

# ***HOW UNITED STATES IMMIGRATION LAWS ENABLE MODERN SLAVERY***

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## ABSTRACT:

Human trafficking is arguably one of the most profitable transnational crimes today. Although slavery was abolished in the United States with the passage of the Thirteenth Amendment in 1865, the practice of selling and exploiting the will of humans continues to occur. In fact, in 2000, the United States enacted legislation, the law Victims of Trafficking and Violence Protection Act of 2000, which prohibits both sex trafficking and labor trafficking. Despite concerted efforts to combat human trafficking, the trade in person continue to grow and although the Trafficking and Violence Protection Act is an improvement over past policies, only a fraction of the estimated victims are being reached and assisted with the purpose provide services that would address their needs. This article will explore the world's trafficking problem addressing the human trafficking in the United States and how the existing immigration policies allow trafficking to persist in the Unites States.

## KEY WORDS:

Human Trafficking, Modern Slavery, Victims Protection Act, Immigration Remedies, Immigration Policies.

## INTRODUCTION

The term “human trafficking” encompasses labor and civil rights violations that are a modern day form of slavery. Because the modern form of trafficking has been regulated for less than a decade, the concepts are still poorly understood. The resources for trafficked people, while growing, remain limited and trafficking victims are among the most isolated types of victims.<sup>1</sup>

Human trafficking is a phenomenon of global magnitude that violates the human rights of millions of women and children. Victims of human trafficking are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. Often, an individual's race, ethnicity, gender, class or status in their home country makes them more vulnerable to traffickers.<sup>2</sup>

Part I of this article will provide an overview and background of human trafficking and the foundational laws and legal protections, such as international treaties, conventions and customary international laws enacted to protect victims of human trafficking.

Part II will explore how the policies and procedures implemented by the U.S. government may not be in the best interests of the victims, and will discuss the issue of human trafficking and implications of the immigration policies on protection laws for trafficking victims.

Part III will evaluate the immigration relief and remedies available to help victims of this heinous crime. This Part will note that **continued presence provides temporary immigration relief to victims of trafficking to enable them to lawfully remain in the United States to effectuate prosecution of their traffickers**, in order to earn a visa to stay in the United States.

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<sup>1</sup> Carole Angel and Lesley Orloff, Human Trafficking And The T-Visa NIWAP (February, 2018) available at <http://library.niwap.org/wp-content/uploads/2015/IMM-Man-Ch11-TraffickingTVisa.pdf>

<sup>2</sup> Id.

## I. An Overview of Human Trafficking

Although Brazil was the last country in the world to abolish slavery (in 1988), a new form of slavery has developed: Human trafficking, also known as modern-day slavery, has recently received significant consideration in global circles. Globalization and transnational migration trends continue to amplify economic disparities and increase the vulnerability of oppressed populations to different forms of human trafficking. Most victims of human trafficking are generally exploited for labor or sexual purposes. Persons most vulnerable to human trafficking are generally the poor, the marginalized, and individuals seeking employment opportunities. Three major types of human trafficking today are labor trafficking, sex trafficking, and war slavery.<sup>3</sup>

Human trafficking is a mushrooming human catastrophe, often connected with transnational organized crime. Human trafficking is both a violation of fundamental human rights and economic crime. Trafficking is a criminal conduct inimical to free and fair labor markets, which impairs businesses' ability to compete ethically for goods, services, and labor. It undermines legitimate economic development for business, government, and developing countries and siphons exorbitant profits to criminal and gray-markets.<sup>4</sup>

The International Labor Organization (ILO) has estimated that over a ten-year period, 20.9 million--roughly three out of every one thousand people worldwide--have been victim of forced labor or sexual exploitation. A growing chorus of international bodies, national governments, businesses, and non-governmental organizations, are committed to eradicating trafficked labor. These include the United Nations (UN), the European Union (EU), and the United States.<sup>5</sup>

### 1. What is Modern Slavery?

Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Trafficking Protocol) defines Trafficking in Persons as:

The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>6</sup>

The definition of human trafficking, as outlined in the Trafficking Protocol has three main components:

- **The Action**, which means the recruitment, transportation, transfer, harboring or receipt of persons;
- **The Means**, which includes threat of or use of force, deception, coercion, abuse of power or position of vulnerability; and
- **The Purpose**, which is always exploitation. Article 3 of the Trafficking Protocol says exploitation "shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs."<sup>7</sup>

<sup>3</sup> Marley S. Weiss, Human Trafficking and Forced Labor: A Primer, 1 31 ABA Journal Lab. & Emp. Law 1 (2015)

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> United Nations Office on Drugs and Crime, Human Trafficking, available at [www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html](http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html)

<sup>7</sup> United Nations Convention against Transnational Organized Crime and the Protocols Thereto (New York, 2014) available at <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

**This Trafficking Protocol** was adopted by General Assembly Resolution 55/25, and entered into force on 25 December 2003. It is the first global legally binding instrument with an agreed definition on trafficking in persons. The intention behind this definition is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in persons cases. An additional objective of the Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights.<sup>8</sup>

## 2. The World's Trafficking Problem

Human trafficking is the world's fastest growing crime that must be addressed with a comprehensive approach, both nationally and internationally. The main steps must include raising awareness of the issue and addressing the root causes of human trafficking, introducing legislation criminalizing human trafficking, adequate enforcement and review mechanisms, and appropriate assistance to the victims.<sup>9</sup>

Human trafficking is a global problem, affecting the lives of millions of people around the world and robbing them of their dignity. Traffickers deceive women, men and children from all corners of the world and force them into exploitative situations every day. While the best-known form of human trafficking is for the purpose of sexual exploitation, hundreds of thousands of victims are trafficked for the purposes of forced labor, domestic servitude, child begging or the removal of their organs. Globally, one in five victims of human trafficking are children, although in poorer regions and sub regions, such as Africa, they make up the majority of trafficked persons. Women meanwhile make up two thirds of the world's human trafficking victims.<sup>10</sup>

In addition, the ILO report, *Profits and Poverty: The Economics of Forced Labor* indicates:

Two thirds of the estimated total of US\$ 150 billion, or US\$ 99 billion, came from commercial sexual exploitation, while another US\$ 51 billion resulted from forced economic exploitation, including domestic work, agriculture and other economic activities.<sup>11</sup> The breakdown of profits generated by forced economic exploitation is as follows<sup>12</sup>:

- US\$ 34 billion in construction, manufacturing, mining and utilities
- US\$ 9 billion in agriculture, including forestry and fishing
- US\$ 8 billion saved by private households by not paying or underpaying domestic workers held in forced labor.

That said, in order to make a significant change in the lives of people victims in forced labor, a concrete and immediate action is needed. It means that governments have to work to strengthen law, policy and its enforcement, with employers to strengthen their due diligence against forced labor, including in their supply chains, and with trade unions to represent and empower those at risk<sup>13</sup>.

## 3. International Instruments Concerning Human Trafficking

International law is a powerful conduit for combating human trafficking. The most reputable instruments of international law that have set the course for how to define, prevent, and prosecute human trafficking are as follows<sup>14</sup>:

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<sup>8</sup> United Nations Convention against Transnational Organized Crime and the Protocols Thereto available at <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

<sup>9</sup> Ewelina U. Ochab, *The World's Fastest Growing Crime* (July, 2017) available at <https://www.forbes.com/sites/ewelinaochab/2017/07/29/the-worlds-fastest-growing-crime/2/#3d7c6ee06547>

<sup>10</sup> Id.

<sup>11</sup> ILO Economic of Forced Labor (May, 2014) available at [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_243201/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang--en/index.htm)

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> United Nations Human Rights Office of the High Commissioner, *International Instruments Concerning Trafficking in Persons* (August, 2014) available at [http://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/IntInstrumentsconcerningTraffickingpersons\\_Aug2014.pdf](http://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/IntInstrumentsconcerningTraffickingpersons_Aug2014.pdf)

- i. The Palermo Protocol, a supplement to the UN Convention against Transnational Organized Crime (2000). Article 5 of the Protocol requires States to criminalize trafficking, attempted trafficking, and any other intentional participation or organization in a trafficking scheme.
- ii. Two International Labor Organization (ILO) conventions focus on forced labor or services: The ILO Forced Labor Convention (Convention No. 29 of 1930) and its newly adopted Protocol, which defines forced or compulsory labor, and the ILO Abolition of Forced Labor Convention (Convention No. 105 of 1957).
- iii. The Slavery Convention (1926) which defines slavery, and its Supplementary Convention that describes “practices similar to slavery,” including debt bondage, and institutions and practices that discriminate against women in the context of marriage.
- iv. The UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) that requires States to punish any person who exploits the prostitution of another.
- v. The International Covenant on Civil and Political Rights (ICCPR) which prohibits a number of practices directly related to trafficking, including slavery, the slave trade, servitude and forced labor.
- vi. The Convention on the Elimination of All Forms of Discrimination against Women that requires States to take all appropriate measures to suppress all forms of trafficking in women and exploitation of prostitution of women. The General Recommendation No. 19 identifies trafficking as a form of violence against women because it puts women at special risk of violence and abuse. Trafficking is incompatible with the equal enjoyment of rights by women and with the respect for their rights and dignity.

Some of these international instruments have specific provisions concerning the trafficking of children. However, the Convention on the Rights of the Child (1989) (CRC), and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (2000), prohibit trafficking in children for any purpose, including for exploitive and forced labor. Article 39 of the CRC requires States to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse.<sup>15</sup> The Optional Protocol to the Convention on the Sale of Children specifies particular forms of protection and assistance to be made available to child victims.

Additionally, the ILO’s Worst Forms of Child Labor Convention (Convention No. 182 of 1999) prohibits perpetrators from using children under 18 years of age for all forms of slavery or practices similar to slavery, trafficking, debt bondage, serfdom, forced or compulsory labor, and prostitution. Article 7(2)(b) and (c) requires States to take effective and timely measures to provide for the rehabilitation and social integration of former victims of the worst forms of child labor, including trafficking, as well as to ensure their access to free basic education, and, wherever possible and appropriate, vocational training.<sup>16</sup>

Although, some instruments contain specific provisions for addressing the needs of foreign victims. Article 7 of the Palermo Protocol indicates that States should consider potential measures for allowing foreign trafficking victims to remain, temporarily or permanently, in the State in which they were trafficked. The UN High Commissioner for Refugees (UNHCR) has noted that some people

<sup>15</sup> United Nations Human Rights Office of the High Commissioner, Convention on the Rights of the Child available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>16</sup> International Labor Organization, Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182)

who have been trafficked or who are at risk of being trafficked may be entitled to international refugee protection under the Convention relating to the Status of Refugees (1951) and its 1967 Protocol if they have a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.<sup>17</sup>

## II. Human Trafficking in The United States

### 1. Current Federal Laws

In the last two decades, Congress has passed a number of comprehensive bills designed to bring the full power and attention of the federal government to the fight against human trafficking. Modern prohibitions of human trafficking in the United States have their roots in the Thirteenth Amendment to the United States Constitution,<sup>18</sup> which barred slavery and involuntary servitude in 1865. With the enactment of the Trafficking Victims Protection Act of 2000 (TVPA), the United States Government was equipped with new tools and resources to mount a comprehensive and coordinated campaign to combat human trafficking toward the prosecution of traffickers, the protection of victims, and the prevention of the crime using the TVPA's expanded criminal status and newly introduced victim protections and anti-human trafficking programs. This strategy is often referred to as the "3Ps," prevention, protection, and prosecution. A fourth "P," for partnership, is a crucial approach that underlines U.S. anti-trafficking efforts.<sup>19</sup>

The TVPA of 2000 is the foundation of federal human trafficking legislation, and established several methods of prosecuting traffickers, preventing human trafficking, and protecting victims and survivors of trafficking. The act establishes human trafficking and related offenses as federal crimes, and attaches severe penalties to them. It also mandates restitution be paid to victims of human trafficking. It further works to prevent trafficking by establishing the Office to Monitor and Combat Trafficking in Persons, which is required to publish a Trafficking In Persons (TIP) report each year. The TIP report describes and ranks the efforts of countries to combat human trafficking. The TVPA of 2000 also established the Interagency Task Force to Monitor and Combat Trafficking, which assists in the implementation of the TVPA. The TVPA of 2000 protects victims and survivors of human trafficking by establishing the T visa, which allows victims of human trafficking, and their families to become temporary U.S. residents and eligible to become permanent residents after three years.<sup>20</sup>

Since 2000, Congress maintained support for this framework by reauthorizing the TVPA of 2000 four times, in 2003, 2005, 2008, and 2013 as follow:

The Trafficking Victims Protection Act of 2003 (TVPRA of 2003) established a federal, civil right of action for trafficking victims to sue their traffickers. It also added human trafficking to the list of crimes that can be charged under the Racketeering Influenced Corrupt Organizations (RICO) statute. It also included additional provisions for protection of victims and their families from deportation, and a requirement that the Attorney General report to Congress annually on the activities of the United States government in the fight against trafficking.<sup>21</sup>

The Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA of 2005) included a pilot program for sheltering minors who are survivors of human trafficking, and grant programs

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<sup>17</sup> United Nations Human Rights Office of the High Commissioner, *supra* note 13, at 2

<sup>18</sup> Thirteenth Amendment to the United States Constitution reads in full: "Neither slavery nor involuntary, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

<sup>19</sup> Department of Justice, Department of Health and Human Services, and Department of Homeland Security, *Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 5 2013-2017*

<sup>20</sup> Polaris Project, *Current Federal Laws* available at <http://polarisproject.org/current-federal-laws>

<sup>21</sup> *Id.*

to assist state and local law enforcement combat trafficking. It also expanded measures to combat trafficking internationally, including provisions to fight sex tourism, a \$5 million pilot program for treatment of trafficking victims abroad, and a strengthening of the regulation over government contracts to ensure they are not made with individuals or organizations that promote or engage in human trafficking.<sup>22</sup>

The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008) included several new prevention strategies, including requirements that the government provide information about workers' rights to all people applying for work and education-based visas. It also put in place new systems to gather and report human trafficking data. In addition to the prevention strategies, the 2008 reauthorization expanded the protections available with the T visa, and required that all unaccompanied alien children be screened as potential victims of human trafficking. This reauthorization also enhanced criminal sanctions against traffickers, and expanded definitions of various types of trafficking to make prosecution easier.<sup>23</sup>

The Trafficking Victims Protection Reauthorization Act of 2013 (TVPRA of 2013), which was passed as an amendment to the Violence Against Women Act (VAWA), establishes and strengthens programs to ensure that U.S. citizens do not purchase products made by victims of human trafficking, and to prevent child marriage. It also puts into place emergency response provisions within the State Department to respond quickly to disaster areas and crises where people are particularly susceptible to being trafficked. The reauthorization also strengthens collaboration with state and local law enforcement to ease charging and prosecuting traffickers.<sup>24</sup>

The Trafficking Victims Protection Act was up for its fifth reauthorization last year on September, 2017. This bill passed in the Senate on September 11, 2017<sup>25</sup> and was referred to the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations on January 22, 2018.<sup>26</sup> It is urgent that the U.S. government turns its attention to reauthorizing the TVPA, because to end human trafficking, the United States must remain a leader in implementing policies and practices to fight human trafficking and serve as an example for the international community.

## 2. The Issue of Human Trafficking on a National Scale

When the issue of human trafficking first gained public attention in the United States in the 1990s, the discussion centered on international human trafficking. In 2000, the United States passed an anti-trafficking law, popularly called the Trafficking Victims Protection Act (TVPA), and the United Nations adopted an anti-trafficking treaty called the Palermo Protocol. Both the TVPA and the Palermo Protocol focused on combating international human trafficking by encouraging countries around the world to pass laws against trafficking and prosecute traffickers.<sup>27</sup>

However, despite the efforts to combat the growing issue of trafficking in persons, the problem of human trafficking, forced labor, and modern slavery continues to grow. These victims often experience severe trauma that requires intensive therapy, recovery, rehabilitation, and restorative services as a result of their abuse. In addition, human trafficking and forced labor criminal cases

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<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Actions Overview S.1311 — 115th Congress (2017-2018) available at <https://www.congress.gov/bill/115th-congress/senate-bill/1311/actions>

<sup>26</sup> Congress.Gov S.1312 – Trafficking Victims Protection Act of 2017 available at <https://www.congress.gov/bill/115th-congress/senate-bill/1312/related-bills>

<sup>27</sup> Carrie N. Barker, The Influence of International Human Trafficking on United States Prostitution Laws: The Case of Expungement Laws 171 (Syracuse Law Review February, 2012) available at <http://lawreview.syr.edu/wp-content/uploads/2013/03/K-Baker.pdf>

are often complicated and lengthy legal proceedings that requires additional resources as well as for victims. Many of these victims require comprehensive case management provided by victims services organizations to see them through their recovery, help them to navigate the legal system, and provide assistance to law enforcement, all of which are necessary to prosecute criminal enterprises involved in human trafficking.<sup>28</sup>

If a person succumbs to the lures of traffickers, the traffickers then often use threats or force to diminish the resistance of the victim and to ensure submission; they may isolate, demean, and demoralize the victim; they may intimidate, abuse, and deceive the victim; and they may use drugs or other tactics, such as denial of food or water, to disorient the victim.<sup>29</sup> Especially in cases of foreign national trafficking victims, traffickers may take away the victims' visas, passports or other documents and threaten to report the victims to immigration authorities, in order to maintain control.

Every year, human traffickers generate billions of dollars in profits by victimizing millions of people in the United States and around the world. Traffickers are estimates to exploit 20.9 million victims, with an estimated 1.5 million victims in North America, the European Union, and others Developed Economies combined.<sup>30</sup> Despite growing awareness about this crime, human trafficking continues to go underreported due to its misconceptions about its definition and lack of awareness about its indicators.

Although, there is no official estimate of the total number of human trafficking victims in the U.S. Polaris, a United States based anti-trafficking service, research, and advocacy organization in Washington, D.C., estimates that the total number of victims nationally reaches into the hundreds of thousands when estimates of both adults and minors and sex trafficking and labor trafficking are aggregated. Also the National Human Trafficking Hotline indicates that more than 40,000 total cases of human trafficking have been reported to the Hotline in the last 10 years. The Hotline annually receives multiple reports of human trafficking cases in each of the 50 states and D.C with an average of 90 calls per day.<sup>31</sup>

### 3. Implications of Immigration Policies on Protections Laws for Trafficking Victims

The current administration idealizes itself as the "law and order" administration. Its immigration policies have led to a mass expansion of immigration enforcement efforts, prioritizing the removal of those convicted or charged with crimes.<sup>32</sup> The policies promote the detention of even those *suspected* of violating the law and prompt removal of all those suspected criminals whose claims to remain in the United States are rejected. It tightens asylum procedures to ensure asylum mechanisms are not illegally exploited to prevent the removal of otherwise removable aliens.<sup>33</sup>

Many fear, rightfully, that such immigration policies have a negative effect on the fight against trafficking and protection of victims. Experts warn that trafficking will skyrocket under this current administration, as fear of deportation leverages traffickers' power over victims, makes victims less willing to come forward, and pushes the crime further underground.<sup>34</sup> Others suggest that even existing visa options

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<sup>28</sup> Alliance to End Slavery & Trafficking (January, 2017) available at <https://endslaveryandtrafficking.org/summary-trafficking-victims-protection-act-tvpa-reauthorizations-fy-2017-2/>

<sup>29</sup> Caroline Fish, Protected, Not Removable: Foreign National Trafficking Victims and the Immigration Policies of the Trump Administration, 1 (The National Law Review) November, 2017, available at <https://www.natlawreview.com/article/protected-not-removable-foreign-national-trafficking-victims-and-immigration>

<sup>30</sup> National Human Trafficking Hotline, Human Trafficking available at <https://humantraffickinghotline.org/type-trafficking/human-trafficking>

<sup>31</sup> Polaris Project, The Facts available at <http://polarisproject.org/human-trafficking/facts>

<sup>32</sup> Fish, *supra* note 31 at 4

<sup>33</sup> Id.

<sup>34</sup> Ellen Wulforst, Immigration Expert Predicts Human Trafficking Will Surge Under Trump Reuters (April, 2017) available at <https://www.reuters.com/article/us-trafficking-conference-immigration/immigration-expert-predicts-human-trafficking-will-surge-under-trump-idUSKBN17R2V0>.

and protection under the TVPRA are not enough to protect foreign national trafficking victims, as few T Nonimmigrant Status (T-visas) are issued and their issuance depends on the discretion of the law enforcement system, which is extremely hostile to and suspicious of immigrants.<sup>35</sup>

Indeed, these experts and advocates are correct to note that the current immigration policies have negative implications for foreign national trafficking victims, as evidenced by events like the appearance of U.S. Immigration and Customs Enforcement (ICE) officers in a Human Trafficking Intervention Courts (HTIC) in New York. However, few propose concrete solutions to these issues. As the “law and order” administration gives no indication of willingness to reverse these policies, the anti-trafficking movement is in dire need of constructive and critical solutions to push the current administration on the issue of protection of foreign national trafficking victims.<sup>36</sup>

Three key solutions to stop and reverse the negative impact of these policies are as follows: first, to leverage the protections that exist under current laws, such as the TVPA, to hold the current administration accountable for ensuring protection of trafficking victims; second, to advance further training on trafficking for law enforcement and immigration officers in order to spread awareness of existing laws and to ensure protection, rather than criminalization, of victims; and third, to enact a newly proposed law that expands victim protection in the United States.<sup>37</sup>

First, the Executive administration’s current immigration policies make explicit that the TVPA must also be enforced to the full extent of the law, including to the extent it amended immigration law to include visa relief and protection for foreign national trafficking victims. While the Executive branch is currently silent on protection of adult foreign national trafficking victims, one of its policies carves out the important exception through reference to the 2008 reauthorization act of the TVPA: The immigration policy states that “all Department of Homeland Security personnel” must be “properly trained on the proper application” of the anti-trafficking legislation, as it relates to “unaccompanied alien children.” Otherwise, to date, no other policy of the Executive Branch suggests prioritization of protection of trafficking victims, including the anti-trafficking policy.<sup>38</sup>

Second, service providers and agencies must continue to advance training for law enforcement and immigration officers to spread awareness of existing laws and to ensure protection, rather than criminalization, of victims.<sup>39</sup>

Third, the Put Trafficking Victims First Bill of 2017, which calls for the advancement of trafficking victim protection in the U.S., must be passed. This bill calls for funding for trainings to ensure, inter alia, that law enforcement officers and prosecutors make every attempt to determine whether an individual is not a trafficking victim before arresting them for, or charging them with, an offense. It also encourages States to enact protections that allow victims to have convictions and adjudications related to prostitution and nonviolent offenses vacated and such records cleared and expunged if offenses were committed as a direct result of the victim being trafficked and to ensure that foreign national victims do not use any immigration benefit because of such conviction or arrests. This law, essentially, would add an extra layer of national commitment to the protection of all trafficking victims, especially foreign nationals.<sup>40</sup>

Where the current immigration policies are dangerous and can push victims into the shadows, they also provide the opportunity for advocates to leverage the laws in place to push the administration

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<sup>35</sup> Jay Shooter, Trump Isn’t Fighting Human Trafficking, He’s Facilitating It, Just Security (May, 2017) available at <https://www.justsecurity.org/40461/trump-fighting-human-trafficking-facilitating/>.

<sup>36</sup> Fish, *supra* note 31 at 5

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

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

on the issue of victim protection and on the advancement of practices that support victims to escape from trafficking situations and to heal.

#### 4. Scope of a Sex Trafficking Case in the United States

A specific case of study on the practice of forced labor will be provided in hopes to bring light to how realistic and brutal slavery and trafficking can be today.

##### a. The People of the State of New York v. G.M. Defendant (2011)<sup>41</sup>

##### i. Facts

##### ➤ Defendant was physically and sexually abused by her husband

In 1989, the defendant, a native of the Dominican Republic, met her husband while on a tourist visa to the United States. The defendant decided to stay in the United States with him, in part, to earn money for her two children who were still living in the Dominican Republic. In 1994, the couple married. Soon thereafter, the relationship took a turn for the worse as her husband began to physically abuse the defendant, something which had never happened before the marriage. The defendant discovered that her husband was addicted to crack cocaine so that the abuse was often more severe when he was under the influence of drugs. She was also raped when he was high on crack cocaine. Her husband isolated her from others and exerted control over almost every aspect of her life. She was not allowed to leave the room or apartment without him and he would often drop her off and pick her up from her jobs, waiting in a car parked outside to make sure she did not go somewhere else.<sup>42</sup>

##### ➤ Defendant was convicted while she was during this period of abuse

Defendant was arrested on six separate occasions. From September 1997 through January 1998, defendant was arrested twice for prostitution (Penal Law § 230.00), twice for criminal trespass in the third degree (Penal Law § 140.10), and twice for criminal possession of a controlled substance in the seventh degree (Penal Law § 220.03), all misdemeanor offenses. The defendant pleaded guilty on each of these cases, often at arraignments, resulting in two noncriminal convictions for disorderly conduct, a violation, and four class B misdemeanor convictions.

##### ➤ Defendant obtained a T Visa for being a human trafficking victim

According to the defendant her husband forced her to engage in these illegal activities, including prostitution, upon threat of physical harm or actual violence if she did not comply. If defendant did not earn enough money for him, he would become angry and violent. The defendant was never allowed to keep any of the money she earned. She eventually sought assistance from outside organizations to help her put her life back together, and in 2009, she received a "T Visa" (T-1 Nonimmigrant Classification Status), after proving to the federal government that she was a victim of human trafficking.<sup>43</sup>

In order to be eligible, the applicant for such a visa met the definition of severe forms of trafficking in persons:

Under the Trafficking Victims Protection Act of 2000 (TVPA), as well as the subsequent Trafficking Victims Protection Reauthorization Acts of 2003, 2005 and 2008, "severe forms of

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<sup>41</sup> See *The People of the State of New York v. G.M.* 922 N.Y.S.2d 761, 2011 N.Y. Slip Op. 21176

<sup>42</sup> *Id.* at 2

<sup>43</sup> *Id.*

trafficking in persons" is defined as the following: (1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>44</sup>

However, despite the defendant's status as a trafficking victim, her criminal record created a severe hardship for her. For example, her job as a home health care attendant, which she held for approximately five years, was jeopardized when the Department of Health (DOH) did a background check on her and discovered her criminal convictions. As a result of this discovery, the defendant was first put on suspension by DOH in 2007 and then terminated. With the assistance of the Sex Workers Project of the Urban Justice Center, she was approved to work again after successfully contesting DOH's decision.<sup>45</sup>

## ii. Legal Issues

Because the defendant felt vulnerable to having her background exposed to future employers, creating further embarrassment, humiliation and financial hardship. She filed a motion to vacate the criminal conviction pursuant to Criminal Procedure Law § 440.10. During the pendency of the litigation, the New York State Legislature amended Criminal Procedure Law, allowing the New York courts, for the first time, to vacate the convictions of those arrested for prostitution-related offenses if they were sex trafficking victims at the time of the arrest. After the passage of that amendment, in a supplemental motion the defendant asked the court to consider these new provisions as additional grounds for granting the article 440 motion.<sup>46</sup>

## iii. Judgment

The Court granted the defendant's article 440 motion by vacating the judgment of conviction in each of the defendant's six cases and dismissed all of the accusatory instruments based upon a recognition that defendant was a victim of sex trafficking who was forced into prostitution activities and arrested during the commission of this illegal activity.<sup>47</sup> Thus, the passage of the new law is giving victims of human trafficking a second change that they deserve for healthy community integration.

## III. Resources for Victims of Human Trafficking

The United States Citizenship and Immigration Services (USCIS) help protect victims of human trafficking and other crimes by providing immigration relief. Since human trafficking, also known as a form of modern-slavery in which traffickers lure individuals with false promises of employment and a better life, individuals and their families may also fall victim to many other types of crimes in the United States. These crimes include: rape, murder, manslaughter, domestic violence, and many other. In this sense there are two types of immigration relief USCIS provides to victim of human trafficking and other crimes: T Nonimmigrant Status (T Visa) and U Nonimmigrant Status (U Visa).<sup>48</sup>

Victims of trafficking have often been exploited for little or no payment over long periods of time. They may have suffered injuries or contracted illnesses that require medical attention. They may have incurred debts as a result of their trafficking experiences. While remedies for trafficking are still extremely limited in the United States, there is a clear trend towards making this a legal possibility.

<sup>44</sup> See Trafficking Victims Protection Act of 2000, 8 CFR 214.11 – 22 U.S. Code § 7102 (9) Alien victims of severe forms of trafficking in persons

<sup>45</sup> Supra note 43 at 2

<sup>46</sup> Id. at 3

<sup>47</sup> Id. at 4

<sup>48</sup> American Civil Liberties Union, Human Trafficking: Modern Enslavement of Immigrant Women in the United States, available at <https://www.aclu.org/other/human-trafficking-modern-enslavement-immigrant-women-united-states>.

In this sense, “continued presence” provides temporary immigration relief to victims of trafficking to enable them to lawfully remain in the United States to effectuate prosecution of their traffickers. Continued presence can only be requested for a victim by a law enforcement agent and is conditioned on a victim’s cooperation with law enforcement in a criminal investigation. Continued presence is issued for no more than one-year increments.<sup>49</sup>

The T Visa provides immigration relief to victims of trafficking. Victims can self-petition for a T Visa if they agree to cooperate with law enforcement in a criminal investigation. In order to receive a T-visa the applicant must cooperate with any requests for assistance in the investigation or prosecution of any acts of trafficking.<sup>50</sup>

U Visas are issued to noncitizens who have suffered substantial physical or mental abuse as a result of being a victim of certain crimes designated by the TVPA, including trafficking, that violate domestic laws or occurred while in the United States. In order to be eligible for a U Visa, a victim must have cooperated or be willing to cooperate in a criminal investigation.<sup>51</sup>

Asylum relief may be available to victims of trafficking if they fear they may be persecuted if returned to their home country. An asylee may adjust to permanent resident status one year after being granted asylum.

Recipients of these forms of immigration relief are eligible for employment authorization and the benefits and services available to victims of trafficking. The T Visa and U Visa provide temporary lawful immigration status to victims of trafficking, with the option of adjusting to legal permanent resident status. Only 5,000 T visas and 10,000 U visas are available annually. These limits do not apply to family members.<sup>52</sup>

All victims should have access to appropriate remedies to make good any human right harm that has occurred, as far as possible. In some circumstances potential victims of trafficking, members of their immediate family or dependents may also be entitled to remedies. In the criminal area, victims of trafficking can receive restitution and their traffickers can be subject to fines and/or imprisonment as a result of criminal prosecution under the Trafficking Victims Protection Act of 2000 (TVPA).<sup>53</sup> The TVPA criminalizes trafficking with respect to forced labor, involuntary servitude, peonage, and slavery. The TVPA also makes it a criminal offense to confiscate a victim’s documents in furtherance of a trafficking crime.<sup>54</sup> Many states have also now adopted their own trafficking laws. In the civil area, *victims of*

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<sup>49</sup> See §1100.35 Authority to permit continued presence in the United States for victims of severe forms of trafficking in persons. (a) (b) The continued presence granted through any of the mechanisms described in this paragraph (b) will contain the terms normally associated with the particular type of authorized continued presence granted, including, but not limited to, duration of benefit, terms and procedures for receiving an extension, travel limitations, and employment authorization unless expressly waived in an individual approval. Aliens granted deferred action based upon section 107(c)(3) are considered to be present in the United States pursuant to a period of stay authorized by the Attorney General for purposes of INA sections 212(a)(9)(B)(I) and (C)

<sup>50</sup> U.S. Citizenship and Immigration Services Victims of Human Trafficking, T Nonimmigrant Status available at <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status/questions-and-answers-victims-human-trafficking-t-nonimmigrant-status>

<sup>51</sup> U.S. Citizenship and Immigration Services Immigration Relief for Vulnerable Population available at <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/T-U-VAWA-relief.pdf>

<sup>52</sup> Id.

<sup>53</sup> The Advocates for Human Rights Civil Remedies for Trafficking Victims available at [http://www.stopvaw.org/civil\\_remedies\\_for\\_trafficking\\_victims](http://www.stopvaw.org/civil_remedies_for_trafficking_victims)

<sup>54</sup> See the Trafficking Victims Protection Act of 2000 supplemented 18 U.S. Code § 1584 - Sale into involuntary servitude (a) Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both. (b) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties described in subsection (a)

*trafficking can also seek compensation for their economic losses and suffering by bringing a civil claim against their trafficker for trafficking violations under a civil cause of action added to the TVPA in 2003. Victims can also claim relief under various federal and state labor and employment laws.*<sup>55</sup>

## Conclusion

Almost all nations of the world, including the United States, are burdened with increased economic, public health, and domestic and transnational crime problems as a result of trafficking in humans. A lack of laws and enforcement resources addressing trafficking, as well as a failure by governments to acknowledge the severity of the issue, contribute to the spread of trafficking. In this sense, the enactment of the Trafficking and Victims Protection Act was a crucial step in eradicating this world phenomenon.

Worldwide, women are suffering from trafficking. The low levels of education, gender discrimination, poverty, illiteracy, and a lack of job opportunities affect women in great numbers. Such conditions pressure women to migrate and make them particularly vulnerable to unscrupulous recruiters who, through force, fraud, or coercion, place women in job situations in which they did not consent and from which they cannot freely escape.

Sometimes when a human trafficking victim is discovered by the authorities is treated as illegal noncitizen and eventually is fined, imprisoned, and deported. Conversely, traffickers escape with light punishment because the law is insufficient to address the types of activities in which they are engaged.

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<sup>55</sup> ACLU Human Trafficking: Modern Enslavement of Immigrant Women in the United States available at <https://www.aclu.org/other/human-trafficking-modern-enslavement-immigrant-women-united-states>

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