



Agriculture's Growing Problem: Investigating and Prosecuting Labor Trafficking and Co-Occurring Crimes in the Illicit Cannabis Industry

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Introduction

Despite the recent legalization of cannabis cultivation, possession and use in many states across the country, the illicit market for the drug is still booming. The illicit cannabis industry is causing profound harm to the communities in which it operates—harm that goes far beyond simply producing off-the-books marijuana. Illicit market growers often seek to sidestep agricultural and worker regulations, expensive permits, export and volume limitations, and caps on pesticide use or THC content² in order to expand their profit margins. In circumventing these regulations, growers are causing widespread environmental harms, including blackouts, water theft, damage to flora and fauna, poisoned waterbeds, and wildfires.

The human cost of illicit cannabis growth is even greater. Across the country, investigators have discovered laborers who have been forced to work in inhumane conditions—often without pay—and in close proximity to dangerous chemicals at illegal cannabis cultivation sites. Workers are sometimes threatened at gunpoint to continue working without complaint.³ Occasionally, suspected victims of trafficking are found dead at a grow site or on a roadside near a local hospital.⁴ Victims who are able to participate in the criminal justice process often describe intimidation from traffickers, who threaten their lives or the lives of their families, or weaponize victims' immigration status to ensure their subjugation.⁵

Criminal justice system actors seeking to hold labor traffickers accountable face special challenges. Victims

often do not come forward due to fear of law enforcement, threats, or language barriers, among other reasons. Pursuing these crimes often requires a specialized skill set among prosecutors and investigators. The evidence supporting labor trafficking offenses can be voluminous and technical, spanning from financial analysis to social media records, and often requires highly honed expertise both to investigate and explain at trial. Prosecutors must also be highly skilled at motions practice to ensure the admission of all possible evidence – particularly when victims are unable to testify due to offender intimidation and other barriers. This Strategies Newsletter demonstrates how investigators and prosecutors, working in conjunction with local and federal stakeholders, can ensure that labor traffickers in the illicit marijuana industry are held accountable for the full range of their conduct.

The Prevalence of the Illegal Cannabis Industry

It is estimated that in 2019, 72% of all marijuana output in the United States was illegally cultivated.⁶ Illegal cultivation in the U.S. occurs across a broad spectrum, ranging from individuals growing slightly more than the legal limit in their homes and gardens to large-scale commercial farming operations. Commercial grow operations are run by family farms, entrepreneurs, gangs, and international drug cartels. They are located on public and unincorporated lands (ranging from forests to deserts⁷), private property, and indoor grow-houses in more populated areas. Illegal cultivation occurs across the country but is estimated to be most prevalent in conjunction with major labor trafficking schemes in California, Oregon, Oklahoma, and Colorado. While the illegal cannabis trade also thrives in other regions without the same volume of reports of trafficking, this does not mean that trafficking is limited to the above-mentioned states; it is possible—and even likely—that trafficking in other regions is under-reported due to intimidation, fear of deportation, and lack of investigation.

Of all the U.S. states, California has the largest raw quantity of illegal cannabis being produced for national sale; it is estimated that as much as 60% of the marijuana

purchased in the U.S. in 2021 was grown in California, despite the fact that it is illegal to export cannabis outside of the state.⁸ Possession (of limited quantities) and licensed cultivation and distribution of cannabis were legalized by the state in 2016,⁹ in part to raise revenue through taxes and fees on the new legal industry. Lawmakers also aspired to eliminate the illicit market for cannabis,¹⁰ thereby improving the safety of the product by way of regulation, and to reduce violence by eliminating the influence of gangs and organized crime. Although legalization *did* coincide with a 15% decrease in marijuana-related violent crime in California,¹¹ the illicit cannabis industry is still thriving: an estimated 80% of the marijuana sold in the state comes from the illicit market.¹² The trade thrives in regions like the Emerald Triangle, a remote area in Northern California¹³ known for extremely high concentrations of illegal cannabis cultivation and a persistent rate of marijuana-related offenses.¹⁴ The Emerald Triangle has what many farmers consider to be ideal cannabis growth conditions: positioned along the coast, a layer of coastal fog protects crops from direct air surveillance, while the warm climate combined with fertile soil leads to fast crop growth. Cultivators ranging from personal growers to cartels take advantage of the Emerald Triangle's climate, leading to enforcement challenges in the region.¹⁵

Meanwhile, in Oregon, it is estimated that as many as 80% of the state's large grow sites are operated illegally.¹⁶ For an idea of scale: in raids conducted on two cannabis farms on one day in September 2021, officers discovered \$650,000, 7.5 tons of processed marijuana, and 20,000 pot plants.¹⁷ Illicit growers come to southern Oregon¹⁸ for many of the same reasons they identified the Emerald Triangle as a lucrative base of operations: the ecological conditions are ideal for producing quality cannabis, and the remote nature of the area enables growers to evade detection.¹⁹ Some illicit cannabis is grown on private property purchased by cartels. Other cannabis is grown on farms that are registered as legal sites; however, the crop is far in excess of what the site is registered to produce, is intended for illegal out-of-state export, or has expanded THC content.²⁰ State regulators tested 212 of 335 registered hemp grows in Jackson and Josephine counties and found that 54%

contained illegal cannabis. At 76 sites, growers refused to allow inspectors onto the land at all.²¹

Oklahoma legalized medical (though not recreational) cannabis in 2018,²² and since then has seen a boom of both legally- and illegally operated cannabis farms. The state now boasts more retail cannabis stores than Colorado, Oregon, and Washington combined, and has more than 9,000 legal licenses for cannabis farms—eclipsing California, despite having only one-tenth of California’s population.²³ Oklahoma is particularly attractive to new operations looking to turn a profit due to the low startup costs for labor and licensing, cheap land, and minimal regulations on the existing legal market.²⁴ While obtaining a license requires a two-year residency requirement, these farms will generally use “ghost owners” to purchase property to circumvent that requirement, as was the case in a 2022 bust in which officials seized over 100,000 pounds of illegally cultivated cannabis.²⁵ The problem may be even bigger than those numbers indicate; with Oklahoma’s boom in cannabis cultivation, the state’s Medical Marijuana Authority has only been able to inspect a quarter of licensed businesses as of February 2022.²⁶

In Colorado, and particularly Denver, illegal grow sites in private homes are commonplace.²⁷ Some sources link this to a 2015 Colorado state law that limited unlicensed growing collectives to 36 plants in commercial spaces, which may have led growers to move their operations into residential houses.²⁸ These illegal grows are generally first identified by exorbitant energy usage. In one case, a home’s electricity use rose to 38,477 kilowatt hours in one day—over 1,200 times the average American’s daily usage—making them a target for investigation by federal law enforcement.²⁹ In 2019, federal prosecutors discovered over 500 private residences that were being used as part of a large-scale illegal cannabis operation in the Denver area.³⁰

The Exploited Labor Fueling the Illegal Cannabis Industry

The illicit cannabis industry is fertile ground for human trafficking. As law enforcement ramp up investigations into illegal grow operations, they are discovering victims

who have been working for little to no pay in unsanitary and dangerous conditions.³¹ Workers have been found stranded and isolated in remote forests, crammed into shipping containers, or living in make-shift shanties without access to electricity, running water, and outside communication.³²

Traffickers target vulnerable populations—such as runaway youth, individuals suffering from substance use disorder, and persons experiencing homelessness or poverty—and force, coerce, or fraudulently induce them into working on illicit grow sites.³³ They also target migrant workers and undocumented persons, some of whom have been brought to the U.S. for the explicit purpose of providing labor to the illicit cannabis industry.³⁴ Traffickers frequently rotate migrant workers through multiple grow sites to prevent them from becoming intimately familiar with fellow workers or even the site itself; some victim-workers do not even know where they are physically located.³⁵ Victims who are discovered and interviewed sometimes reveal that they have not been paid at all for their labor, despite being told they would receive a percentage of profits after harvest.³⁶

In some cases, victims are worked to death, leading to the discovery of bodies at grow sites, or workers being anonymously dropped off at hospitals in deplorable physical conditions.³⁷ The identification of bodies has occasionally led to the discovery of live victims, though these workers are not always able to speak with law enforcement about their experiences.³⁸ Victims who do come forward describe intimidation from traffickers, who threaten their lives, threaten their families, and exploit victims’ immigration status to keep them compliant.³⁹

Isolated and vulnerable workers are also at high risk for sexual exploitation,⁴⁰ sexual assault, and abuse.⁴¹ These abuses are present on large, cartel-driven enterprises, but exist along the entire spectrum of illegal cultivation operations. For example, the isolation of farms in the mountains of the “Emerald Triangle” has fostered an environment rife with sexual exploitation and abuse of women and girls seeking work or community in this region.⁴²

The Hidden Environmental Costs of Illicit Cannabis: Water, Power, and Chemicals

In addition to human trafficking, the illicit cannabis industry poses significant environmental concerns.⁴³ Water theft is one of the most prominent issues: the volume of illegal cultivation in hot-spot areas has had a marked impact on surrounding communities' already-minimal water supplies.⁴⁴ Because peak cannabis growing season occurs during the summer, when water levels are generally at their lowest, even small diversions of rivers and water sources can have major impacts on the environment, harming wildlife and causing entire rivers to run dry.⁴⁵ In many cases, locals near illegal grow sites have complained of dried-up wells.⁴⁶ The overuse of water may force some legal farmers—both those who legally produce cannabis, as well as those within the general agricultural industry—out of the market, since they do not have enough water to maintain their crops.⁴⁷ Droughts in these areas have led to increased wildfires, stretching the already thin capacity of exhausted and overworked firefighters.⁴⁸

Illicit cannabis cultivation has likewise put a strain on electrical power. Indoor grow-sites use a tremendous amount of electricity⁴⁹ and can lead to blackouts in communities where large or numerous indoor grow operations are present. In 2015, for instance, a West Coast electric company attributed seven blackouts to indoor grow sites in Oregon, causing hundreds of customers to lose power.⁵⁰ Another indoor grow site in California led to a power surge in 2017, which caused a utility pole fire and a blackout.⁵¹ International reports of power outages lend additional support for illicit cannabis growths' negative effects on electrical resources. In 2021, it was reported that Dutch power outages due to illegal cannabis production are commonplace,⁵² and in 2022, South Yorkshire, England reported severe blackouts linked to the town's illicit cannabis industry.⁵³

While legal indoor growers often alert their utility companies of their electricity needs—which can prompt these companies to provide separate dedicated circuits for their buildings—illegal grow sites are less likely to alert their power companies to the increased

wattage they require. This causes illegal growers to use significantly more power than the average home is designed to receive, thereby straining the electrical grid of the entire neighborhood.⁵⁴ Many states cannot afford to have this additional strain placed on their power grids; in California, individual users of electric power are being asked to limit their usage of energy for non-essential purposes to off-peak hours to avoid blackouts, and in many states, older grids that transmit electricity are already at capacity.⁵⁵

Illicit growth operations also lead to the release of toxins into the environment. Cannabis plants themselves release toxic terpenes, which can be hazardous in an indoor-grow setting if breathed in by workers at the site. Unfettered by regulations, illegal growers also use dangerous chemicals and pesticides on their cannabis plants, which harm workers, the environment, wildlife, and ecosystems.⁵⁶ The harmful chemicals used by unregulated growers can contaminate the product and poison users who inhale the chemicals into their lungs. A 2013 study found that up to 69.5% of contaminants can remain in smoked illicit cannabis⁵⁷—by contrast, regulated cannabis is held to standards higher than food-grade products.⁵⁸ In Oklahoma, some legal distributors are finding that as much as 90% of the product being delivered to them fails to meet state safety standards for consumption, as it contains traces of pesticides, heavy metals, or other contaminants.⁵⁹

Pesticides used on illegal grow sites are often stored in containers that are dangerously insufficient, like used Gatorade bottles. This increases the risk that their contents can leak, poisoning rivers and prompting mass casualties of endangered species.⁶⁰ These pesticides are harmful to humans, as well. They contain chemicals like aluminum phosphate, which can become an incendiary risk⁶¹ when left out in the sun, causing danger for unwary investigators, ecological surveyors, and hikers in the area. These pesticides used on illegal grow sites—which are often banned or severely restricted by regulatory agencies—can also be extremely poisonous if handled improperly, leading to immediate symptoms such as difficulty breathing, chest tightness, abdominal pain, headache, dizziness, and internal bleeding.⁶²

The environmental havoc wrought by the illicit cannabis industry has caused widespread concern among local communities. Residents in Oklahoma have expressed concern about securing funding to ensure sufficient clean drinking water due to contaminants in their existing water supply.⁶³ In late 2021, several counties in Oregon declared states of emergency due to the impact of illegal cannabis, prompting legislators to request additional funding and even dispatch of the state's national guard.⁶⁴

Holding Offenders Accountable for Trafficking and Co-Occurring Offenses

Labor trafficking cases and prosecutions are minimal in the U.S. In 2021, only 140 new trafficking cases were filed in federal courts—and of these, only 8% involved forced labor.⁶⁵ These prosecutions are also geographically concentrated: in 2021, 45% of federal districts did not file a single human trafficking case.⁶⁶ Federal prosecutions for labor trafficking are sparse even in states with documented forced labor in the illicit cannabis industry; federal prosecutors in California, for example, did not file a single labor trafficking case in 2020.⁶⁷ While there are difficulties measuring state-level prosecutions due to a lack of consistent reporting and a dearth of information on case dispositions, state participants in the Uniform Crime Reporting Program reported just 92 arrests for labor trafficking offenses in 2020.⁶⁸

Sex trafficking charges are generally filed more often than labor trafficking charges. There are large differences in the way sex and labor trafficking cases present, which can explain some of this disparity. Law enforcement has far more latitude and authority to proactively investigate *illicit* industries, like the sex trade, than it has in industries that deal in legal commodities, such as generalized agriculture. This highlights an urgent need for training and coordination on how to investigate and handle labor trafficking cases, and the *illicit* cannabis cultivation industry is a prime opportunity to address labor trafficking through proactive investigation.

Even with the wider latitude afforded to law enforcement investigating illicit cannabis operations, there

is no doubt that labor trafficking cases are incredibly complex, usually involving a high volume of technical evidence and victims who are reluctant to participate in the criminal justice process. Yet it is imperative that prosecutors at both state and federal levels hold offenders accountable for the significant harms they do to victims and the environment. What follows is guidance on identifying illegal grow sites, conducting investigations into human trafficking as well as ancillary offenses, such as environmental crimes, and building strong labor trafficking cases for prosecution.

I. Identify Illegal Cannabis Grow Operations

The first step to investigating forced labor in the illegal cannabis industry is to identify the illicit growth operations themselves. While some labor trafficking investigations may be prompted by victim disclosures, such a situation will be rare. The same factors that make an individual an attractive target for labor exploitation — poverty, lack of legal status, homelessness, lack of English proficiency, personal history of trauma, race, substance use disorder, and other major factors — make them unlikely to report any malfeasance to law enforcement. Victims may be told by their traffickers that they will be deported if “caught” by the government or criminally charged for acts they have been forced to engage in. They may even be told that their traffickers are the only ones who can protect them from law enforcement. By proactively identifying illegal cannabis grow sites and then investigating these operations for indicators of trafficking and other offenses, law enforcement has the opportunity to build strong, evidence-based cases that may move forward for prosecution even in the absence of victim participation or testimony.

At all stages, it is critical for criminal justice system actors to collaborate with law enforcement at all levels, regulatory agencies, and victim service providers. This coordinated response should incorporate existing multidisciplinary team (MDT) efforts to leverage their capacity and expertise and avoid duplication or siloing of efforts. Training of primary investigative agencies, as well as allied professionals on the ground, are necessary prerequisites for such a coordinated response.

That training should include, at a minimum, indicators of illicit cannabis growth, labor trafficking, and environmental violations, as well as victim-centered, trauma-informed, and culturally-informed investigations.

Illegal cannabis grow operations will be found in different types of locations, which will require different strategies for identification.

Illegal Grows on Public Lands

Law enforcement can employ numerous techniques to identify illicit cannabis sites operating on public lands. They may search for grow sites by leveraging computer algorithms to analyze aerial and satellite imagery—for example, using computer databases to map known legal grow sites, so that unregistered sites can be more easily identified.⁶⁹ Officers can also surveil public lands, focusing their investigations in areas displaying tell-tale signs of illicit cannabis operations, which may include:

- **Impacted vegetation, fish, and wildlife.** Flora and fauna can be exposed to pesticides and other harmful chemicals. Such signs may be obvious by sight (e.g., dead or visibly sickened animals and plants),⁷⁰ or smell (many pesticides have strong chemical odors that linger in the air).⁷¹ They can also be detected by testing downstream waters for eDNA and chemicals.⁷²
- **Larger than average or prolonged wildfires.**
- **Diversion of streams and other water sources,** which can be detected through aerial and satellite imagery.
- **Greenhouses, generators, and workers,** all of which can be detected with thermal imagery.
- **Commercial vehicles, vehicles with HazMat placards, and vehicles without proper licensing to carry tanks of pesticide or water.** Investigators can monitor highways and roads leading into public land through the use of patrol officers, strategically placed video cameras, and license plate readers.

Investigators can also collaborate with individuals or organizations who use or live in proximity to national

forests and deserts. Environmental and wildlife organizations, hunters, and fishers can detect some of the signs of illicit cannabis growth described above through the course of their day-to-day activities and may have the most recent, on-the-ground observations of these areas. It can also be helpful to work with the USDA-Forest Service to identify sites for surveillance. Law enforcement should encourage these individuals and organizations to report any tips or complaints.

Illegal Grows on Private Property in Remote Areas

Much cannabis cultivation takes place on private lands, such as the farms located in California's "Emerald Triangle". Given that such growth takes place on private property, investigators will not be able to use many of the public surveillance techniques described above. Although there may be fewer reports of grow sites in areas where cannabis farming is a long-entrenched part of the economy, investigators should look for indicators of forced labor or illicit cannabis growth in connection with reports of missing persons, violent crimes, and homicides.⁷³ Furthermore, with proper training, collaboration with environmental agencies and organizations, and time spent developing contacts with laborers in both the legal and illicit cannabis industries, law enforcement can identify suspicious operations and develop probable cause to secure search warrants for private premises.

Illegal Grows in More Populated Areas

There are a variety of techniques to identify illicit indoor grow sites located in more densely populated locations, such as Colorado. Investigators should be sure to follow up on any reports or tips from community members, legal growers/sellers, property owners, landlords, motel owners, utility workers, informants, and conservation groups. They may also detect illicit grow operations based on observations and reports from law enforcement service calls, administrative inspections, and other governmental inspections.⁷⁴

Building intelligence through community tips will first require more proactive strategies. Law enforcement can conduct trainings for inspectors, utility workers,

and other public stakeholders to raise awareness about the signs of illicit cannabis cultivation, as well as its ancillary harms. With increased awareness, these stakeholders may be empowered to report suspicious behavior (e.g., excess strains on the power grid). These reports may corroborate intelligence gathered through other means or lead law enforcement to evidence of illicit activity, supporting the probable cause needed to conduct a search. Law enforcement should also strengthen connections with communities targeted by traffickers, although it will take time to build trust and rapport. As a start, agencies can reach out to victim impact organizations, immigration attorneys, and community non-profits.

Law enforcement may also benefit from expanding existing narcotics units in order to focus more resources on illicit cannabis growth. Narcotics agents should be required to receive training on labor trafficking dynamics, co-occurring environmental harms, and investigative techniques, including trauma-informed and culturally sensitive practices.

II. Investigating Human Trafficking and Environmental Offenses

Collaboration: A Foundational Requirement

Once illicit cannabis operations are identified, law enforcement must dig deeper than the narcotics crimes apparent on the surface. Successful investigations into forced labor in the illicit cannabis industry requires close collaboration between a variety of stakeholders. According to a study published by the Little Hoover Commission, an independent state agency that oversees the California government, the dearth of successful labor trafficking investigations and prosecutions in the state is due in part to a lack of collaboration between agencies, which are completely siloed from one another.⁷⁵

No one can or should be expected to be a master of all disciplines; multidisciplinary teams should exist even within departments, where cross-training can facilitate understanding and synergy. A strong multidisciplinary team should involve many of the agencies discussed in Appendix A, so that police officers, federal agents, reg-

ulatory enforcement, inspectors, criminal prosecutors, civil attorneys, and service providers can work together to hold offenders accountable, provide services for victims, and remedy environmental harms.

One crucial collaboration is between narcotics agents and specialized human trafficking investigators, who have different but complementary skillsets. While narcotics agents and task forces may be more focused on opioids, fentanyl, and methamphetamines than illicit cannabis, anti-trafficking and environmental specialists can rally public awareness regarding the collateral harms of the illicit cannabis industry, which could prompt narcotics units to allocate more resources to respond. Narcotics officers are well-trained in organized crime investigations aimed at building strong evidence-based cases that do not rely on civilian witness testimony, which will be crucial in trafficking cases where victims are unwilling or unable to participate. Experienced trafficking investigators, meanwhile, are proficient at engaging with victims in a trauma-informed manner and assessing the culpability of victims forced to engage in criminal behavior.⁷⁶ Trafficking investigators may also have established relationships with community organizations that work with affected populations of victims (e.g., immigrants), which can address a wide spectrum of victims' needs.

Law enforcement should draw upon the experience and resources of any existing local, regional, and state human trafficking and narcotics task forces. This will offer law enforcement the manpower to identify and investigate illicit cannabis sites and provide opportunities for cross-training. These teams should also involve other government agencies, such as the U.S. Forest Service, which may have the technology and expertise to identify illicit cannabis sites but lack the manpower for enforcement. Regulatory agencies can also educate other Task Force members about code violations and environmental harms, which will be crucial for building strong investigations and promoting officer safety while on site.

What follows is a non-exhaustive list of strategies and tools for multidisciplinary teams to consider on a case-by-case basis.

In-Person Surveillance

On public land, officers can identify grows sites, extricate workers/victims,⁷⁷ and post surveillance cameras. Traffickers have to come back for harvest to collect the cannabis. By surveilling the behavior of suspected traffickers when they return to these sites, officers can identify them and ideally catch them leaving with the product. It can be helpful to work with the USDA-Forest Service to identify sites for surveillance.

Law enforcement can also conduct surveillance outside of private grow sites in order to help establish probable cause for a search. They can identify players, gather evidence, and anticipate the needs of any victims so services can be ready when an operation takes place. If vehicles are identified coming and going from the site, law enforcement may consider seeking a court order for a tracking device. Occasionally, it is useful to arrest minor players for isolated violations, such as water theft or transporting chemicals.⁷⁸ This can aid law enforcement in the identification of key players within the operation and provide opportunities to search vehicles, phones, or GPS devices. Law enforcement can also monitor who these individuals call from jail—or when they are released from jail—to identify potential traffickers.

Collecting Circumstantial Evidence of The Trafficker's Knowledge and Intent

Labor trafficking charges generally require proof that the offender has committed some sort of act (*e.g.*, recruiting, harboring, transporting) by means of force, fraud or coercion with intent to exploit the labor or services of another. Since offenders will generally deny knowledge of the trafficking scheme — as well as their intent to exploit labor — it is often critical to collect circumstantial evidence to help prove a trafficker's knowledge and intent.

This involves documenting observations and collecting as much evidence as possible on the persons involved, the living and working conditions of the laborers, and the grow site. Law enforcement should take photos and videos of the laborers themselves, any food and water, the workers' housing, chemicals, and any other key evidence.

It is also important to document negative evidence. What is missing that investigators expect to see at a legitimate job site or a staff lodging site? What documents or notices (*e.g.*, employee rights, safety guidelines and regulations) are missing that one would expect to see at a legitimate business? Assess what the laborers do not have access to — for example, workers without money are being exploited, and workers without access to their immigration documents are being controlled.

All workers should be provided with a medical-forensic exam. Forensic nurses can document the physical signs of exploitation, such as malnourishment and untreated injuries. Patient statements to a medical professional (*e.g.*, regarding exposure to hazardous chemicals) will also be useful to demonstrate exploitation and may be admissible under Federal Rule of Evidence 803(4) or its local equivalent, even if the victim does not testify at trial.

Digital Evidence and Communications

Communications between traffickers or between traffickers and laborers are often key to successful human trafficking investigations. These communications can help establish the identity of traffickers; demonstrate their knowledge of the illicit cannabis scheme and the exploitation of labor; establish the relationship between various players in the enterprise; and provide evidence of force, fraud, or coercion, among other things.

Prosecutors can seek subpoenas from cell phone companies to get access to transactional data, such as call detail records. Access to the content of such communications, however, requires a search warrant or electronic surveillance order.

Universal Forensic Extraction Devices (UFED) such as Cellebrite allow trained officers and agents to extract (or “dump”) the contents of cell phones in the field or at their headquarters. While these devices are expensive, require subscriptions to keep the software updated, and necessitate training on the use of the device,⁷⁹ they are extremely helpful in downloading large volumes of evidence. In cases where victims are in possession of their own phones, UFED in-field technology can enable

investigators to “dump” the phones on scene and return them to victims instead of seizing the phones indefinitely. Where UFED is not locally available, law enforcement should contact regional and federal partners, who likely have more ready access to such technology.⁸⁰

A manual search of phone data can be like finding a needle in a haystack. Luckily, software systems like PenLink are available to help process and analyze the vast amounts of data contained on these devices. The software was created for Pen Registers,⁸¹ but can also be used to process and analyze phone data, call records, and Electronic Surveillance Orders (ESOs).⁸² Analysts on regional High Intensity Drug Trafficking Area (HIDTA) teams are equipped with this software and are highly skilled at using it; these analysts should be able to assist local law enforcement due to the drug component of these investigations. Regional and statewide fusion centers also have intelligence analysts equipped with this software.

Real-time surveillance may be a valuable tool in larger investigations. Through Consensual Overhears (COH), law enforcement can obtain and record substantive communications with suspects with the consent of a participant, such as an undercover agent or an informant; however, such evidence can only be recorded without a court order in jurisdictions with one-party consent laws.⁸³ Law enforcement may also consider video surveillance; this method typically does not require a court order if no audio is being recorded and if the area is open to public view, where the target does not have a reasonable expectation of privacy, such as on public lands. When illicit growers use pesticides, law enforcement can seek a warrant for CCTV video footage from pesticide manufacturers, which could identify individuals who made the purchase or picked up these chemicals.

Pen Registers — which require a court order establishing probable cause — can be used to document phone numbers associated with incoming and outgoing calls and messages in real-time; the content of calls and texts may not be intercepted without an ESO.⁸⁴ They can also provide real-time cell tower and GPS location information for devices. With the aid of PenLink soft-

ware, these devices can establish connections between players in a criminal enterprise by showing communications between devices, without providing the content of communications.

In the event that alternative methods of investigation are likely to fail or have already been exhausted, law enforcement may consider seeking an ESO, commonly referred to as a “wire” or “wiretap”. ESOs authorize the interception and recording of communications without consent of any party, whether communication takes place over a device or in person.⁸⁵ They are typically a tool of last resort because it significantly impacts privacy interest. ESO applications also require a high burden of proof,⁸⁶ and the investigations themselves are costly and labor-intensive.⁸⁷ However, when executed correctly, ESOs can be a tremendously valuable tool in proving the existence of and connecting players in a criminal enterprise, as well as establishing the knowledge, intent, participation, and culpability of individuals in the criminal activity. If successful, they can greatly mitigate the reliance upon victim testimony to prove a case. In most jurisdictions, illegal cannabis cultivation alone is not sufficient to get a wiretapping warrant; investigators will need to establish evidence of human trafficking before an ESO is sought.

Records

Law enforcement may pursue a variety of documentation to build strong labor trafficking cases, including:

- **Sales and financial records:** Records maintained by manufacturers and distributors of hazardous chemicals such as pesticides may help law enforcement trace large quantity buyers, which may be indicative of illicit cannabis growth.
- **Vehicle and licensing records:** States are required by federal law to maintain lists of individuals who are in possession of licenses to transport many common, legally regulated pesticides and make those records available to Homeland Security.⁸⁸ State governments may impose additional regulations on individuals and vehicles transporting hazardous chemicals. While highly sophisticated traffickers will likely avoid

transporting chemicals under licenses that can be traced back to them, law enforcement should consider requesting information on trucks observed during surveillance from the Federal Motor Carrier Safety Administration (FMCSA), the Department of Transportation (DOT), or the state's Department of Motor Vehicles (DMV); they may be able to help identify individuals connected with any vehicles spotted transporting pesticides to illicit grow sites.

- **Property Records:** Determining who owns the private land, residence, or business where the grow site operates may assist law enforcement in distinguishing traffickers from victims. Property owners are not always targets, however; they may be witnesses or informants. Records of other properties or businesses owned by the same people or connected individuals may lead investigators to other parts of the criminal enterprise or how the proceeds are laundered.

On-Site Operations

Labor trafficking investigations usually involve on-site operations, the circumstances of which will vary considerably from case to case. They may involve the execution of an arrest warrant for a suspect or suspects, the execution of search warrants, various types of covert or undercover operations, or a combination of any/all of these activities. In some cases, an entire case could blossom out of a single, routine operation; in others, an investigation might involve dozens of operations over the course of months.

The timing of such operations, as well as any predicate investigative steps, will also be highly variable. Law enforcement may want to wait to execute an arrest warrant until these targets return to the site to retrieve the cannabis product; such information can be surmised from conversations with disclosing victims, phone dumps, or real-time surveillance methods.

Once law enforcement establish the safety and security of the scene, they should consider how individuals will be separated, transported, interviewed, and offered services. Personnel should be trained to recognize common indicators of trafficking — *e.g.*, lack of access

to passports/documents, cellphones, personal protective equipment, and/or money — and avoid arrest of any individuals who may be victims. At all stages of the operation, officers should ensure they are interacting with all victims and witnesses in a trauma-informed, culturally-sensitive manner. This includes, but is not limited to:

- Ensuring that victims/witnesses are separated and out of sight from one another and from traffickers before speaking with investigators, both to ensure victim/witness privacy and to prevent intimidation.⁸⁹
- Being prepared with a plan for when body-worn cameras will be activated and deactivated.
- Planning ahead to provide clothing, food, shelter, and immediate medical attention to victims.
- Having service providers (*e.g.*, advocacy and legal services) and interpreters available on site or available nearby

It is important for law enforcement to seize all of the money of the trafficker or the criminal enterprise immediately so that it is not hidden by the traffickers' allies or used for bail, to hire a lawyer, or to flee. In doing so, the money can be securely retained until sentencing, at which point the money can be used for victim restitution or forfeited to the government.⁹⁰

In the event that any targets escape an arrest operation, motion-activated surveillance video may help to identify them, increasing the chances of arrest at a later date. It should also be noted that, in the majority of cases, investigators should not discuss operations with the media until after high-profile targets have been apprehended.

Prioritizing Victim Safety and Support

Investigators and prosecutors should anticipate encountering victims at various stages of an investigation. It is critical to employ victim-centered, trauma-informed practices at every stage and during every interaction in order to protect victim safety, privacy, and well-being. This will include utilizing trauma-in-

formed interviewing techniques⁹¹ and partnering with systems- and community-based advocates to ensure that victims' health, safety, housing, and other service needs are met. Importantly, workers should be connected to legal services that can solely represent their interests; such attorneys can address victims' immigration status (through, *e.g.*, continued presence, U, and T visas), any potential criminal concerns, and any other legal needs victims may have.

Investigators and prosecutors should anticipate and even expect that victims will be unable to participate in the prosecution of their traffickers, whether due to language barriers, cultural differences, distrust or fear of authority, intimidation by traffickers or other witnesses, legal status, or whatever means traffickers used to isolate and control them. While victim statements may provide critical investigative leads in a labor trafficking case, law enforcement should not expect that this will be the norm. The goal is to build evidence-based cases that do not rely solely on the testimony of survivors at trial.

III. Charging Considerations

Regardless of one's view of the legalization of marijuana, there is no doubt that illicit cannabis cultivation causes direct harm to human beings, destroys the environment, and endangers communities. Workers in this "underground" industry are often forced to work in unsafe and inhumane conditions; sometimes, they are dumped in remote areas to work a crop with no way out and no outside contact. Unsafe and illegal pesticides and chemicals are used, which poison the environment and have ripple effects on ecosystems. Water is not only contaminated, but also stolen from fire hydrants and diverted from rivers and streams, which exacerbates the impacts of drought and increases the risk of wildfires. The negative impacts of these criminal enterprises are far-reaching, and all types of charges to respond and protect communities and the environment should be considered. Such prosecutions are necessary both to ensure full accountability for the breadth and scope of the offenders' behavior, as well as to assist prosecutors strategically in instances where securing victim testimony is difficult or impossible.

While illegal cannabis is the financial impetus behind all the crimes discussed in this resource, priority should be placed on combatting human trafficking, which exploits and dehumanizes victims.

Local, state, and federal prosecutors should collaborate to determine what types of charges can be most readily proven; which carry penalties to appropriately hold offenders accountable; and whether federal, state, or federal and state charges will be brought. Appendix B provides a *non-exhaustive* list of potentially applicable federal crimes and regulations.⁹²

Trafficking Charges

Generally, human trafficking offenses are serious felonies carrying robust potential penalties, including substantial prison sentences.⁹³ It is important to charge strategically—it is not enough to charge quickly and settle for the easiest charges. Picking "low hanging fruit"—*i.e.*, charging the workers who handle the day-to-day operations of the illegal grow site — often fails to hold the most culpable offenders accountable while perpetuating harm to and exacerbating trauma of victims. Investigators and prosecutors must apply a nuanced assessment of culpability to determine who should be charged, and with what. Answering the following questions will help guide the analysis:

- **Are recruiters and smugglers of labor and drugs also guilty of trafficking?** There may or may not be evidence that recruiters and smugglers had the requisite knowledge/intent to support a trafficking offense.
- **How do investigators and prosecutors establish knowledge/intent on the part of the individuals who own the illegal cultivation operation?**
- **Is there enough to prosecute all members of a larger criminal enterprise/cartel?** If not, who should be charged?
- **Does delaying charging of low-level management help secure additional evidence against higher-level members of the illegal operation?** Where there are layers or a hierarchy to a criminal enterprise, filing charges against low-ranking parties can alert

the larger targets to law enforcement's investigation. Information may be disclosed in the arrest process, bond hearings, or discovery, which may prompt flight, witness intimidation, or destruction of evidence. This analysis will always be case-specific and should involve an assessment of the relative culpability of the charged individual, their flight risk, the likelihood that they will be detained if charged, and what other evidence is needed to charge higher-level members of the criminal enterprise.

• **Are the individuals who work in the fields and/or run the day-to-day operations being trafficked?**

When deciding if an individual will be charged, prosecutors should consider the totality of the circumstances to determine whether an individual has been forced, fraudulently induced, or coerced into the acts underlying the crime. Evidence of exploitation may include but is not limited to: lack of access to phones, money, immigration documents, protective equipment, or adequate food, shelter, and/or water; physical injuries; the workers' unawareness of their physical location; or their fear of other workers or bosses higher up in the operation. It should be noted that threats and coercion can be psychological, including taking advantage of an individual's immigration status.⁹⁴

• **Does an individual exist somewhere in the middle of the culpability spectrum?** Consider each individual's involvement in the illegal growth operation. Some workers may be completely involuntary participants, while others may be traffickers and owners. Others will fall somewhere between—perhaps they were voluntarily complicit in the business, or they managed or recruited others, but have themselves suffered trauma or have been coerced in some way during their work at the operation. Is there any evidence that workers or low-level managers were under duress when committing a crime?

• **Would charges trigger compulsory joinder or double jeopardy issues (in your jurisdiction or others) with regard to other charges in the future?**

And are there compelling reasons to move ahead with charges? This complex legal analysis should involve prosecutors before take-downs.

Environmental Charges

Environmental violations and theft of water and utilities vary in terms of seriousness, ranging from civil penalties to felonies under state laws.⁹⁵ Civil violations may become criminal offenses, and misdemeanors may be escalated to felonies, depending on the extent of damage caused. Criminal offenses may be applicable for a variety of actions, including but not limited to:

- Water theft
- Water or environmental pollution
- Vandalism
- Violations of pesticide regulations
- Dangerous handling, storage, or transport of pesticides
- Theft of a utility like electricity

Environmental violations may also aggravate or elevate a substance-related offense. In California, for instance, unlicensed cannabis cultivation is a misdemeanor offense, but certain environmental violations are aggravating factors, which can elevate the cultivation charge to a felony.⁹⁶

Substance-Related Charges

Depending on the circumstances, prosecutors may levy charges for illicit cultivation, possession or possession with intent to distribute or sell, or drug trafficking. These charges vary in seriousness depending on the jurisdiction; the amount of cannabis cultivated, possessed, or sold; and a variety of aggravating factors.⁹⁷

The importance of narcotics offenses, even where they do not carry significant penalties, should not be discounted. One of the most significant obstacles to identifying cases of labor trafficking is that law enforcement has no legal basis to investigate businesses in legal industries without a complaint of wrongdoing. Here, illicit cannabis cultivation can be a point-of-entry to investigate further offenses involving harm to people and the environment. Furthermore, charging narcotics offenses along with human trafficking offenses can serve to hold offenders accountable if trafficking charges later fall apart, since narcotics charges can typically be

proven without civilian testimony. The circumstances of how the perpetrators abused and exploited their workers and poisoned the environment can also serve as aggravation at sentencing, usually without victim testimony as well.

Civil and Regulatory Violations

Prosecutors should partner with specialized civil attorneys and allied agencies to ensure that civil and regulatory violations are addressed, including those involving:

- Operating in violation of cultivation licensing rules and regulations, or lapse or technical defects in licensure⁹⁸
- Employment/labor violations⁹⁹
 - Violation of minimum wage laws/wage theft
 - Violation of workers compensation laws (*e.g.*, failure to secure workers compensation insurance; insurance fraud)
 - Violation of unemployment insurance laws (*e.g.*, failure to secure unemployment insurance; insurance fraud)
 - Violation of Fair Labor Standard Act laws regarding overtime, meal breaks, rest breaks, etc.
 - Violation of Notice Requirements¹⁰⁰
- State water codes on diversion and use of rivers
- Civil environmental laws
- Nuisance claims
- Toxic Tort (private civil action based upon personal exposure to toxic substances)

IV. Pre-Trial and Trial Strategies

Once a labor trafficking case is charged or indicted, the prosecutor must take into account a number of considerations to maximize the chance of a just outcome. Although none of the strategies discussed below are unique to labor trafficking prosecutions, they are especially critical to leverage in these cases due to the special needs of victims, the heightened chance for intimidation, and the need to educate jurors on case dynamics.

Working with Victims and Their Advocates

Prosecutors should meet with survivors as early as possible in the case to build and maintain trust. For victims whose primary language is not English, prosecutors' offices must ensure the availability of highly qualified interpreters—both to ensure the accuracy of information communicated and to help victims feel as comfortable as possible. It is also critical for prosecutors to employ a trauma-informed, culturally sensitive approach during all victim interviews and interactions. Victims of labor trafficking have undoubtedly experienced months or even years of trauma, impacting their ability to disclose or participate in the criminal justice process. Trauma-informed interviewing techniques can enable prosecutors to establish rapport with victims, maximize victims' ability to disclose, and mitigate the chances that they will be further traumatized by the system.¹⁰¹

Victims and witnesses should also be connected with community services, including community-based advocacy and legal services at the earliest possible opportunity. Community-based advocates serve a critical role; as non-governmental actors, they may develop privileged or confidential relationships with their clients and thus may be protected from compulsory testimony and discovery. This provides a safe space for survivor disclosure. Community organizations also have deep ties to local resources, including housing, which will be crucial for labor trafficking survivors who are transient, migrants, or who otherwise lack a permanent residence or ties to the community. These organizations can also set victims up with attorneys who can represent them in immigration and other legal proceedings.

Prosecutors should ensure that all witnesses who have engaged in criminal behavior — either at the behest of their traffickers or otherwise — are assigned defense attorneys who can zealously advocate for their interests.¹⁰² A witness's court testimony or statements to law enforcement or prosecutors will implicate their 5th amendment right against self-incrimination. These issues are best navigated by working with the victim's attorney, and if appropriate, providing immunity. In the event that a victim or witness of labor trafficking

has already been convicted of a crime that is later determined to have resulted from their victimization, prosecutors may work with the individual's lawyer to seek appropriate criminal relief, such as vacatur and expungement.

Prosecutors should also enlist the assistance of their in-house victim-witness advocates to provide case-level support. These advocates can make sure victims are kept informed of various stages in the criminal justice process, advised of their rights, treated appropriately within the justice system, and connected to community services. Advocates employed by prosecutors' offices can also serve as a consistent contact between victims and the system, demystifying the criminal justice process for victims while keeping prosecutors apprised of any important victim updates (*e.g.*, changed address, potential witness intimidation).

Immigration Relief

Where a case involves immigrant victims, a prosecutor should consider how to support any applicable immigration relief, such as T or U visas¹⁰³ or Continued Presence status.

These immigration benefits will not only help prosecutors seeking to ensure their witnesses' availability to testify at trial; they will also enable victims to work legally, access state and federal benefits, and escape traffickers' immigration-related abuse tactics.

In light of prosecutors' duties to comply with proper discovery requests, as well as their obligations under *Brady* and *Giglio*, immigration benefits will always be disclosed to defense attorneys, who may attempt to undermine the credibility of testifying witnesses by claiming they are lying on the stand in exchange for legal immigration status. There are a number of ways to counter this defense. Visa certification should never be conditioned upon the victim's cooperation or testimony. Victims should also understand that law enforcement and prosecutors have no authority to approve the final visa application or other immigration relief. Prosecutors can reinforce this information while preparing victims for direct and cross-examination to

ensure that victims are prepared to respond truthfully in response to questions at trial. Finally, prosecutors may consider calling a witness to explain the law enforcement agency's or prosecutor's office's limited role related to immigration relief. They may also consider calling an expert witness to explain applicable immigration and visa information.

CONCLUSION

The illicit cannabis industry has a profoundly negative impact — one that goes far beyond the side-stepping of narcotics laws and regulations. Laborers of the industry are often forced, fraudulently induced, or coerced into working on these grow sites with subsistence or no wages in hazardous conditions. Often lacking access to cell phones or immigration documents, they are effectively cut off from the outside world, unable to contact family or seek assistance. The ones who make it out alive suffer from long-lasting trauma, injury, and illness.

Illicit cannabis sites also pose serious harms to the environment. They exacerbate existing water shortages; increase the risk of forest fires; pollute ground water; and expose humans, animals, and plants to toxic pesticides.

These harms must be rectified, and further harm must be prevented. Criminal justice actors are well-positioned to lead a multidisciplinary effort to identify illicit grow sites and investigate labor and prosecute trafficking and co-occurring offenses. By leveraging the strategies discussed above, law enforcement and prosecutors can hold traffickers accountable while protecting and achieving justice for victims.

APPENDIX A

Agency	Role
State Department of Justice and Attorney General	Statewide prosecution (criminal & civil), training, and coordination.
State District Attorney’s Association	Statewide training & education in the justice system.
Local District Attorneys	Initiates and tries criminal cases originating under state law.
U.S. Attorneys’ Offices	Initiates and tries criminal cases originating under federal law.
Department of Industrial Relations <ul style="list-style-type: none"> • Leads Labor Enforcement Task Force (LETF) 	Conducts investigation into employment-related misdoings related to violations of minimum wage laws, overtime laws, failure to carry worker’s compensation insurance, etc. DIR has a small team of peace officers not directly tasked with human trafficking but has collaborated in multi-faceted prosecutions. <ul style="list-style-type: none"> • LETF has 10 teams of investigators from various agencies in need of training on identification & investigation of labor trafficking.
Employment Development Board <ul style="list-style-type: none"> • Leads Joint Enforcement Strike Force on Underground Economy (JESFUE) • Member of TRUE TF 	Investigates payroll tax violations, unemployment fraud, worker’s comp violations, etc. 28 investigators intended to deter underground economy and investigate violations typically co-occurring with labor trafficking. Capacity for surveillance, undercover, and detective work but lack human trafficking training. Keeper of statewide labor data. <ul style="list-style-type: none"> • Works with local law enforcement through JESFUE
State Franchise Tax Board <ul style="list-style-type: none"> • Member of TRUE TF 	Investigates state tax fraud by employers and has worked with law enforcement on sex trafficking cases, but lacks exposure to labor trafficking. Trained financial/fraud investigators can help track money, identify/investigate ancillary crimes, and serve as expert witnesses.
State based Department of Fair Employment & Housing	Investigates, mediates, & prosecutes labor related civil complaints – but does not have any law enforcement force of its own.
Human Trafficking Task Forces (HTTFs)	Often focused on coordinating responses for sex trafficking work than labor, but can help rally resources and committed stakeholders, but could need labor-specific training and additional partners at the table.
Department of Insurance	Maintains records of (among other things) workers compensation insurance if the employer is actually paying into it.
Insurance companies' Special Investigative Units	Work with civil law firms – may be an arm to expand discovery when a concurrent civil labor trafficking case is filed.
Equal Employment Opportunity Commission	Provides civil remedies for victims exploited/abused based on race, gender, nationality or other protected status

Agency	Role
U.S. Department of Agriculture: Forest Service	Forest Police patrols national forests <ul style="list-style-type: none"> • Grossly understaffed for the area they cover. • Have created computer algorithms to ID illegal grow sites from aerial & satellite imagery. • Environmental DNA (eDNA) can detect traces of marijuana in water collected downstream.
Legal cannabis industry	Potential source of intelligence regarding who is recruiting workers, source of marijuana, etc.
Wildlife ecologists and environmentalists	Potential source of intelligence, especially in tracking impact of pesticides to the source; and can help public awareness of labor & environmental issues
Outdoor enthusiasts (hunting, fishing, camping, hiking...)	Potential source of intelligence regarding animal deaths, which might be indicators of chemicals used at illegal grow sites.
Cannabis Removal on Public Lands Project (CROP)	Works to clear and remediate effects of illegal cannabis cultivation on public lands.
County and State Department of Fish and Wildlife	Potential source of intelligence, and can help public awareness of labor & environmental issues
State-based Bureau of Land Management	Manages public land for a variety of public uses including legal agriculture, timber harvesting, recreation, and cultural and historic resources.
U.S. Drug Enforcement Agency (DEA)	Enforces and investigates federal narcotics violations, including marijuana distribution. Coordinates many narcotics task forces, including many in CA, can help rally TFOs for training on how to identify labor trafficking in the course of drug investigations and operations on grow sites.
National Guard	Supports local, state, federal, and tribal law enforcement in counterdrug enforcement; can help rally TFOs and disseminate training on identifying labor trafficking during narcotics investigations.
U.S. Department of the Interior	Maintains national parks, provides for their public use.
Local High Intensity Drug Trafficking Areas program (HIDTA)	Provides assistance to Federal, state, local, and tribal law enforcement agencies operating in areas determined to be critical drug-trafficking regions. Staffed with analysts from various agencies who aid in analysis and info sharing for LE at all levels.

Agency	Role
Department of Homeland Security	<p>Secures the homeland from outside threats, including terrorists, cartels, human and narcotics smugglers. Homeland Security Investigations division (HSI) has taken on the fight against human trafficking as a specific threat in their mission, and partner with many HTTFs. Maintains assets/agents/resources/partners inside and outside the US, and access to information about entry and removal from the country.</p> <p>Can grant Continued Presence to suspected survivors of human trafficking to provide legal status (and work authorization) to undocumented persons who may be useful to investigation.</p>
Federal Bureau of Investigation	Primary investigative branch of US-DOJ for domestic crimes. Central partner in most HTTFs and violent crimes task forces.
U.S. Occupational Safety & Hazard Administration (OSHA)	Investigates worksite conditions complaints and sets national standards for worker conditions.
Internal Revenue Service <ul style="list-style-type: none"> • Some agents/analysts are detailed to HIDTA 	Investigates federal tax crimes. Financial analysts often partner with narcotics investigators at HIDTA. Some have limited familiarity with sex trafficking to flag Suspicious Activity Reports (SARs) to LE.
U.S. Department of Labor (DOL) <ul style="list-style-type: none"> • Wage & Hour Division • Office of Inspector General 	Investigates violations of the Fair Labor Standards Act
State Water Resources Control Board	Provides permits and receives reports on discharge and spill of toxic or hazardous materials such as pesticides, oversees regional water resource control boards in CA.
State-based OSHA	Investigates violations of labor protections under state law.
State-based Department of Food and Agriculture	Sets regulations for agricultural standards.
State and local Department of Pesticide Regulation	Regulates pesticide sales and provides licenses for manufacturing, sale, transport, and use of regulated pesticides.
National Center for Farmworkers Health	Provides information services, training and technical assistance, and a variety of products to community and migrant health centers nationwide, as well as organizations, universities, researchers, and individuals involved in farmworker health.

APPENDIX B

Crime Type	Charges
Illegal cannabis cultivation	21 U.S.C.A. § 841 Possession with Intent to Deliver/Manufacture 21 U.S.C.A. § 856 Maintaining Drug Involved. Premises (<20yrs for purpose of “manufacture” or storage) Fed Sent Guidelines (FSG § 2D1.1): <ul style="list-style-type: none"> • Level 14 = 10-20kg (c 13) • Level 16 = 20-40kg (c 12) • Level 24 = 100-400kg (c 8) + 2 levels on state or fed land (b 15) + 2 levels with exploit labor (b 16)
Labor trafficking	Forced Labor 18 U.S.C.A. § 1589 Labor Trafficking 18 U.S.C.A. § 1590, 22 U.S.C § 7102(3) Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor 18 U.S.C. § 1592
Environmental crimes ¹⁰⁴	33 U.S.C.A. § 1251-1387 Water Pollution and Control Act 7 U.S.C.A. § 136 Federal Insecticide, Fungicide, and Rodenticide Act 49 U.S.C.A. § 5101-5127 Transportation of Hazardous Materials 42 U.S.C.A. § 9601-9675 Comprehensive Environmental Response Compensation and Liability Act 42 U.S.C.A. § 300f-300j The Safe Drinking Water Act
Other potential charges	Racketeer Influenced and Corrupt Organizations (RICO) 18 U.S.C. § 1961 ¹⁰⁵ Sex Trafficking 18 U.S.C. § 1591 Harboring, transporting, and concealing unauthorized aliens 8 U.S.C. § 1324 Visa fraud 18 U.S.C. § 1546 Laundering of monetary instruments 18 U.S.C. § 1956 Stalking 18 U.S.C.A. § 2261A Child Sexual Exploitation 18 U.S.C.A. § 2251 Trafficking for the purposes of prostitution 18 U.S.C.A. § 2421 Sexual Abuse 18 U.S.C.A. § 2242 Abusive Sexual Contact 18 U.S.C.A. § 2244

ENDNOTES

- 1 Lou Longhitano is a Attorney Advisor, Jennifer Newman is a Associate Attorney Advisor, and Holly Spainhower is a Senior Associate Attorney Advisor with AEQuitas.
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- 78 This requires a very sensitive balancing of considerations on a case-by-case basis in consultation with partners, including prosecutors. Consideration must be given not only to officer and victim safety and investigation integrity, but also to legal issues like compulsory joinder and double jeopardy, so as not to shield a target against more serious charges down the road. Furthermore, although individuals transporting water chemicals to and from sites are generally higher up within the labor trafficking scheme, where there are indicators that such an individual is a trafficking victim, arrest should be avoided. *See, e.g.*, Jacobs, McKenzie, & Racine, *supra* note 76.

- 79 Training will also be necessary in order for the law enforcement officer to be able to testify effectively about the extraction at trial.
- 80 Furthermore, federal funding may be available to law enforcement agencies in need of this equipment. Contact AEQuitas at info@aequitasresource.org for details.
- 81 See discussion *infra*.
- 82 *Id.*
- 83 A one-party consent law refers to a law that criminalizes the interception or recording of a wire, oral, or electronic communication unless one party to the conversation consents. *See, e.g.*, Va. Code. § 19.2-62. A two-party consent law, on the other hand, requires both parties to consent before a communication can be legally recorded. *See, e.g.*, Cal Penal. Code § 632.
- 84 See discussion *infra*.
- 85 A pen register is inherent in any ESO which involves a phone, so PenLink software will be essential.
- 86 To grant an eavesdropping warrant at the federal level, a judge must determine the following based on the facts laid out in the application: (1) that there is probable cause to believe that the subject is committing, or about to commit, an eligible offense, (ii) that there is probable cause to believe that communications concerning that offense will be obtained through interception; and (iii) that normal investigative procedures have been tried and failed or would be unlikely to succeed if tried. 18 U.S.C. § 2518 (3).
- 87 ESOs are not a one-size-fits-all magic bullet. Deciding whether to pursue an ESO requires nuanced consideration. Contact AEQuitas at info@aequitasresource.org for additional resources and assistance.
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- 94 *See, e.g., United States v. Bradley*, 390 F.3d 145 (1st Cir. 2004) (upholding jury instruction given at trial that advised that jurors could consider immigrants' special vulnerabilities, including their background, physical and mental condition, experience, education, and socioeconomic status, in determining whether defendant's actions were sufficient to compel immigrants to work) (judgment vacated on other grounds by *Bradley v. U.S.*, 545 U.S. 1101 (2005)).
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- 96 Cal. Health & Safety Code § 11358.
- 97 In Oregon, for example, the cultivation of more than four but less than eight marijuana plants is a misdemeanor, but becomes a felony for any amount beyond that, even without penalties for environmental violations. O.R.S. § 475B.349. While illegal cannabis cultivation is typically a misdemeanor under California law, Cal. Health & Safety Code § 11358(c), it can be elevated to a felony when certain environmental violations are committed in conjunction with illegal cultivation. Cal Health & Safety Code § 11358 (d)(3)(A)-(d)(3)(G).
- 98 In order to operate a legal commercial cannabis growth operation in California, for example, an individual must first receive a cultivation license from the California Department of Food and Agriculture, and possibly also permits from the state and local Water Board and Fish and Wildlife, Cultivation without a license will typically be criminal, but the license itself requires technical compliance, which can be pursued civilly.
- 99 There has been a more successful balance of sex and labor trafficking cases in civil court, where in 2020, 109 labor cases were filed compared to 91 sex cases. *See* FEEHS & CURRIER WHEELER, *supra* note 64.
- 100 *E.g.*, Cal. Civ. Code Ann. § 52.6(b)) requires businesses to post notice regarding human trafficking.

- 101 See Int'l Assoc. of Chiefs of Police & AEquitas, *supra* note 91.
- 102 For more information on assessing culpability, see Jacobs, McKenzie, & Racine, *supra* note 76.
- 103 For more information on T and U visas, which can benefit victims of labor trafficking, see U and T Visa Certifications, Dep't of Labor, <https://www.dol.gov/agencies/whd/immigration/u-t-visa> (last visited May 22, 2023); see also Training Tools for Prosecutors on the U Visa, VAWA and Criminal Court Discovery, Nat'l Immigrant Women's Law Project, <https://niwaplibrary.wcl.american.edu/prosecutors-tools> (last updated Feb. 2022).
- 104 While some violations of the Federal Environmental code are independent crimes that can be prosecuted by a U.S. Attorney's Office of appropriate jurisdiction, it is likely that

in this context they will provide the basis to seek additional warrants and surveillance to confirm suspected trafficking at an illegal marijuana plant. Whether or not a federal office would or should pursue current charges for environmental damage should be a case-by-case strategy decision made by individual offices.

- 105 RICO can be a vehicle for charging players in a criminal enterprise perpetuating its illicit business through a variety of different types of crimes. A combination of narcotics and human trafficking may serve as predicates for RICO charges, but environmental crimes may not. *Melanson v. US Forensic LLC*, 183 F.Supp.3d 376 (2016) ruled that RICO is precluded from application where a separate, robust federal regulatory scheme for enforcement exists.

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This article was developed under a grant awarded by the Howard G. Buffett Foundation. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Howard G. Buffett Foundation.