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## The “Other” Side of Human Trafficking: Effectively Advocating for Labor Trafficking Survivors Under the Trafficking Victims Protection Act

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Norma González<sup>1</sup>

### I. INTRODUCTION

The exploitation<sup>2</sup> of people through sex abuse or forced labor is a worldwide, persistent, and profitable epidemic. Despite growing international efforts to address the issue of human trafficking, it remains a multi-billion dollar industry, ranked third to the arms and drug trades.<sup>3</sup> The International Labour Organization (ILO) estimates that 21 million people are victims of forced labor and 4.5 million are victims of forced sexual

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<sup>1</sup> Prior to law school, I was employed as a victim advocate at the Center for Hope and Safety, formerly Mid-Valley Women’s Crisis Service, in Salem, Oregon, for over three years. I worked with victims of domestic violence, sexual assault, stalking, and human trafficking. Much of the information contained in this article draws from my experiences as an advocate. However, out of respect for the confidentiality of the many survivors and the non-mandatory reporting agency I worked for, I will speak only very generally about the people I worked with and the many stories I heard during my advocacy experience. [Hereinafter “Personal Experiences”].

<sup>2</sup> Exploitation and trafficking are used interchangeably throughout this article.

<sup>3</sup> Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87, B.U. L. REV. 157, 163 (2007) (citing to *International Trafficking in Women and Children: Hearings Before the Subcomm. on Near Eastern and South Asian Affairs of the S. Comm. on Foreign Relations*, 106<sup>th</sup> Cong. 11 (2000), <https://www.bu.edu/law/central/jd/organizations/journals/bulr/volume87n1/documents/SRIKANTIAHv.2.pdf>); see *Human Trafficking How Serious is the Problem?*, UNITED NATIONS REGIONAL INFO. CTR., <http://www.unric.org/en/human-trafficking> (last visited Mar. 5, 2016).

exploitation.<sup>4</sup> The ILO also found that migrant workers and indigenous people are particularly vulnerable to abuse through forced labor.<sup>5</sup>

Globalization increases the demand for jobs in the service, manufacturing, agricultural, and industrial sectors. Low-skilled workers who are subject to low wages often meet this demand.<sup>6</sup> These workers often come from developing countries and must make the difficult choice to leave their country of origin to better their economic situation.<sup>7</sup> It is within the context of employment, or economic necessity, that the potential for exploitation occurs. Labor trafficking encompasses a broad range of abuses, but is best understood in broad terms as people in positions in power (such as farm and business owners) exploiting vulnerable workers who are unaware of their rights in a new country.<sup>8</sup>

The United States is no exception to this global epidemic. Congress estimates that approximately 50,000 women and children are trafficked into the United States each year.<sup>9</sup> Further, the “2014 Trafficking in Persons Report,” published by the US Department of State, recognized that Mexico is one of the top countries of origin for victims of human trafficking.<sup>10</sup> Yet, despite these startling statistics, the current focus in the United States

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<sup>4</sup> *Forced Labour, Human Trafficking and Slavery*, INT’L LABOUR ORG., <http://www.ilo.org/global/topics/forced-labour/lang—en/index.htm> (last visited Feb. 18, 2016).

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

<sup>6</sup> DENISE BRENNAN, *LIFE INTERRUPTED: TRAFFICKING INTO FORCED LABOR IN THE UNITED STATES* 6 (2014).

<sup>7</sup> NISHA VARIA ET AL., HUMAN RIGHTS WATCH, *RIGHTS ON THE LINE: WORK ON ABUSES AGAINST MIGRANTS IN 2010* (2010), <http://www.hrw.org/reports/2010/12/12/rights-line-0>.

<sup>8</sup> BRENNAN, *supra* note 6, at 7.

<sup>9</sup> *Victims of Trafficking and Violence Protection Act*, 22 U.S.C. § 7101 (2000).

<sup>10</sup> *See* U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, *TRAFFICKING IN PERSONS REPORT 2014 271* (June 2014), <http://www.state.gov/documents/organization/226847.pdf>.

remains on combatting sex trafficking, with very little attention paid to the exploitation of undocumented and immigrant people.<sup>11</sup>

Although overwhelming efforts have been made to support children, and, to a lesser extent, adult female victims of human trafficking, men are also victims of both sex and labor trafficking.<sup>12</sup> Federal protections that exist to protect workers are often not enforced,<sup>13</sup> and even fewer protections are available to undocumented workers, leaving them at tremendous risk for exploitation.<sup>14</sup> I will argue that, although remedies are available for undocumented victims under the Trafficking Victims Protection Act (TVPA), they are not implemented equally for undocumented victims of labor trafficking. This is due to the pervasive and systemic racism that undocumented immigrants face, as well as community and system-wide ignorance surrounding the issue of labor exploitation.

Specifically, I will address the underutilization of TVPA benefits, which can be resolved through a hybrid approach of implementing cultural changes surrounding the stigmatization of undocumented immigrants from Central America, as well as systemic changes to adequately serve labor trafficking victims. These changes include: (1) removing socially stigmatizing and racist language that serves to dehumanize and criminalize

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<sup>11</sup> Jeanne Sahadi, *Slave Labor in America Today*, CNN MONEY (Oct. 21, 2014, 10:51 AM), <http://money.cnn.com/2014/10/21/pf/labor-trafficking/>.

<sup>12</sup> The male survivors I worked with were disproportionately indigenous people from Latin America. This group is particularly vulnerable to exploitation because their primary language is not Spanish, they often lack formal education, and they often face discrimination in their home countries as well as in the United States. Many of the victims I worked with were reluctant to identify as indigenous for fear of discrimination on my part. When they did identify as indigenous, or, more often, conceded that they spoke very little Spanish, it was extremely difficult to find service providers that could translate. BRENNAN, *supra* note 6, at 46.

<sup>13</sup> VARIA ET AL., *supra* note 7.

<sup>14</sup> S. POVERTY LAW CTR., *CLOSE TO SLAVERY: GUESTWORKER PROGRAMS IN THE UNITED STATES I* (2013), <http://www.splcenter.org/sites/default/files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf>.

people who are undocumented; (2) implementing mandatory training for law enforcement officers, lawyers, and social service practitioners to identify and serve this vulnerable population; (3) minimizing Immigration Customs Enforcement (ICE) and local police collaborations; and (4) creating task forces in every state dedicated to serving the needs of labor trafficking victims. Finally, I will end by analyzing the success of the Coalition to Abolish Slavery and Trafficking (CAST), a program out of Los Angeles, California, that has successfully implemented most of the solutions offered throughout this article.

#### *A. Human Trafficking Defined*<sup>15</sup>

Human trafficking is the exploitation of a person through force, fraud, or coercion.<sup>16</sup> It is important to understand that human trafficking is a pattern of exploitation and not an isolated incident.<sup>17</sup> A victim of human trafficking is often subjected to ongoing physical, psychological, or sexual abuse by a trafficker who could be the victim's partner, employer, friend, or other acquaintance.<sup>18</sup> Sex or labor is merely the means the trafficker uses to exploit the individual for profit.<sup>19</sup> For example, a woman can enter a consensual relationship with her partner and then be coerced into

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<sup>15</sup> Much of the information contained in this section comes from a PowerPoint presentation on file with the author. I created the PowerPoint in partnership with Emily Trussell, an advocate at Center for Hope and Safety, and Chris Killmer, former advocate for Immigration Counseling Services (ICS) in Portland, Oregon. We created the presentation to help other social service agencies and members of the community understand the dynamics of human trafficking, as well as identify and refer victims to our respective programs [Hereinafter "PowerPoint Presentation"].

<sup>16</sup> Victims of Trafficking and Violence Protection Act, 22 U.S.C. § 7101(8)(B) (2000).

<sup>17</sup> See U.S.C. § 7102(2) & -(5)(A) (describing this form of abuse as a scheme, plan or pattern).

<sup>18</sup> *The Victims and Traffickers*, POLARIS PROJECT, <https://polarisproject.org/victims-traffickers> (last visited Mar. 8, 2016).

<sup>19</sup> PowerPoint Presentation, *supra* note 15.

prostitution<sup>20</sup> when her trafficker threatens her with physical abuse if she does not comply. Similarly, farmworkers may enter into a consensual working relationship with an employer, but then be unable to leave the situation because they are being geographically or socially isolated or are being subjected to threats of abuse or deportation if they report the abuse.<sup>21</sup> Although I will be focusing primarily on labor trafficking, it is important to recognize that sexual exploitation often occurs within labor trafficking.<sup>22</sup>

Sex trafficking is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act where the commercial sex act is induced by force, fraud, or coercion, or the person being induced to perform such act is under 18 years of age.”<sup>23</sup> Labor trafficking is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary

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<sup>20</sup> The word prostitution carries a negative social stigma, and many advocates believe it places blame on the victim. Since victims often are not able to leave the life of prostitution, the preferred terminology is “sexual exploitation” or “sexually exploited person.” The majority of women who are involved in prostitution are being exploited by pimps or traffickers. See Celia Williamson & Terry Cluse-Tolar, *Pimp-Controlled Prostitution Still an Integral Part of Street Life*, 8 VIOLENCE AGAINST WOMEN (No. 9) 1074, 1083 (2002), <http://www.pdinewlife.org/wp-content/uploads/2011/12/Pimp-controlled-Prostitution.pdf>.

<sup>21</sup> S. POVERTY LAW CTR., *supra* note 14.

<sup>22</sup> *Id.*

<sup>23</sup> Victims of Trafficking and Violence Protection Act, 22 USC § 7102(9–10) (2015).

servitude, peonage, debt bondage, or slavery.”<sup>24</sup> Both forms of trafficking require the presence of the elements of force, fraud, or coercion.<sup>25</sup>

### *B. Trafficking vs. Smuggling*

Trafficking is often confused with smuggling, which is a source of confusion for many practitioners.<sup>26</sup> This confusion most likely stems from the association of undocumented immigrants with criminalization,<sup>27</sup> which I will address later in this article. This confusion also causes difficulty in identifying victims and determining whether they qualify for services despite their legal status.<sup>28</sup>

The major distinction between the two is that trafficking refers to a pattern of exploitation, whereas smuggling refers to transportation.<sup>29</sup> Trafficking refers to the abuse that the victim was subjected to, not movement.<sup>30</sup> Smuggling refers to a person making the choice to cross the border without legal status.<sup>31</sup> What makes the distinction more confusing at times is the fact that someone can be both smuggled and trafficked.<sup>32</sup> For example, victims may have made the choice to pay someone (commonly

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<sup>24</sup> The Trafficking Victims Protection Act labels this as a “severe form of trafficking in persons,” but US Citizenship and Immigration Services (USCIS), the agency charged with approving T-Visas, recognizes this as the definition for labor trafficking. See Victims of Trafficking and Violence Protection Act, 22 USC § 7102(9)(b) (2015); *Question and Answers: Victims of Human Trafficking, T Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERV. (Nov. 22, 2010), <http://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>25</sup> *Id.*

<sup>26</sup> *Human Trafficking and Smuggling*, U.S. IMMGR. & CUSTOMS ENFORCEMENT (Jan. 16, 2013), <http://www.ice.gov/factsheets/human-trafficking>.

<sup>27</sup> See Srikantiah, *supra* note 3.

<sup>28</sup> See PowerPoint Presentation, *supra* note 15.

<sup>29</sup> *Human Trafficking and Smuggling*, *supra* note 26.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

referred to as a “coyote”) to smuggle them into the country, but is later exploited by the coyote that forces him or her to work by threatening to harm the victim or his or her family.<sup>33</sup> Persons can choose to be smuggled into a country, but they lose autonomy and choice when they are trafficked by someone.<sup>34</sup> Throughout this article, I will refer to trafficking and exploitation interchangeably, because in the context of human trafficking, the two terms have the same meaning.

## II. THE TRAFFICKING VICTIMS PROTECTION ACT (TVPA)

The TVPA was enacted in 2000 to address the exploitation of vulnerable victims—particularly women, children, and immigrants.<sup>35</sup> The TVPA recognized that “[no] comprehensive law exists in the United States that penalizes the range of offenses involved in the trafficking scheme.”<sup>36</sup> Additionally, it recognized that “[e]xisting laws fail to protect victims of trafficking, and because victims are often [undocumented] immigrants . . . they are repeatedly punished more harshly than the traffickers themselves.”<sup>37</sup> Subsequently, reauthorizations of the TVPA have extended protections for victims of trafficking. These extended protections include a “trauma exception,” which allows victims to avoid cooperation with law enforcement after experiencing severe trauma,<sup>38</sup> extends T-Visa status and benefits up to four years,<sup>39</sup> and expands the definition for coercion which includes “abuse or threatened abuse of law or legal process” to pressure another person to do or not do something.<sup>40</sup>

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

<sup>34</sup> *Id.*

<sup>35</sup> Victims of Trafficking and Violence Protection Act, 22 U.S.C. § 7101(b)(14) (2015).

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

<sup>37</sup> 22 U.S.C. § 7101(b)(17).

<sup>38</sup> Trafficking Victims Protection Reauthorization Act 2005, 8 U.S.C.

§ 1101(a)(15)(T)(iii) (2006).

<sup>39</sup> 22 U.S.C. § 1184 (o)(7) (2006).

<sup>40</sup> Trafficking Victims Protection Reauthorization Act 2008, 18 U.S.C. § 1589(c)(2).



The purpose of the TVPA is to “to combat trafficking in persons . . . to ensure just and effective punishment of traffickers, and to protect their victims.”<sup>41</sup> The TVPA sets forth the requirements under which a victim may apply and obtain a T-Visa.<sup>42</sup> A T-Visa gives a victim the same status and access to state and federal benefits as refugees and grants them employment authorization.<sup>43</sup> After three years, the survivor<sup>44</sup> can petition for permanent resident status.<sup>45</sup> Other benefits for victims who qualify for a T-Visa include the ability to obtain compensation following the prosecution and the right to petition for immediate family members.<sup>46</sup> Refugee benefits include the ability to access state programs such as housing, food stamps, and medical benefits.<sup>47</sup> A victim is eligible for these benefits after an attorney has identified them as eligible<sup>48</sup> and after a law enforcement agency (LEA) or a US attorney has certified their T-Visa application.<sup>49</sup>

#### *A. Legal Requirements for T-Visa Eligibility*

In order to qualify for a T-Visa, the applicant must (1) be a victim of a severe form of human trafficking, which includes being subjected to force, fraud, or coercion, (2) be physically present in the United States on account

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<sup>41</sup> Victims of Trafficking and Violence Protection Act, 22 U.S.C. § 7101(a).

<sup>42</sup> SUZANNE B. SELTZER ET AL., NY ANTI-TRAFFICKING NETWORK LEGAL SUBCOMM., IDENTIFICATION AND LEGAL ADVOCACY FOR TRAFFICKING SURVIVORS A-iv (2009), [http://aaldef.org/docs/T-visa-manual-3rd-ed\(1208\).pdf](http://aaldef.org/docs/T-visa-manual-3rd-ed(1208).pdf).

<sup>43</sup> *Id.* at A-3.

<sup>44</sup> I use the term victim and survivor interchangeably throughout this article, but it is important to note that language has a tremendous effect on people who have experienced abuse. For some, the word victim carries a negative connotation and can be seen as disempowering; in contrast, the word survivor can be more empowering and create a sense of autonomy and an identity that is separate from their trafficker or abuser.

<sup>45</sup> *Id.* at A-iv.

<sup>46</sup> *Id.* at A-22; *Immigrant Crime Victims/U & T-Visa*, OR. DEP’T OF JUST., [http://www.doj.state.or.us/victims/pages/u\\_visas.aspx](http://www.doj.state.or.us/victims/pages/u_visas.aspx) (last visited Mar. 8, 2016).

<sup>47</sup> SELTZER ET AL., *supra* note 42, at A-9.

<sup>48</sup> *Id.* at A-10.

<sup>49</sup> *Id.* at A-8, A-9.

of the trafficking, (3) comply with any reasonable requests for assistance in the investigation or prosecution of the trafficking (or be under the age of 18 or unable participate due to trauma), and (4) suffer extreme hardship involving unusual and severe harm upon removal from the United States.<sup>50</sup>

*B. Force, Fraud, and Coercion*<sup>51</sup>

Force, fraud, and coercion are the elements required to prove the existence of labor trafficking.<sup>52</sup> It is important to note that all three elements are not required to be present, it is enough to prove that a forcible, fraudulent, or coercive act or combination of acts led the victim to believe that they were not free to leave the situation.<sup>53</sup>

Force is the most straightforward element because it can be proven by demonstrating that some type of physical abuse or restraint took place.<sup>54</sup> For example, victims may not be allowed to leave their place of employment because they live and work in the same place, they may be constantly accompanied by their trafficker when they go out in public,<sup>55</sup> or they may not have the means to leave, to access money, or to make a phone call.<sup>56</sup>

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<sup>50</sup> U.S. CITIZENSHIP & IMMIGR. SERV., IMMIGRATION RELIEF FOR VULNERABLE POPULATIONS: HUMAN TRAFFICKING, CRIME VICTIMS, DOMESTIC VIOLENCE AND CHILD ABUSE 8 (July 2011), <http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/T-U-VAWA-relief.pdf> [hereinafter "Immigration Relief for Vulnerable Populations"].

<sup>51</sup> See PowerPoint Presentation, *supra* note 15.

<sup>52</sup> See *Human Trafficking and Smuggling*, *supra* note 26.

<sup>53</sup> Department of Homeland Security Nonimmigrant Classes Rule, 8 CFR § 214.11(d)(3) (2002).

<sup>54</sup> *Fact Sheet: Human Trafficking, Office of Trafficking in Persons*, U.S. Dep't of Health & Hum. Serv. (Aug. 2, 2012), <http://www.acf.hhs.gov/programs/endtrafficking/resource/fact-sheet-human-trafficking>.

<sup>55</sup> Traffickers often present as helpful, even charming people. They will insist on translating for the victim at medical appointments, claim to be the victim's guardian, or dismiss the victim as mentally ill if they speak out. Personal Experiences, *supra* note 1.

<sup>56</sup> S. POVERTY LAW CTR., *supra* note 14, at 36.

Fraud usually occurs when the trafficker makes false promises to the victims in order to place them in a vulnerable situation and later exploit them.<sup>57</sup> For example, debt bondage<sup>58</sup> (a form of fraud) occurs when a trafficker promises a victim a stable job and travel expenses paid, but once they arrive, the trafficker does not allow the victim to leave until the debt is paid.<sup>59</sup>

Coercion occurs when the trafficker makes verbal threats to the victims in an effort to prevent them from leaving.<sup>60</sup> The statute defines coercion as “(A) threats of serious harm to or physical restraint against any person; (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (C) the abuse or threatened abuse of the legal process.”<sup>61</sup> The most common threat I encountered when working with survivors was the threat of deportation or incarceration. Many immigrant victims are fearful of police in their home countries because of the corruption that exists, and most victims assume that the same level of corruption exists in the United States.<sup>62</sup>

### *C. Physical Presence on Account of the Trafficking*

Physical presence only requires that the victim prove that the exploitation occurred within the United States,<sup>63</sup> but it has caused some confusion among practitioners that do not understand the difference between

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<sup>57</sup> See WHAT IS TRAFFICKING IN PERSONS?, OFF. TO MONITOR & COMBAT TRAFFICKING IN PERSONS (2014), <http://www.state.gov/documents/organization/233944.pdf>.

<sup>58</sup> 22 U.S.C. § 7102(5) (2015).

<sup>59</sup> See, e.g., S. POVERTY LAW CTR., *supra* note 14, at 12.

<sup>60</sup> 22 U.S.C. § 7102(3).

<sup>61</sup> *Id.*

<sup>62</sup> See Srikantiah, *supra* note 3, at 186.

<sup>63</sup> SELTZER ET AL., *supra* note 42, at A-15.

smuggling and trafficking explained earlier in this article.<sup>64</sup> Despite this confusion, however, deportation can become a barrier for victims who wish to apply for a T-Visa because they may be unable to apply without the help of an experienced immigration attorney in the United States.<sup>65</sup>

*D. Compliance with Reasonable Requests from Law Enforcement Agencies*

LEAs include officials from the Department of Justice such as US Attorneys' Office, officials from the Civil Rights and Criminal Division of the Department of Justice, the FBI, US Citizenship and Immigration Services (USCIS), Immigration Customs Enforcement (ICE), United States Marshals Service, and the Diplomatic Security Service of the Department of State.<sup>66</sup> Ironically, state and local law enforcement agencies are not considered in the legal definition of an LEA for purposes of T-Visas.<sup>67</sup> However, statements from state or local law enforcement documenting the applicant's compliance are considered as secondary evidence.<sup>68</sup> This means that an official from at least one of the aforementioned agencies would have to find that trafficking occurred.<sup>69</sup> This can be problematic, especially where ICE is involved, because ICE primarily concerns itself with deporting people, not identifying victims.<sup>70</sup> Victims are often reluctant to make such

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<sup>64</sup> *See id.*

<sup>65</sup> *Id.* at A-4. If a victim has overstayed a valid visa, used fraudulent documents, or come into the country without inspection, they may have additional hurdles to overcome in Immigration Court. "The validity of a T-Visa applicant's immigration status is important because if an applicant is not in valid status, and he or she is being brought to the attention of [US Citizenship and Immigration Services] USCIS or ICE, the applicant could be issued a Notice to Appear (NTA), and removal (deportation) proceedings may be commenced." *Id.* at A-4.

<sup>66</sup> Department of Homeland Security Nonimmigrant Classes Rule, 8 CFR § 214.11(a) (2002).

<sup>67</sup> *Id.*

<sup>68</sup> SELTZER ET AL., *supra* note 42, at A-16.

<sup>69</sup> *See id.*

<sup>70</sup> *See Who We Are*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, <https://www.ice.gov/about> (last visited Feb. 11, 2016).

reports due to fear of criminalization or deportation.<sup>71</sup> However, to qualify for a T-visa, the survivor must either report the crime or (1) be willing to assist a LEA in the investigation or prosecution; (2) be under the age of 18; or (3) be unable to participate due to trauma.<sup>72</sup>

*E. Extreme Hardship Involving Unusual and Severe Harm upon Removal from the United States*

The US Citizen and Immigration Services (USCIS), which is part of the Department of Homeland Security (DHS), is the administrative agency tasked with reviewing T-Visa applications and determining whether or not to issue a T-Visa.<sup>73</sup> Additionally, if a survivor is detained by DHS, a T-Visa approval will stop deportation proceedings.<sup>74</sup> The T-Visa applicant must establish “extreme hardship involving unusual and severe harm upon removal.”<sup>75</sup> Legal advocates have widely criticized this high standard,<sup>76</sup> but based on my experience working with victims, I believe this standard can be easily met in most cases because of the inherent trauma that labor trafficking victims experience.

USCIS allows for a variety of factors to be considered in order to meet the standard. Some of the factors that USCIS considers include: the victim’s age and personal circumstances; the victim’s need for medical or psychological attention not reasonably available in their country of origin; the effect of loss of access to US courts during the prosecution; the likelihood of re-victimization and inability of the authorities in their home

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<sup>71</sup> See Srikantiah, *supra* note 3, at 158.

<sup>72</sup> SELTZER ET AL., *supra* note 42, at A-16.

<sup>73</sup> See *Who We Are*, *supra* note 70.

<sup>74</sup> See SELTZER ET AL., *supra* note 42, at A-24.

<sup>75</sup> *Id.* at A-18.

<sup>76</sup> See generally Jennifer M. Wetmore, *The New T-Visa: Is the Higher Extreme Hardship Standard Too High for Bona Fide Trafficking Victims?*, 9 NEW ENG. J. INT’L & COMP. L. 159, 159 (2003), <http://www.nesl.edu/userfiles/file/nejicl/vol9/wetmore.pdf>; Srikantiah, *supra* note 3.

country to protect against it; and the likelihood that the applicant's individual safety would be seriously threatened.<sup>77</sup>

*F. T-Visa Quotas Are Not Being Met*

Congress placed a cap of 5,000 T-Visas per year.<sup>78</sup> In 2014, USCIS only granted 944 victims a T-Visa, although this is an increase from previous years,<sup>79</sup> T-Visas have never once met the 5,000-applicant limit.<sup>80</sup> Previous articles have cited to issues such as stringent T-Visa requirements under the TVPA,<sup>81</sup> fear and mistrust of law enforcement,<sup>82</sup> and a lack of available resources to assist labor trafficking victims as reasons for the low numbers.<sup>83</sup> Although these are real barriers for T-Visas, U-Visas have a very similar application process and reporting requirement,<sup>84</sup> so it does little to explain why U-Visa quotas have exceeded their 10,000 caps in recent years,<sup>85</sup> but T-Visas have not.<sup>86</sup>

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<sup>77</sup> SELTZER ET AL., *supra* note 42, at A-18-19.

<sup>78</sup> *Question and Answers: Victims of Human Trafficking*, *supra* note 24.

<sup>79</sup> U.S. CITIZENSHIP & IMMIGR. SERV., NUMBER OF I-914 APPLICATIONS FOR T NONIMMIGRANT STATUS (VICTIMS OF SEVERE FORMS OF TRAFFICKING AND FAMILY MEMBERS) BY FISCAL YEAR, QUARTER, AND CASE STATUS 2008-2015 (2015), [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t\\_visastatistics\\_fy2015\\_qtr3.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t_visastatistics_fy2015_qtr3.pdf) [hereinafter "I-914 Applications Chart"].

<sup>80</sup> *Id.*

<sup>81</sup> See Wetmore, *supra* note 76, at 159.

<sup>82</sup> See Srikantiah, *supra* note 3, at 81.

<sup>83</sup> See Lysnay Gott, *Unrealistic Burdens: How the T-Visa and Asylum Law Fail to Protect Many Victims of Trafficking*, 26 IMMIGR. & NATIONALITY L. REV. 705, 709-10 (2005).

<sup>84</sup> U-Visas are available to victims of certified crimes that occurred on US soil. In order to qualify for a U-Visa, victims must have cooperated with law enforcement. See *Victims of Criminal Activity: U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERV., <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status> (last visited Apr. 19, 2015).

<sup>85</sup> *USCIS Approves 10,000 U Visas for 6th Straight Fiscal Year*, U.S. CITIZENSHIP & IMMIGR. SERVICES, <http://www.uscis.gov/news/uscis-approves-10000-u-visas-6th-straight-fiscal-year> (last visited Apr. 19, 2015).

I believe that the stigma against undocumented immigrants is systemically pervasive, such that it prevents victims from accessing the resources they need to remain safe and to create stability in their lives after surviving extreme trauma. These systemic barriers can be overcome by (1) removing socially stigmatizing and racist language that serves to dehumanize and criminalize people who are undocumented, (2) implementing mandatory training for law enforcement officers, lawyers, and social service practitioners to identify and serve this vulnerable population, (3) minimizing ICE and local police collaborations, and (4) creating task forces in every state dedicated to serving the needs of labor trafficking victims.

### III. THE CURRENT SOCIAL STIGMA AGAINST IMMIGRANTS FROM LATIN AMERICA

A very pervasive and harmful stigma exists against undocumented immigrants from Latin American countries in the United States.<sup>87</sup> This social stigma is harmful not only because it breeds hate against undocumented immigrants but also because it systemically translates to a lack of resources for immigrant victims and a lack of education and training among social service providers on how to work with immigrant victims. The systemic racism in the United States against undocumented immigrants contributes to the reason T-Visa caps are not being met, despite the overwhelming evidence that exploitation of workers is rampant in this country.<sup>88</sup>

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<sup>86</sup> I-914 Applications Chart, *supra* note 79.

<sup>87</sup> CECILIA MENJÍVAR & LEISY ABREGO, LEGAL VIOLENCE IN THE LIVES OF IMMIGRANTS: HOW IMMIGRATION ENFORCEMENT AFFECTS FAMILIES, SCHOOLS, AND WORKPLACES, THE CTR. FOR AM. PROGRESS (2012), <https://www.americanprogress.org/issues/immigration/report/2012/12/11/47533/legal-violence-in-the-lives-of-immigrants/>.

<sup>88</sup> See BRENNAN, *supra* note 6, at 188; U.S. DEP'T. OF STATE, *supra* note 10, at 400; S. POVERTY LAW CTR., *supra* note 14, at 16.

The social stigma against Latin American immigrants is highlighted in (1) ICE's treatment of both undocumented and documented immigrants from Latin America, (2) a lack of support or sympathy for labor trafficking victims, and (3) law enforcement officers issuing Continued Presence (CP) status to victims, rather than certifying T-visas.

*A. Undocumented Immigrants from Latin America Are Disproportionately Targeted by ICE and Law Enforcement*

The Pew Hispanic Center estimates that in 2011 there were 11.1 million undocumented immigrants<sup>89</sup> living in the United States.<sup>90</sup> Mexicans only make up 58 percent of the total undocumented immigrant population,<sup>91</sup> yet immigration officials disproportionately target them.<sup>92</sup>

In 2009, ICE officials held between 380,000 and 442,000 people in approximately 300 facilities, at an annual cost of \$1.7 billion.<sup>93</sup> One study found that 72 percent of people deported between 1997 and 2007 were deported for non-violent offenses.<sup>94</sup> Statistics show that 96 percent of those

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<sup>89</sup> I use the terms undocumented and undocumented immigrant instead of the word "illegal alien" for the same reason that I use sexually exploited rather than "prostitute"; both "illegal alien" and "prostitute" have negative social stigmas attached to them and assume that the person being exploited had a choice or is to blame for their exploitation.

<sup>90</sup> *A Nation of Immigrants: A Portrait of the 40 Million, Including 11 Million Unauthorized*, PEW RES. HISP. TRENDS PROJECT (Jan. 29, 2013), <http://www.pewhispanic.org/2013/01/29/a-nation-of-immigrants/>.

<sup>91</sup> *Id.*

<sup>92</sup> MENJÍVAR & ABREGO, *supra* note 87.

<sup>93</sup> HUMAN RIGHTS WATCH, *COSTLY AND UNFAIR FLAWS IN THE U.S. IMMIGRATION DETENTION POLICY 1* (2010), <https://www.hrw.org/sites/default/files/reports/usimmigration0510webwcover.pdf>.

<sup>94</sup> *Forced Apart (By the Numbers) Non-Citizens Deported Mostly for Nonviolent Offenses*, HUMAN RIGHTS WATCH (Apr. 15, 2009), <https://www.hrw.org/report/2009/04/15/forced-apart-numbers/non-citizens-deported-mostly-nonviolent-offenses>.



deported are from Latin American countries, with Mexico being the primary country of origin.<sup>95</sup>

Immigrants must attend deportation hearings where they are not entitled to a government-appointed attorney.<sup>96</sup> One study found that 60 percent of noncitizens go unrepresented, and this number increases to 84 percent when noncitizens are confined to detention facilities.<sup>97</sup> Criminalization and incarceration results in further victimization and trauma because victims are detained in high-security facilities that are not designed to meet the needs of survivors who have experienced prolonged trauma at the hands of their traffickers.<sup>98</sup>

This widespread practice of targeting undocumented immigrants fuels a lack of empathy for victims of labor trafficking because they are often seen as criminals, rather than victims deserving compassion.<sup>99</sup> Customs and Border Protection (CBP) is no exception to this lack of empathy, as they have been widely criticized for being notoriously unregulated.<sup>100</sup> One America, the largest immigrant advocacy organization in Washington, conducted a study in 2012 and determined that there were numerous accounts of border patrol engaging in racial and religious profiling.<sup>101</sup>

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<sup>95</sup> THE MEXICAN AM. LEGAL DEF. & EDUC. FUND ET AL., DETENTION, DEPORTATION, AND DEVASTATION: THE DISPROPORTIONATE EFFECT OF DEPORTATIONS ON THE LATINO COMMUNITY 2 (2014), [http://www.maldef.org/assets/pdf/DDD\\_050614.pdf](http://www.maldef.org/assets/pdf/DDD_050614.pdf).

<sup>96</sup> 8 U.S.C. § 1362 (1952).

<sup>97</sup> *Id.*

<sup>98</sup> Interview with Tim Warden-Hertz, Directing Attorney, Northwest Immigrant Rights Project, Tacoma Office, Tacoma, Wash. (Dec. 3, 2014).

<sup>99</sup> Srikantiah, *supra* note 3, at 205.

<sup>100</sup> See Chris Rickerd, *Whistleblower Says CBP Has Culture of Impunity and Violence*, AM. C.L. UNION (Aug. 15, 2014, 12:44 PM), <https://www.aclu.org/blog/washington-markup/whistleblower-says-cbp-has-culture-impunity-and-violence?redirect=blog/immigrants-rights-racial-justice/whistleblower-says-cbp-has-culture-impunity-and-violence>.

<sup>101</sup> ONE AMERICA, THE GROWING HUMAN RIGHTS CRISIS ALONG WASHINGTON'S NORTHERN BORDER 18 (2012), [https://www.weareoneamerica.org/sites/weareoneamerica.org/files/REPORT\\_northernborder-FINAL.pdf](https://www.weareoneamerica.org/sites/weareoneamerica.org/files/REPORT_northernborder-FINAL.pdf) [hereinafter "ONE AMERICA"].

States' efforts to "tighten the border" between the United States and Mexico have resulted in increased exploitation because victims often fear deportation and criminalization, which encourages them to stay with their traffickers rather than seek help.<sup>102</sup> When it comes to undocumented immigrants reporting abuses at work, one study found that "in many jurisdictions, lawyers representing workers advise them to avoid calling police because they are more likely to take action against complaining workers than against the employer."<sup>103</sup> The reason for this systemic disparity of treatment can only be attributed to social stigmas against immigrants from Latin American countries.<sup>104</sup>

*B. Documented Immigrants from Latin America Are Extremely Vulnerable to Exploitation*

Although many people migrate without valid documents, there are many immigrants who come into the country with valid work visas and are equally vulnerable to exploitation.<sup>105</sup> Southern Poverty Law Center (SPLC) published a report that uncovered systemic exploitation of documented workers under the current Guestworker Program.<sup>106</sup> The abuses included facing deportation, blacklisting, or retaliation for reporting wage theft.<sup>107</sup> Additionally, Guestworkers were subjected to forced servitude, debt bondages, and living in squalid conditions.<sup>108</sup>

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<sup>102</sup> See *id.* at 25; VARIA ET AL., *supra* note 7.

<sup>103</sup> S. POVERTY LAW CTR., *supra* note 14, at 16.

<sup>104</sup> THE MEXICAN AMERICAN LEGAL DEF. & EDUC. FUND ET AL., *supra* note 95, at 1; Skrikantiah, *supra* note 3, at 189–90.

<sup>105</sup> S. POVERTY LAW CTR., *supra* note 14, at 39 (indicating that guest workers have little recourse under Department of Labor enforcement provisions, which rarely disbar or suspend agencies or recruiters from participating in the guest worker program, even after agencies or recruiters have been convicted of violations).

<sup>106</sup> S. POVERTY LAW CTR., *supra* note 14.

<sup>107</sup> *Id.* at 1.

<sup>108</sup> *Id.* at 1.

USCIS recognizes that “immigrants can be particularly vulnerable to crimes like human trafficking, domestic violence and child abuse [due to] language barrier[s], separation from family and friends, lack of understanding of US laws, fear of deportation, fear of law enforcement, [and] cultural differences.”<sup>109</sup> Despite this recognition, very little is being done to mitigate the racial hostility that immigrants face when interacting with these systems.<sup>110</sup>

### *C. Sex Trafficking is Dominating the Human Trafficking Conversation*

Despite the proposed intent of the TVPA to focus its efforts on combatting both labor and sex trafficking, state and federal efforts, as well as overwhelming public sympathy, have focused on supporting youths and, to a lesser extent, adult female victims of sex trafficking.<sup>111</sup> Services for victims of sexual exploitation are more often available to youths and women.<sup>112</sup> However, because of the current social stigma against undocumented immigrants—particularly those from Latin America—<sup>113</sup> services of the same caliber do not exist for labor trafficking survivors, which include men and families.<sup>114</sup>

In the past, immigration authorities have stated that, “in most cases, aliens who are voluntarily smuggled into the United States will not be considered victims of a severe form of trafficking in persons.”<sup>115</sup> This rhetoric has had lasting effects and is still echoed among LEAs and

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<sup>109</sup> Immigration Relief for Vulnerable Populations, *supra* note 50, at 4.

<sup>110</sup> See generally MENJÍVAR & ABREGO, *supra* note 87.

<sup>111</sup> See U.S. DEP’T OF STATE, *supra* note 10, at 401.

<sup>112</sup> *Id.* at 271.

<sup>113</sup> See THE MEXICAN AMERICAN LEGAL DEF. & EDUC. FUND ET. AL., *supra* note 95, at 2.

<sup>114</sup> See U.S. DEP’T OF STATE, *supra* note 10, at 401 (The report found that “[e]xisting services for victims were often disproportionately available to female and child survivors of sex trafficking. Shelter and housing for . . . male and labor trafficking victims, continued to be insufficient.”).

<sup>115</sup> See Srikantiah, *supra* note 3, at 191–92.

legislatures who make decisions to criminalize immigrants rather than recognize the potential for exploitation that these racist policies create.<sup>116</sup>

*D. Continued Presence is a Temporary Remedy, Not a Real Solution for Victims*

The social stigma against undocumented immigrants is also apparent in the way in which LEAs handle their power to certify T-Visas and issue Continued Presence (CP) status. CP is a temporary immigration status provided to victims who are identified by LEAs as potential witnesses, but often times LEAs are reluctant to issue this status.<sup>117</sup> LEAs have a preference for withholding status until a victim cooperates, despite the fact that LEAs can issue CP when the victim is identified as a potential witness.<sup>118</sup> One detective summarized the attitude of LEAs and prosecutors towards victims by saying “they just want a conviction; they want the trophy.”<sup>119</sup>

CP allows survivors of human trafficking to remain in the United States temporarily during the investigation of human trafficking-related crimes committed against them,<sup>120</sup> but this benefit is only available for one year, and it does not provide a path to citizenship like a T-visa does.<sup>121</sup> Additionally, if the victim leaves the country during that year or is convicted of a crime, their CP status can be terminated.<sup>122</sup> An added barrier to stability for victims is that they must find legal representation following their trauma to submit an application for a T-Visa because self-petitioning is

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<sup>116</sup> See VARIA ET AL., *supra* note 7.

<sup>117</sup> See SELTZER ET AL., *supra* note 42, at A-3.

<sup>118</sup> *Id.* at A-8.

<sup>119</sup> Interview with Anonymous Detective (Mar. 10, 2015).

<sup>120</sup> 22 U.S.C. § 7105(c)(3) (2008).

<sup>121</sup> See SELTZER, *supra* note 42, at A-9.

<sup>122</sup> See SELTZER, *supra* note 42, at A-8.

not recommended given the complexities of the application and the potential for denial.<sup>123</sup>

In 2013, 171 trafficking victims maintained CP status. This means that 171 victims were identified as witnesses and eligible for benefits under a T-visa.<sup>124</sup> Ironically, the fact that a victim is participating in a prosecution makes them eligible for a T-visa; however, CP is preferred because it removes the “appearance of collusion” when victims testify against their trafficker in court.<sup>125</sup>

#### IV. REMOVING THE SOCIAL STIGMA AGAINST UNDOCUMENTED IMMIGRANTS

The exploitation of undocumented workers is an urgent problem facing the United States today. Although real barriers exist in reaching and working with this vulnerable population, major barriers can be overcome by (1) minimizing the current social stigmas against undocumented immigrants through the removal of racist language from legal vocabularies, (2) educating community service providers on how to identify and work with victims, and (3) encouraging collaboration among community partners to provide comprehensive services to meet the many needs of labor trafficking survivors.

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<sup>123</sup> ALISON SISKIN & LIANA SUN WYLER, *TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS*, CONG. RES. SERV. 25 (2013), <https://www.fas.org/sgp/crs/misc/RL34317.pdf> (under TVPA, funding for programs to offer legal assistance to trafficking victims is made available by Congress).

<sup>124</sup> See NUMBER OF I-914 APPLICATIONS FOR T NONIMMIGRANT STATUS (VICTIMS OF SEVERE FORMS OF TRAFFICKING AND FAMILY MEMBERS) BY FISCAL YEAR, QUARTER, AND CASE STATUS 2008-2015, U.S. CITIZENSHIP & IMMIGR. SERV., [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t\\_visastatistics\\_fy2015\\_qtr4.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t_visastatistics_fy2015_qtr4.pdf) (note that the identity of an applicant is withheld, therefore it is unknown how many people file for T-Visas pro se; also note that as application numbers have increased, so have denial rates).

<sup>125</sup> See Srikantiah, *supra* note 3, at 195–201.

*A. Remove Socially Stigmatizing and Racist Language from Law Books and Media*

One way to remove the social stigma against people who are undocumented and vulnerable to exploitation is by removing socially stigmatizing and racist language, such as labeling people “illegal.” In 2010, the Center for Racial Justice Innovation created the *Drop the “I” Word Campaign* in order to raise awareness that the word “illegal” serves to unfairly stigmatize and marginalize people who are undocumented.<sup>126</sup>

Those that dismiss the terms “illegal” and “illegal alien” as merely legal jargon argue that the terms are legally accurate and have been used widely in statutes and judicial rulings. However, it is hard to deny that despite its legal accuracy, the term “illegal” has become socially stigmatizing and creates barriers, especially for victims seeking help in vulnerable situations.<sup>127</sup> As one commentator notes, terms have the ability to create hostility and animosity toward marginalized people:

Once upon a time, the n-word and f-word were utterly acceptable terminology in undermining not only the basic rights, but basic humanity of black people and gay people. That those terms seem radically inappropriate and out of step with mainstream culture now is only because social movements and legal and political changes have shifted the landscape. But make no mistake about it, words matter, not only in reflecting certain dehumanizing attitudes

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<sup>126</sup> Race Forward is a research, media, and practice organization centered on racial justice. The campaign was created in September 2010 in response to anti-immigrant sentiments and an increase in hate crimes against communities of color. See *About Race Forward*, RACE FORWARD: THE CNTR. FOR RACIAL JUST. INNOVATION, <https://www.raceforward.org/about> (last visited Dec. 7, 2014).

<sup>127</sup> Miranda S. Leitsinger, *Drop the I Word? Debating the Term ‘Illegal Immigrant’*, NBC NEWS (July 11, 2012, 5:23 AM), [http://usnews.nbcnews.com/\\_news/2012/07/11/12664426-drop-the-i-word-debating-the-term-illegal-immigrant?lite\\_](http://usnews.nbcnews.com/_news/2012/07/11/12664426-drop-the-i-word-debating-the-term-illegal-immigrant?lite_)

toward historically marginalized groups, but in actively perpetuating and rationalizing that dehumanization.<sup>128</sup>

The *Drop the “I” Word Campaign* suggests that a cultural shift is both necessary and possible. In just three years, the campaign was able to educate and pressure media outlets like the *Associated Press*, *USA Today*, *Los Angeles Times*, *San Francisco Chronicle*, and many others to drop the “I”-word, which affected millions of readers nationwide.<sup>129</sup>

#### *B. Mandatory Training for Law Enforcement and Legal Practitioners*

Survivors of labor trafficking risk further victimization and trauma when they must work directly with law enforcement officers and attorneys who do not fully understand the circumstances surrounding a survivor’s victimization.<sup>130</sup> Additionally, a lack of training on how to work with victims of severe trauma can mean the difference between identifying and supporting a survivor or forcing a victim to return to his or her trafficker.<sup>131</sup>

Although asking the right questions will likely help determine whether a victim is eligible to apply for a T-Visa, it is just the first step in working with labor trafficking victims. Before asking questions, lawyers need to understand how to work with victims who have experienced continuous patterns of abuse for months or even years and, as a result, suffer from psychological trauma and a lack of trust.<sup>132</sup>

#### *C. Mandatory Trauma Informed Care Training*

Providing adequate training for LEAs as well as local law enforcement officers and legal advocates will help facilitate communication between

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<sup>128</sup> Sally Kohn, *The ‘i-word’ is Un-American*, CNN (July 4, 2014), <http://www.cnn.com/2014/07/04/opinion/kohn-immigration-words/>.

<sup>130</sup> See U.S. DEP’T OF STATE, *supra* note 10, at 401.

<sup>131</sup> See generally Srikantiah, *supra* note 3.

<sup>132</sup> See U.S. DEP’T OF STATE, *supra* note 10, at 401.

clients and attorneys, and ultimately, it will result in more efficient interviews. As one lawyer recognizes, there is an inherent difficulty in managing both the client's trauma needs and the requirements of the application.

It takes time to ask questions and sometimes clients don't want to admit or they are embarrassed or afraid but we have to get to force, fraud and coercion elements to determine at what point it crosses the line to trafficking [. . .] clients are often extremely traumatized by their trafficking and it can take a number of sessions to identify the trafficking and write a personal declaration which is the primary source of evidence. It can take several appointments to get all the details and sometimes I have to break up the interviews into segments or refer them out for counseling to help facilitate that process because often it just brings back the trauma.<sup>133</sup>

One way to help attorneys and LEAs understand how best to approach victims is by requiring them to use trauma informed care (TIC) practices.<sup>134</sup> TIC is defined as a "treatment framework that involves understanding, recognizing, and responding to the effects of all types of trauma."<sup>135</sup> The TIC practice also "emphasizes physical, psychological and emotional safety for both consumers and providers, and helps survivors rebuild a sense of control and empowerment."<sup>136</sup> TIC practices ensure that a professional understands the effects of long-term exploitation to avoid re-traumatizing victims and further inhibiting their recovery.<sup>137</sup> For example, victims can be

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<sup>133</sup> Interview with Justine Elliot, Staff Attorney, Immigration Counseling Services, in Portland, Or. (Nov. 25, 2014).

<sup>134</sup> See U.S. DEP'T OF STATE, *supra* note 10, at 398 (US Department of State recommends increasing training on victim-centered approach).

<sup>135</sup> See generally THE TRAUMA INFORMED CARE PROJECT, <http://www.traumainformedcareproject.org/> (last visited Dec. 7, 2014).

<sup>136</sup> *Using a Trauma Informed Approach*, OFF. FOR VICTIMS OF CRIME, <https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/41-using-a-trauma-informed-approach/> (last visited Mar. 16, 2016).

<sup>137</sup> *Id.*



retraumatized if professionals force them into questioning when they are emotionally or psychologically unstable, or if an interviewer asks questions that make the victim feel as though the interviewer is blaming them for their situation.<sup>138</sup>

This method can be taught through mandatory Continued Learning Education (CLE) credits,<sup>139</sup> or alternatively, through collaboration with victim advocates<sup>140</sup> or mental health professionals who use TIC practices to identify and assist a victim.<sup>141</sup> Additionally, programs like Polaris Project offer a wealth of free online information and training on TIC practices.<sup>142</sup>

#### *D. Mandatory Interview Skills and Victim Identification Training*

Many non-profits cannot meet the comprehensive needs of male and family victims of labor trafficking;<sup>143</sup> therefore, these survivors often present themselves to attorneys first because they do not trust law enforcement officers.<sup>144</sup> Additionally, because many victims do not self-

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<sup>138</sup> See generally THE TRAUMA INFORMED CARE PROJECT, *supra* note 135.

<sup>139</sup> See U.S. DEP'T OF STATE, *supra* note 10, at 398 (recommending enhanced training for law enforcement and prosecutors to increase focus on labor trafficking).

<sup>140</sup> As a victim advocate, I was trained by other advocates on the dynamics of abuse and how to work with victims of domestic violence. Additionally, I was certified by the State of Oregon and received training on how to work with victims of sexual assault and sex trafficking. I found that these same skills I acquired through various trainings and certifications helped me to work with labor trafficking survivors as well.

<sup>141</sup> *Victim Service Provider Intake & Needs Assessment*, OFF. FOR VICTIMS OF CRIME, <https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/42-victim-service-provider-intake-and-needs-assessment/> (last visited Mar. 16, 2016).

<sup>142</sup> See *Take Action*, POLARIS PROJECT, [http://www.polarisproject.org/take-action?option=com\\_content&view=article&id=52&Itemid=64](http://www.polarisproject.org/take-action?option=com_content&view=article&id=52&Itemid=64) (last visited Apr. 19, 2015).

<sup>143</sup> See U.S. DEP'T OF STATE, *supra* note 10, at 401 (The report found that “[e]xisting services for victims were often disproportionately available to female and child survivors of sex trafficking. Shelter and housing for . . . male and labor trafficking victims, continued to be insufficient”).

<sup>144</sup> See S. POVERTY LAW CTR., *supra* note 14, at 40–41.

identify,<sup>145</sup> lawyers and LEAs are presented with several barriers to assisting labor trafficking victims. Such barriers include (1) recognizing the signs of the labor exploitation, (2) understanding the T-Visa process and its many waivers, and (3) complying with the time restrictions of the T-Visa benefits. However, as one attorney notes, “[there is] not a lot of knowledge around these issues . . . [and] a lot of attorney’s are intimidated by T-Visa cases,”<sup>146</sup> the solution, again, is as simple as mandating training for all LE officers and legal practitioners, specifically those that work directly with survivors of abuse.

Lawyers often advise victims to avoid calling police if they are undocumented because police officers may question, detain, and report them to immigration authorities rather than taking action against the employer who is exploiting them.<sup>147</sup> This speaks not only to the prevalence of the stigma against undocumented people, but also to the lack of knowledge among lawyers and LEAs in asking the right questions when victims present themselves. Attorneys note it is important to ask “why they originally came to this country, how they got here, and what has happened to them because many trafficking cases may initially present as domestic violence, sexual abuse or labor violations.”<sup>148</sup> Determining whether a victim was defrauded or coerced by the trafficker requires an in-depth interview and understanding of the victim’s state of mind and the trafficker’s

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<sup>145</sup> Stacie Reimer Smith, *Underutilization of the T-Visa: Comparing the T-Visa to Similar Temporary Residence Around the World*, 14 GEO. J. GENDER & L. 719, 726 (2013).

<sup>146</sup> See Interview with Justine Elliot, *supra* note 133.

<sup>147</sup> S. POVERTY LAW CTR., *supra* note 14, at 14–17.

<sup>148</sup> Interview with Tim Warden-Hertz, *supra* note 98; see also LAURA SIMICH ET AL., VERA INSTITUTE OF JUSTICE, IMPROVING HUMAN TRAFFICKING IDENTIFICATION-VALIDATION AND DISSEMINATION OF A SCREENING TOOL 2 (2014), <http://www.vera.org/sites/default/files/resources/downloads/human-trafficking-identification-tool-technical-report.pdf>.

actions.<sup>149</sup> Asking these simple questions may mean the difference between being able to help a victim get relief after an exploitative situation or not.<sup>150</sup>

For attorneys, identifying victims is as simple as changing the intake forms when clients walk in for services.<sup>151</sup> An attorney with human trafficking experience explained, “when I started here I realized there were a lot [of] clients that I talked to where what they were telling me sounded like trafficking and I realized we didn’t have certain questions on our intake form, so we talked as an office and changed the questioning.”<sup>152</sup>

#### *E. Education on T-Visa Process and Waiver Eligibility*

After having identified a potential victim of labor trafficking, many attorneys are still confused by the T-Visa application itself. Many do not understand that victims can qualify for waivers of the statute of limitations, reporting requirements, and legal status exceptions.<sup>153</sup> For LEAs, the confusion centers on the certification process and what certifying a T-Visa actually means.<sup>154</sup> Education on the T-Visa process should include understanding the waiver process for attorneys and understanding what certification actually means for LEAs. Attorneys and LEAs can get this education through mandatory CLE credits and basic training respectively.

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<sup>149</sup> Srikantiah, *supra* note 3, at 192.

<sup>150</sup> *See id.*

<sup>151</sup> Interview with Tim Warden-Hertz, *supra* note 98.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> Many LEAs are reluctant to sign off on T-Visas because they believe that signing a certification is the same as testifying that the crime occurred. Personal Experiences, *supra* note 1; see DEP’T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES, AND OTHER GOVERNMENT AGENCIES 16 (2015), <https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide%201.4.16.pdf> (indicating that LEAs are not required to have a policy in place for signing certifications, which many LEAs interpret as not having to sign a certification at all).

Critics of the T-Visa argue that the application requirements are too stringent and difficult to meet, but the reality is that T-Visa requirements are not as stringent as some practitioners perceive them to be.<sup>155</sup> Applicants can overcome most barriers to the T-Visa application process by submitting medical and mental health records to USCIS to demonstrate the level and prevalence of trauma that a victim suffered.<sup>156</sup> Additionally, survivors can overcome T-Visa timelines by proving that exceptional circumstances prevented the victim from filing for a T-Visa within the statute of limitations.<sup>157</sup>

The reporting requirement is also viewed as a barrier for practitioners;<sup>158</sup> however, the language of the T-Visa only requires that the victim make a report of the abuse, but it does not distinguish between the type of report that must be made or whether or not the victim must meet with a law enforcement officer in order to make the report.<sup>159</sup> One practitioner had success in obtaining a T-Visa where a victim reported the trafficking by emailing the local police department.<sup>160</sup> Additionally, the attorney was able to prove the severity of the abuse through medical and mental health records.<sup>161</sup> The requirement to cooperate with reasonable requests from LEAs can also be waived by demonstrating extreme emotional trauma.<sup>162</sup>

CLE training for immigration attorneys on the T-Visa process is already readily available online for a fee,<sup>163</sup> but I propose that this training be made mandatory for all attorneys practicing in the legal fields most likely to come

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<sup>155</sup> Smith, *supra* note 145, at 744.

<sup>156</sup> 8 C.F.R. 214.11(B)(4) (2009).

<sup>157</sup> Interview with Justine Elliot, *supra* note 133.

<sup>158</sup> See SELTZER ET AL., *supra* note 42, at A-9.

<sup>159</sup> *Id.* at A-8.

<sup>160</sup> Interview with Justine Elliot, *supra* note 133.

<sup>161</sup> *Id.*

<sup>162</sup> See SELTZER ET AL., *supra* note 42 at A-16.

<sup>163</sup> See *T Visas For Crime Victims-Downloadable Recording*, AILA (Feb. 20, 2014), <http://agora.aila.org/product/detail/1842>.

across labor trafficking victims—mainly immigration, labor, and family law.<sup>164</sup> Currently, states like Washington only require CLE credits for topics such as ethics and professional responsibility, but no other specialty courses are required.<sup>165</sup> Appealing to the CLE regulatory groups in each state can change this. In California, for example, lawyers are required to complete a certain number of credits specific to recognition and elimination of bias in the legal profession and society.<sup>166</sup> Federal law enforcement already implements requires training on human trafficking,<sup>167</sup> therefore, this same training can be made mandatory at basic training for local law enforcement officers.

#### *F. Understanding Benefits and Timelines of a T-Visa*

Another barrier for practitioners working with labor trafficking victims is meeting their immediate basic needs following the exploitation. This can include the need for food, shelter, mental health services, and seeking safety from their traffickers.<sup>168</sup> Under TVPA guidelines, victims can access refugee benefits once a certifying official signs the T-Visa Application.<sup>169</sup>

Challenges occur when a victim is certified under CP. Victims are only eligible for refugee benefits for a maximum of nine months before they have to submit a T-Visa application to continue receiving services.<sup>170</sup> This presents a problem for practitioners who must obtain detailed information from their clients regarding their abuse in order to submit the full T-Visa application.<sup>171</sup> This situation forces a practitioner to choose between submitting the T-Visa application, subjecting their client to more trauma, or

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<sup>164</sup> See S. POVERTY LAW CTR., *supra* note 14, at 40.

<sup>165</sup> *Washington: MCLE Requirements*, A.B.A., [http://www.americanbar.org/cle/mandatory\\_cle/mcle\\_states/states\\_pz/washington\\_state.html](http://www.americanbar.org/cle/mandatory_cle/mcle_states/states_pz/washington_state.html) (last visited Feb. 8, 2016).

<sup>166</sup> *MCLE Requirements*, THE STATE BAR OF CAL., <http://mcle.calbar.ca.gov/Attorneys/Requirements.aspx> (last visited Feb. 8, 2016).

<sup>167</sup> Press Release, Dep't of Homeland Sec., DHS Announces Human Trafficking Training Program For Federal Law Enforcement (Jan. 27, 2016).

waiting until they are emotionally stable and risk having a gap in necessary services.<sup>172</sup> Many victims who have participated in the prosecution of their trafficker also qualify for state and federal crime victim's compensation (CVC), which allows the attorneys to bypass the time restrictions altogether because the government pays for the medical needs of the client.<sup>173</sup> However, those who do not receive CVC risk being exposed to further trauma.

Another way that attorneys resolve the issue of emotional trauma is by applying for a trauma exception by showing evidence of psychological or physical trauma, but ultimately it is the decision of LEAs whether to grant the exception or not.<sup>174</sup> Therefore, attorneys have to assess the needs of the client using TIC interview tactics, as well as have an adequate understanding of the T-Visa process and its exceptions in order to meet the victim's needs.<sup>175</sup>

#### *G. Mandatory Training for Law Enforcement Officers*

Law enforcement officers are at times reluctant to certify T-Visas because they perceive a signature as equivalent to affirming or testifying to

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<sup>168</sup> *Human Trafficking Task Force e-Guide, Victim Service Provider Intake and Needs Assessment*, OFF. FOR VICTIMS OF CRIME TRAINING AND TECHNICAL ASSISTANCE CTR., <https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/42-victim-service-provider-intake-and-needs-assessment/> (last visited May 25, 2016).

<sup>169</sup> SELTZER ET AL., *supra* note 42, at A-9.

<sup>170</sup> *Id.*

<sup>171</sup> The Personal Statement can be a challenge to many practitioners, as it requires addressing various elements in detail. *See id.* at B-9.

<sup>172</sup> See SELTZER ET AL., *supra* note 42, at A-9.

<sup>173</sup> *Id.*; Interview with Chris Killmer, Former Human Trafficking Victim Advocate, Immigration Counseling Serv., in Portland, Or. (Sept. 19, 2014).

<sup>174</sup> *Id.* at A-16-17.

<sup>175</sup> Interview with Justine Elliot, *supra* note 133.

the validity of the abuse.<sup>176</sup> One detective explains the level of ignorance among local law enforcement officers in the Northwest when he says,

[T]he only thing they know about victims is that they're undocumented and they're here illegally—trying to get people to understand the back story and dig into how the person got here in the first place is difficult . . . they don't look at that part of the story, they only see that they don't have documents to be here.<sup>177</sup>

Refusal of LEAs to certify a T-Visa creates a barrier for legal advocates because USCIS is often reluctant to approve T-Visas without certification from a LEA.<sup>178</sup> This ignorance can easily be remedied with mandatory training for all LEAs including local law enforcement officers at basic training.<sup>179</sup> Unfortunately, mandatory training alone will not help to reduce the racial stigma that LEAs are also susceptible to.<sup>180</sup>

#### *H. Minimize ICE and Police Collaboration*

The close collaboration between immigration officials and state and local LEAs, that began following the 9/11 attacks<sup>181</sup> works to prevent victims from coming forward to seek help.<sup>182</sup> In order to make it safe for undocumented victims to come forward, state and local LEAs need to minimize collaborations and set their own guidelines, separate and apart

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<sup>176</sup> See SISKIN & WYLER, *supra* note 123, at 23.

<sup>177</sup> Interview with Anonymous Detective (Mar. 10, 2015).

<sup>178</sup> See SISKIN & WYLER, *supra* note 123, at 26.

<sup>179</sup> Currently the Department of Homeland Security offers training materials, but it is not a requirement during basic training for local law enforcement officers. See DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES, AND OTHER GOVERNMENT AGENCIES 3 (2015), [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf)

<sup>180</sup> MENJÍVAR & ABREGO, *supra* note 87.

<sup>181</sup> Juliet P. Stumpf, *D(e)volving Discretion: Lessons from the Life and Times of Secure Communities*, 64 AM. U. L. REV. 1259, 1267 (2015).

<sup>182</sup> "ONE AMERICA," *supra* note 101.

from ICE recommendations.<sup>183</sup> Immigrant rights advocates have long called for a decrease in collaboration, citing issues such as racial profiling and unfair detention.<sup>184</sup>

Recently, immigrant rights activists in San Francisco succeeded in convincing city and county officials to stop collaborating with ICE except under very limited circumstances.<sup>185</sup> This limited collaboration model can serve to reduce ICE's power to discriminate and target undocumented people.

#### *I. Implement a Separate Labor Trafficking Force in All States*

Under the TVPA, funding is set aside and managed by the Office for Victims of Crime to help communities establish human trafficking task forces in every state.<sup>186</sup> This was implemented into the TVPA program in an effort to have service providers, LEAs, and legal advocates work collaboratively to identify and meet the many needs of survivors.<sup>187</sup> However, the strong focus and community sympathy surrounding the issue of sex trafficking has diverted attention away from labor trafficking victims and has resulted in very little attention and resources being given to labor trafficking victims.<sup>188</sup> An easy solution to this problem is to set up dual task forces—one specific to sex trafficking victims and another specific to labor trafficking victims.

Oregon set up the Foreign-Born Trafficking Task Force, in which LEAs, service providers, and prosecutors focus exclusively on the exploitation of

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<sup>183</sup> MENJÍVAR & ABREGO, *supra* note 87.

<sup>184</sup> LENA GRABER, NAT'L IMMIGRATION PROJECT OF THE NAT'L LAWYERS GUILD, THE ALL-IN-ONE GUIDE TO DEFEATING ICE HOLD REQUESTS 10 (2010), [http://www.ilrc.org/files/documents/013\\_all\\_in\\_one\\_guide.pdf](http://www.ilrc.org/files/documents/013_all_in_one_guide.pdf).

<sup>185</sup> John Rodney et al, The Free San Francisco Coalition (Nov. 24, 2015) (PowerPoint Presentation), GOTOWEBINAR.COM.

<sup>186</sup> See SISKIN & WYLER, *supra* note 123, at 25.

<sup>187</sup> *Id.*

<sup>188</sup> BRENNAN, *supra* note 7, at 190.



immigrant victims.<sup>189</sup> This way, the task force can focus not just on providing services but also in educating other community partners on the social stigma that prevents victims from accessing services.<sup>190</sup> Washington has a similar model, and its advertising and awareness campaigns have added to its success in identifying survivors.<sup>191</sup> Although collaboration and education among service providers is necessary to identify victims, in my experience, victims in immediate danger need a primary location where they can go to receive the comprehensive services they need.<sup>192</sup>

#### V. CURRENT MODELS IN PLACE

The Coalition to Abolish Slavery and Trafficking (CAST) is the first organization in the country dedicated exclusively to serving survivors of human trafficking.<sup>193</sup> This human rights organization is based in Los Angeles, California, and has been recognized nationally and internationally for its success in identifying trafficking survivors through collaboration, advocacy, and providing direct services to victims.<sup>194</sup>

CAST provides comprehensive long-term services to victims, which includes social services, legal services, outreach, and training.<sup>195</sup> The organization also established the first shelter in the nation solely dedicated

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<sup>189</sup> *Human Trafficking*, OR. STATE SHERIFF'S ASS'N (Aug. 1, 2015), <http://oregonsheriffs.org/news/human-trafficking/>.

<sup>190</sup> *Id.* (Center for Hope and Safety, formerly Mid-Valley Women's Crisis Service, was invited to be part of the Task Force in 2013. The Task Force is now a closed group, open only to law enforcement officers. Center for Hope and Safety is no longer part of this group.).

<sup>191</sup> *Community Mobilization*, THE WASH. ANTI-TRAFFICKING RESPONSE NETWORK, <http://www.warn-trafficking.org/resources/community-mobilization/> (last visited Feb. 28, 2016).

<sup>192</sup> *See* Personal Experiences, *supra* note 1; *see also* *Human Trafficking*, *supra* note 189.

<sup>193</sup> *What We Do*, COAL. TO ABOLISH SLAVERY & TRAFFICKING, <http://www.castla.org/advocacy> (last visited Dec. 7, 2014).

<sup>194</sup> *See id.*

<sup>195</sup> *About the Coalition to Abolish Slavery & Trafficking (CAST)*, COAL. TO ABOLISH SLAVERY & TRAFFICKING, <http://www.castla.org/about-us> (last visited Dec. 7, 2014).

to serving victims of trafficking, and it successfully set up a partnership with a local family clinic to address the medical and mental health needs of trafficking victims.<sup>196</sup> Last year, CAST served over 375 victims of human trafficking and attributes its success to being able to provide comprehensive long-term help to victims.<sup>197</sup> This approach allows CAST to help victims who are currently in an exploitative situation leave their environment and access legal services immediately.<sup>198</sup>

Unlike the approach used by CAST, victims in Oregon and Washington seek out attorneys sometimes years after they have left an exploitative situation or only after being detained in ICE custody.<sup>199</sup> For example, in Oregon, there is only one federally funded victim service provider for labor trafficking victims in the entire state.<sup>200</sup> This makes it extremely difficult to help victims who are in immediate danger. As the former victim service provider Chris Killmer explained, “when I was contacted by law enforcement to find immediate shelter for a potential labor trafficking victim, I had to explain to them we’re just not set up that way.”<sup>201</sup> In Oregon and Washington, task forces rely on homeless shelters and domestic violence programs to meet the needs of labor trafficking victims,<sup>202</sup> but

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<sup>196</sup> *Id.*

<sup>197</sup> THE COAL. TO ABOLISH SLAVERY & TRAFFICKING, 2015 IMPACT REPORT 3 (2016), <http://www.castla.org/templates/files/impactreport-2015-r3.pdf>.

<sup>198</sup> Interview with Chris Killmer, *supra* note 173; Interview with Tim Warden-Hertz, *supra* note 98.

<sup>199</sup> Interview with Chris Killmer, *supra* note 173; Interview with Justine Elliott, *supra* note 133.

<sup>200</sup> Interview with Chris Killmer, *supra* note 173.

<sup>201</sup> *Id.*

<sup>202</sup> See *Human Trafficking*, *supra* note 189 (indicating that “service providers are immigration attorneys from the American Immigration Lawyers Association (AILA), the National Crime Victim Law Institute (NCVLI), Immigration Counseling Service, Catholic Charities, faith-based communities, and independent immigration attorneys”); *Human Trafficking*, WASH. ST. OFF. OF THE ATT’Y GEN., <http://www.atg.wa.gov/human-trafficking#sthash.CmkFHUkU.dpuf> (last visited May 25, 2016) (stating that “Our work is ongoing but we continue to seek a comprehensive

these organizations are not trained to assist people who have experienced long-term trauma.<sup>203</sup> In order to effectively advocate for victims of labor trafficking, it is necessary to create a comprehensive model that includes education on the dynamics specific to immigrant communities, collaboration among service providers, and a shelter specific to labor trafficking survivors.

## VI. CONCLUSION

Although the intent and purpose of the TVPA is to “ensure just and effective punishment of traffickers, and to protect their victims,”<sup>204</sup> the reality is that labor trafficking victims are difficult to reach due to the systemic racism that undocumented people face. Combined with the lack of education and misconceptions surrounding labor trafficking, and the perceived barriers surrounding the T-Visa process, it becomes clear why there is such a huge discrepancy in the projected number of labor trafficking victims versus actual victims served under the TVPA program.

The fact remains that the exploitation of undocumented workers is an urgent problem facing the United States today. Although real barriers exist in reaching and working with this vulnerable population, major barriers can be overcome by (1) removing racial stigmas against undocumented immigrants, (2) educating community service providers on how to identify and work with victims, and (3) collaborating to provide comprehensive services to meet the many needs of labor trafficking victims.

Removing the social stigma against undocumented immigrants will be by far the most abstract and difficult barrier given the current anti-immigrant

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approach to victims services, addressing language barriers, lack of awareness of services, fear and suspicion of law enforcement.”).

<sup>203</sup> Personal Experiences, *supra* note 1.

<sup>204</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, 114 Stat. 1464, 1466 (2000).

climate,<sup>205</sup> but it is a necessary step in addressing the root of the problem and combatting labor trafficking in a meaningful way. Social stigmas against undocumented people from Latin America need to be addressed in order to remove the fear of criminalization and deportation that this community faces. To begin to remove the social stigma against undocumented immigrants, states and agencies need to fully implement the benefits available under the TVPA, as well as limit ICE's close collaboration with local LEAs by setting up clear guidelines that do not further stigmatize survivors. Additionally, providing mandatory training for local law enforcement officers and attorneys on how to properly screen for and identify labor trafficking victims is crucial to identifying and serving victims.

In conclusion, states should implement task forces specific to immigrant communities to prevent domestic sex trafficking from dominating community forums. Furthermore, states should also look toward the success of the CAST model to help communities set up comprehensive and collaborative services for survivors. These changes will help communities to properly support victims in the way that the TVPA purports to help and serve all victims of human trafficking.

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<sup>205</sup> MENJÍVAR & ABREGO, *supra* note 87, at 2.