii) the results of the proceedings;

23 and

1 “(D) return to the movant any fine, fee,
2 cost, or restitution associated with the convic-
3 tion and paid by the movant.

4 “(2) EFFECT.—If a conviction is vacated under
5 an order entered under paragraph (1) the conviction
6 shall not be regarded as a conviction under Federal
7 law and the movant for whom the conviction was va-
8 cated shall be considered to have the status occupied
9 by the movant before the arrest or the institution of
10 the criminal proceedings related to such conviction.

11 “(d) EXPUNGEMENT OF ARRESTS.—

12 “(1) IN GENERAL.—If the court grants a mo-
13 tion to expunge all records of an arrest for an of-
14 fense under subsection (b), the court shall imme-
15 diately enter an expungement order that directs that
16 there be expunged from all official records all ref-
17 erences to—

18 “(A) the arrest of the movant for the of-
19 fense;

20 “(B) the institution of any criminal pro-
21 ceedings against the movant relating to the of-
22 fense; and

23 “(C) the results of the proceedings, if any.

24 “(2) EFFECT.—If an arrest is expunged under
25 an order entered under paragraph (1) the arrest

1 shall not be regarded as an arrest under Federal law
2 and the movant for whom the arrest is expunged
3 shall be considered to have the status occupied by
4 the movant before the arrest or the institution of the
5 criminal proceedings related to such arrest, if any.

6 “(e) MITIGATING FACTORS.—

7 “(1) IN GENERAL.—The court that imposed
8 sentence for a level A offense or level B offense upon
9 a covered prisoner may reduce the term of imprison-
10 ment for the offense—

11 “(A) upon—

12 “(i) motion by the covered prisoner or
13 the Director of the Bureau of Prisons; or

14 “(ii) the court’s own motion;

15 “(B) after notice to the Government;

16 “(C) after considering—

17 “(i) the factors set forth in section
18 3553(a);

19 “(ii) the nature and seriousness of the
20 danger to any person, if applicable; and

21 “(iii) the community, or any crime
22 victims; and

23 “(D) if the court finds, by a preponderance
24 of the evidence, that the covered prisoner com-
25 mitted the offense as a direct result of the cov-

1 ered prisoner having been a victim of traf-
2 ficking.

3 “(2) REQUIREMENT.—Any proceeding under
4 this subsection shall be subject to section 3771.

5 “(3) PARTICULARIZED INQUIRY.—For any mo-
6 tion under paragraph (1), the Government shall con-
7 duct a particularized inquiry of the facts and cir-
8 cumstances of the original sentencing of the covered
9 prisoner in order to assess whether a reduction in
10 sentence would be consistent with this section.

11 “(f) ADDITIONAL ACTIONS BY COURT.—The court
12 shall, upon granting a motion under this section, take any
13 additional action necessary to grant the movant full relief.

14 “(g) NO FEES.—A person may not be required to pay
15 a filing fee, service charge, copay fee, processing fee, or
16 any other charge for filing a motion under this section.

17 “(h) CONFIDENTIALITY OF MOVANT.—

18 “(1) IN GENERAL.—A motion under this sec-
19 tion and any documents, pleadings, or orders relat-
20 ing to the motion shall be filed under seal.

21 “(2) INFORMATION NOT AVAILABLE FOR PUB-
22 LIC INSPECTION.—An officer or employee may not
23 make available for public inspection any report,
24 paper, picture, photograph, court file, or other docu-

1 ment, in the custody or possession of the officer or
2 employee, that identifies the movant.

3 “(i) **APPLICABILITY.**—This section shall apply to any
4 conviction or arrest occurring before, on, or after the date
5 of enactment of this section.”.

6 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
7 The table of sections of chapter 237 of title 18, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

“3772. Motion to vacate; expungement; mitigating factors.”.

10 **SEC. 3. REPORTS.**

11 (a) **UNITED STATES ATTORNEY MOTIONS FOR**
12 **VACATUR OR EXPUNGEMENT.**—Not later than 1 year
13 after the date of enactment of this Act, each United States
14 attorney shall submit to the Attorney General a report
15 that details—

16 (1) the number of motions for vacatur or
17 expungement filed under section 3772 of title 18,
18 United States Code, as added by section 2, in the
19 district of the United States attorney; and

20 (2) for each motion described in paragraph
21 (1)—

22 (A) the underlying offense;

23 (B) the response of the United States at-
24 torney to the motion; and

1 (C) the final determination of the court
2 with respect to the motion.

3 (b) UNITED STATES ATTORNEY TRAINING ON
4 HUMAN TRAFFICKING INDICATORS.—Not later than 1
5 year after the date of enactment of this Act, the Attorney
6 General shall submit to Congress a report that details all
7 professional training received by United States attorneys
8 on indicators of human trafficking during the preceding
9 12-month period.

10 (c) GOVERNMENT ACCOUNTABILITY OFFICE.—Not
11 later than 3 years after the date of enactment of this Act,
12 the Comptroller General of the United States shall submit
13 to Congress a report that—

14 (1) assesses the impact of the enactment of sec-
15 tion 3772 of title 18, United States Code, as added
16 by section 2; and

17 (2) includes—

18 (A) the number of human trafficking sur-
19 vivors who have filed motions for vacatur or
20 expungement under such section 3772;

21 (B) the final determination of each court
22 that adjudicated a motion described in subpara-
23 graph (A);

1 (C) recommendations to increase access to
2 post-conviction relief for human trafficking sur-
3 vivors with Federal criminal records; and

4 (D) recommendations for improving the
5 implementation and tracking of professional
6 training of United States attorneys on indica-
7 tors of human trafficking.

8 **SEC. 4. USE OF GRANTS FOR POST-CONVICTION RELIEF**
9 **REPRESENTATION.**

10 The Office of Justice Programs or the Office on Vio-
11 lence Against Women, in awarding a grant that may be
12 used for legal representation, may not prohibit a recipient
13 from using the grant for legal representation for post-con-
14 viction relief.

15 **SEC. 5. SENSE OF CONGRESS.**

16 It is the sense of Congress that—

17 (1) this Act is a first step to address the chang-
18 ing tactics of human traffickers, who are using
19 forced criminality as a form of force, fraud, and co-
20 ercion in their human trafficking enterprises; and

21 (2) Congress is committed to continuing to find
22 solutions as needed to thwart human traffickers and
23 protect survivors of human trafficking.

1 **SEC. 6. HUMAN TRAFFICKING DEFENSE.**

2 (a) IN GENERAL.—Chapter 1 of title 18, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 **“§ 28. Human trafficking defense**

6 “(a) DEFINITION.—In this section, the term ‘covered
7 Federal offense’ means a level A offense or level B offense,
8 as those terms are defined in section 3772.

9 “(b) PRESUMPTION OF DURESS.—In a prosecution
10 for a covered Federal offense, a defendant who establishes
11 by clear and convincing evidence that the defendant was
12 a victim of trafficking at the time at which the defendant
13 committed the offense shall create a rebuttable presump-
14 tion that the offense was induced by duress.

15 “(c) RECORD OR PROCEEDING UNDER SEAL.—In
16 any proceeding in which a defense under subsection (b)
17 is raised, any record or part of the proceeding related to
18 the defense shall, on motion, be placed under seal until
19 such time as a conviction is entered for the offense.

20 “(d) POST-CONVICTION RELIEF.—A failure to assert,
21 or failed assertion of, a defense under subsection (b) by
22 an individual who is convicted of a covered Federal offense
23 may not preclude the individual from asserting as a miti-
24 gating factor, at sentencing or in a proceeding for any
25 post-conviction relief, that at the time of the commission

1 of the offense, the defendant was a victim of trafficking
2 and committed the offense under duress.

3 “(e) FEDERAL AID.—A failure to assert, or failed as-
4 ssertion of, a defense under subsection (b) by an individual
5 who is convicted of a covered Federal offense may not be
6 used for the purpose of disqualifying the individual from
7 participating in any federally funded program that aids
8 victims of human trafficking.”.

9 (b) TECHNICAL AND CONFORMING AMENDMENT.—
10 The table of sections for chapter 1 of title 18, United
11 States Code, is amended by adding at the end the fol-
12 lowing:

“28. Human trafficking defense.”.