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# HUMAN TRAFFICKING: PROTECTING HUMAN RIGHTS IN THE TRAFFICKING VICTIMS PROTECTION ACT

JOYCE KOO DALRYMPLE\*

HUMAN TRAFFIC: SEX, SLAVES & IMMIGRATION. By Craig McGill. London: Vision Paperbacks 2003. Pp. 216.

**Abstract:** Trafficking in persons is the most widespread manifestation of modern-day slavery, with an estimated four million people trafficked worldwide every year. Modern technology and globalization enable networks of criminals to operate internationally and prey upon those who are impoverished and vulnerable. Craig McGill's book describes the various ways in which countries seek to combat illegal immigration and trafficking by strengthening law enforcement, and suggests that these "solutions" do not address the source of the problem. This Book Review argues that anti-trafficking strategies must view trafficking not only from a law enforcement perspective directed to the perpetrators, but also from a human rights perspective by adequately protecting and assisting victims of human trafficking. The Trafficking Victims Protection Act recognizes the need to protect the victims' human rights, but fails to offer the comprehensive protection policy necessary to be effective.

## INTRODUCTION

In *Human Traffic: Sex, Slaves, and Immigration*, Craig McGill examines illegal immigration from the perspective of the smuggled, the smugglers, and law enforcement officials, in order to identify and better understand the "problem" of immigration.<sup>1</sup> The problem, he argues, is not immigration itself, but a lack of "immigration management."<sup>2</sup> He also suggests that the problem of immigration may be the unregulated illegal activity of human trafficking, a dangerous and life-threatening practice.<sup>3</sup>

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<sup>1</sup> CRAIG MCGILL, HUMAN TRAFFIC: SEX, SLAVES AND IMMIGRATION 4, 206 (2003).

<sup>2</sup> *Id.* at 209.

<sup>3</sup> *Id.*; see Shelley Case Inglis, *Expanding International and National Protections Against Trafficking for Forced Labor Using a Human Rights Framework*, 7 BUFF. HUM. RTS. L. REV. 55, 55 (2001). Victims are kidnapped, coerced, or sold into work environments from which they cannot escape, leaving them vulnerable to extreme exploitation. Inglis, *supra*, at 55.

McGill concludes that societal prejudices cause us to view immigration as a “problem.”<sup>4</sup> The public’s attitude toward immigrants is often driven by fear: fear of terrorism, of the loss of national identity, of rising welfare costs, and of a saturated job market.<sup>5</sup> He asserts that in reality, developed Western countries are economically dependent on immigrants to fill both highly skilled positions and unwanted jobs, especially in places where population growth is slowing and workers are needed to support pensioners.<sup>6</sup> Instead of responding to real economic needs, governments react to social fears by passing politically advantageous but unnecessary and inhumane immigration laws.<sup>7</sup>

McGill recounts the attempts of various nations to combat illegal immigration and trafficking principally by strengthening criminal laws and border controls.<sup>8</sup> These law enforcement efforts alone are ineffective, he submits, in part because such strategies do not address the cause—the needs of people who are persecuted, impoverished, and

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<sup>4</sup> MCGILL, *supra* note 1, at 212.

<sup>5</sup> *See id.* at 206–08.

<sup>6</sup> *Id.* at 207–08. A report from the Labor Market Center at Northeastern University revealed that recent U.S. immigrants accounted for half the new wage earners who joined the labor force in the 1990s. *Id.* at 207. The former French Interior Minister, Jean-Pierre Chevenement said that Europe will need fifty to seventy-five million immigrants to fill jobs in the next fifty years. *Id.* at 207–08.

<sup>7</sup> *See id.* at 209. In 2003, responding to the concerns of the British population, British Prime Minister Tony Blair threatened to reject the Human Rights Treaty, which obliges Britain to shelter asylum seekers and refugees. *Id.*

<sup>8</sup> *See id.* at 30–31. Even though the United States has increased substantially the number of border patrol agents in the last decade, more than three million people still attempt to enter from the southern border illegally every year. David Martin, *The Obstacles to Effective Internal Enforcement of the Immigration Laws of the United States*, in IMMIGRATION CONTROLS: THE SEARCH FOR WORKABLE POLICIES IN GERMANY AND THE UNITED STATES 1, 4 (Kay Hailbronner et al. eds., 1998); MCGILL, *supra* note 1, at 171. Most international documents addressing human trafficking in detail focus on a law enforcement approach. Elizabeth M. Bruch, *Models Wanted: The Search for an Effective Response to Human Trafficking*, 40 STAN. J. INT’L L. 1, 16 (2004) (listing various international conventions that address human trafficking). For example, the 2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, requires state parties to criminalize trafficking in article 5, but limits protections to “appropriate cases and to the extent possible under domestic law,” which essentially makes the protections discretionary in article 6. *See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, G.A. Res. 55/25, U.N. GAOR, 55th Sess., Annex 2, Supp. No. 49, at arts. 5, 6, U.N. Doc. A/45/49 (2001) [hereinafter *Protocol*]; Bruch, *supra*, at 16–17.

seeking a safe place to live.<sup>9</sup> People are especially open to abuse by traffickers when they are desperate and vulnerable.<sup>10</sup>

An effective anti-trafficking strategy must address the needs of victims.<sup>11</sup> Any plan that focuses primarily on law enforcement without comprehensively protecting the human rights of victims will fail because victims have no incentive to come forward and assist in prosecutions, as they are promised no protection if they do.<sup>12</sup> By not providing victims with the assistance and security they need to leave traffickers, governments permit the perpetuation of modern-day slavery or involuntary servitude.<sup>13</sup> Furthermore, many countries punish victims by deporting them, effectively subjecting them to re-victimization due to the absence of real assistance in their home country.<sup>14</sup> Governments must understand that trafficking in persons violates the fundamental human

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<sup>9</sup> See MCGILL, *supra* note 1, at 211. Political (civil unrest), economic (poverty), and social and cultural (low status) insecurity leave people especially vulnerable to trafficking. See Mohamed Y. Mattar, Commentary, *Incorporating the Concept of Human Security in National Legal Responses to Trafficking in Persons* § 4, at <http://www.protectionproject.org/main1.htm> (last visited Feb. 23, 2005).

<sup>10</sup> MCGILL, *supra* note 1, at 209.

<sup>11</sup> *Examining U.S. Efforts to Combat Human Trafficking and Slavery: Hearing before the Senate Comm. on the Judiciary, Subcomm. on the Constitution, Civil Rights, and Property Rights*, 108th Cong. (2004) (statement of Wendy Patten, U.S. Advocacy Director, Human Rights Watch), at <http://judiciary.senate.gov/hearing.cfm?id=1255> [hereinafter *Hearing*]; see Inglis, *supra* note 3, at 99.

<sup>12</sup> See Kelly E. Hyland, *Protecting Human Victims of Trafficking: An American Framework*, 16 BERKELEY WOMEN'S L.J. 29, 55 (2001). Also, immigration law treated victims as undocumented immigrants, rather than victims of crime, which resulted in their detention and deportation. See Juliet Stumpf & Bruce Friedman, *Advancing Civil Rights Through Immigration Law: One Step Forward, Two Steps Back?*, 6 N.Y.U. J. LEGIS. & PUB. POL'Y 131, 153 (2002). This policy allowed traffickers to use deportation as a threat against trafficking victims, so they would be afraid of reporting abuse. Inglis, *supra* note 3, at 98.

<sup>13</sup> See *Hearing*, *supra* note 11 (statement of Director Wendy Patten). Trafficking victims become enslaved when they are held against their wills by use or threat of violence for exploitative purposes. KEVIN BALES, *DISPOSABLE PEOPLE: NEW SLAVES IN THE GLOBAL ECONOMY* 20 (1999). Because of the glut of potential slaves, they are so cheap that they have become cost-effective in agricultural, factory, domestic, and other kinds of work. *Id.* at 14. Unlike the old form of slavery, wherein slaves were a long-term investment, now modern-day slaves cost so little that they are not worth securing "legal" ownership. *Id.* After the slaveholder gets all the work they can from their slaves, they dispose of them. *Id.*

<sup>14</sup> Mattar, *supra* note 9; Michael R. Candes, Comment, *The Victims of Trafficking and Violence Protection Act of 2000: Will It Become the Thirteenth Amendment of the Twenty-first Century?*, 32 U. MIAMI INTER-AM. L. REV. 571, 594 (2001). The Trafficking Victims Protection Act recognizes that victims of trafficking "are repeatedly punished more harshly than the traffickers themselves." Trafficking Victims Protection Act, 22 U.S.C. § 7101(b)(17) (2000). The Act also states that "victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation." *Id.* § 7101(b)(19).

rights principle that "all human beings are born free and equal in dignity and rights."<sup>15</sup> Such rights include freedom of movement and residence,<sup>16</sup> free choice of employment, and the right to just and favorable work conditions.<sup>17</sup>

The United States' Trafficking Victims Protection Act of 2000 (TVPA) would effectively combat trafficking by addressing the needs of trafficking victims with a view towards human rights.<sup>18</sup> Before the promulgation of the Act, the government routinely detained and deported victims to their home countries if they were not material witnesses.<sup>19</sup> By decriminalizing victims and giving them lawful immigration status in the United States, the TVPA grants victims the same civil rights afforded to legal immigrants.<sup>20</sup> This change in the legal status of trafficking victims rightfully recognizes that it is not the trafficked but the traffickers who still are the "problem."<sup>21</sup>

This Book Review, however, contends that the TVPA does not adequately protect trafficked individuals.<sup>22</sup> Unless the TVPA is altered,

<sup>15</sup> See *Universal Declaration of Human Rights*, G.A. Res. 217, U.N. GAOR, 3rd Sess., 183d plen. mtg., art. 1, at 71, U.N. Doc. A/810 (1948).

<sup>16</sup> *Id.* art. 13(1), at 71.

<sup>17</sup> *Id.* art. 23(1), at 71.

<sup>18</sup> See 22 U.S.C. § 7101(22), (23). Representative Chris Smith (Rep-N.J.), one of the authors of the TVPA stated, "While it was the intent of the legislation . . . that victims of trafficking should help in the investigation or prosecution of trafficking cases, there should be no doubt that the T visa was primarily intended as a humanitarian tool to facilitate the rehabilitation of trafficking survivors." *Hearing, supra* note 11 (statement of Charles Song, Coalition to Abolish Slavery and Trafficking). The TVPA advocates a "Three P" approach to address prevention, prosecution, and protection. See 22 U.S.C. § 7104 (Prevention); *id.* § 7105 (Protection and Assistance for Victims of Trafficking); *id.* § 7109 (Prosecution and Punishment of Traffickers). The Reauthorization Act of 2003 also provided some additional protections for victims. See Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 4, 117 Stat. 2875, 2877-79 (codified as amended in scattered sections of 8 and 22 U.S.C.).

<sup>19</sup> Candes, *supra* note 14, at 594.

<sup>20</sup> Stumpf & Friedman, *supra* note 12, at 168. Governments should pay special attention to cases involving immigrant women, since they have often been disregarded. See Suzanne H. Jackson, *To Honor and Obey: Trafficking in "Mail-Order Brides,"* 70 GEO. WASH. L. REV. 475, 566 (2002). Law enforcement and legal doctrines view immigrant women with skepticism, whether trapped in coerced or forced prostitution, oppressive sweatshop labor, exploitative conditions as domestic servants, or abusive marriages. *Id.* Authorities may stereotype women working as prostitutes, considering prostitution a "victimless crime" not worthy of the time and effort necessary to combat it. *Id.*

<sup>21</sup> See McGILL, *supra* note 1, at 209 (asking if those who traffic others are the "problem of immigration").

<sup>22</sup> See Candes, *supra* note 14, at 593-94 (suggesting that the Act will harm victims if strictly interpreted); Inglis, *supra* note 3, at 75-76 (stating that if the visa protections are not broad enough, then victims of trafficking will not be able to remain in the United States permanently).

the number of victims assisted and the number of traffickers convicted will remain appallingly low.<sup>23</sup> According to a 1999 CIA report, fifty thousand women and children were trafficked to the United States every year; in comparison, the number actually “rescued” was alarmingly small, and remains so.<sup>24</sup> Since the passage of TVPA in 2000 through the end of 2003, only 448 victims have been certified or issued refugee benefits eligibility letters from the Department of Health and Human Services.<sup>25</sup>

How could the TVPA better serve its stated goal to eliminate trafficking and protect trafficking victims?<sup>26</sup> First, most victims need immediate secure shelter and access to legal resources before they leave their abusers.<sup>27</sup> While the Act allows certified trafficked persons to receive benefits equivalent to those of refugees, the requirements for certification are too stringent, deterring victims from coming forward or denying relief to those who have not been trafficked with enough force.<sup>28</sup> Unless they qualify as victims of a “severe form of trafficking,” they risk deportation.<sup>29</sup> Furthermore, the additional cri-

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<sup>23</sup> See DEP’T OF STATE, 2004 TRAFFICKING IN PERSONS REPORT 257, 258, available at <http://www.state.gov/documents/organization/34158.pdf> [hereinafter TIP REPORT]. The Department of Justice secured seventy-seven convictions and guilty pleas between fiscal years 2001 and 2003. *Id.* at 258.

<sup>24</sup> See *id.* at 257; AMY O’NEILL RICHARD, CTR. FOR THE STUDY OF INTELLIGENCE, DCI EIAP MONOGRAPH: INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME, at iii (2000), available at [www.cia.gov/csi/monograph/women/trafficking.pdf](http://www.cia.gov/csi/monograph/women/trafficking.pdf). The TVPA also states that approximately 50,000 women and children are trafficked into the United States every year. 22 U.S.C. § 7101(b)(1) (2000). The State Department released more recent numbers in its 2004 *Trafficking in Persons Report*, estimating that people trafficked into the United States ranged from 14,500 to 17,500 a year. TIP REPORT, *supra* note 23, at 23.

<sup>25</sup> Mattar, *supra* note 9, § VII. In fiscal year 2003, the Department of Health and Human Services provided 151 certifications and benefits eligibility letters. TIP REPORT, *supra* note 23, at 257. In 2002, only 99 certification letters were granted. In 2001, 198 letters were issued; however, 174 of those were certified in a single 2001 case involving Vietnamese garment workers. DEP’T OF HEALTH & HUMAN SERVS., 2002 ANNUAL TRAFFICKING REPORT TO CONGRESS § III, available at [http://www.acf.dhhs.gov/programs/orr/policy/atrc\\_02.htm](http://www.acf.dhhs.gov/programs/orr/policy/atrc_02.htm).

<sup>26</sup> See 22 U.S.C. § 7101(a), (b) (24).

<sup>27</sup> See Hyland, *supra* note 12, at 63, 64 (discussing the House bill on the TVPA, which offered emergency housing and mandatory access to legal assistance for trafficking victims).

<sup>28</sup> See 22 U.S.C. § 7105(b)(1)(A); Candes, *supra* note 14, at 593, 602; Hyland, *supra* note 12, at 56; discussion *infra* Part II.A. The Act’s success also depends upon victims having knowledge of their new rights and confidence that law enforcement agencies will protect their rights. See discussion *infra* Part IV.

<sup>29</sup> See 22 U.S.C. § 7105(b)(1)(A); Candes, *supra* note 14, at 594. Charles Song, an attorney for the Coalition to Abolish Slavery and Trafficking (CAST), illustrated why protections are so vital to combat trafficking:

teria that victims must meet in order to remain in the United States are likewise too severe.<sup>30</sup>

Part I of this Book Review examines the causes, nature, and prevalence of trafficking worldwide. Part II assesses the TVPA requirements that victims must meet to be eligible for protections, and argues that they are overly stringent. Part III examines the assistance currently available to victims under the TVPA, and proposes enhanced protections that address victims' distrust of law enforcement and fear of their traffickers. Part IV explores the coordination and protocols that nonprofit organizations and law enforcement must develop locally in order to identify and adequately provide for victims.<sup>31</sup> This Book Review concludes that, given trafficking persons' complex situations, the offered protections must be expanded and tailored to victims' needs before more will seek to benefit from the TVPA.

### I. THE CAUSE, NATURE & PREVALENCE OF TRAFFICKING

More than twenty million people migrate to another country every year; over half travel illegally.<sup>32</sup> Some pay smugglers to facilitate the journey; others are trafficked.<sup>33</sup> While statistics on trafficking are unreliable, largely due to the clandestine nature of the activity, the

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I received a phone call from a woman who informed me her brother had been tricked into coming to the United States and was being physically and legally forced to work. I advised the woman that her brother's life may be in imminent danger and recommended immediately contacting the proper authorities. I also advised her of the federal protections available to her brother and the legal and social services CAST could provide him. She asked if I could guarantee he would not be deported if she reported to law enforcement because he would be seriously injured or murdered if he was deported. I told her I could not guarantee anything but, based on the information she had provided me, he would be permitted to legally stay in the United States and provided many other benefits to help him recover from his enslavement if he cooperated with law enforcement. After discussing these issues further, she concluded the telephone call by saying that she was terrified of subjecting him to the risk of deportation and would think it over and contact me as soon as possible. I never heard from the woman again.

*Hearing, supra* note 11 (statement of Attorney Charles Song).

<sup>30</sup> See Immigration and Nationality Act (INA) § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T) (2000).

<sup>31</sup> See CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, FLORIDA STATE UNIV., FLORIDA RESPONDS TO HUMAN TRAFFICKING 195–201 (2003), at <http://www.cahr.fsu.edu/report.html> [hereinafter FLORIDA RESPONDS].

<sup>32</sup> MCGILL, *supra* note 1, at 1.

<sup>33</sup> See Bo Cooper, *A New Approach to Protection and Law Enforcement Under the Victims of Trafficking and Violence Protection Act*, 51 EMORY L.J. 1041, 1047 (2002).

United Nations Population Fund estimates that about four million persons worldwide are trafficked annually.<sup>34</sup> Although McGill does not clearly distinguish between smuggling and trafficking, this Book Review argues that the distinction is important because, under most anti-trafficking laws, those who are trafficked receive protections while those who are smuggled will likely be deported.<sup>35</sup>

The greatest distinction between smuggling and trafficking is that a smuggled person chooses autonomously to move to a new country.<sup>36</sup> Smuggling is a transaction: the migrant pays the smuggler to procure illegal entry into another country.<sup>37</sup> In contrast, trafficking involves a dynamic, ongoing violation of the person by threats or actual physical force, deception, fraud, intimidation, isolation, debt bondage, threats of deportation, as well as threats of harm to family members.<sup>38</sup> The traffickers' goal is to control the victim for labor exploitation purposes, manifested as slavery, involuntary servitude, peonage, debt bondage, or commercial sex acts.<sup>39</sup>

Differentiating between smuggling and trafficking becomes more difficult when persons who voluntarily migrate become subject to violence or threat of violence under slave-like conditions in their destination country.<sup>40</sup> These victims, deceived about the working conditions

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<sup>34</sup> United Nations Population Fund, *Trafficking in Human Misery*, at <http://www.unfpa.org/gender/trafficking.htm> (last visited Feb. 23, 2005) [hereinafter *Trafficking in Human Misery*]. According to the U.S. State Department, annually about 600,000 to 800,000 people are trafficked across national borders, which does not count the millions trafficked within their own countries. BUREAU OF PUB. AFFAIRS, U.S. DEP'T OF STATE, FACTS ABOUT HUMAN TRAFFICKING 1 (May 24, 2004), available at <http://www.usembassy.it/pdf/other/FactsTrafficking.pdf>.

<sup>35</sup> Cooper, *supra* note 33, at 1047. Typically, a person who has voluntarily entered into an arrangement to be brought into the United States without the appropriate immigration permission will not be considered a victim of severe trafficking and will not qualify to receive benefits under the TVPA. See Protection and Assistance for Victims of Trafficking, 66 Fed. Reg. 38,514–15 (July 24, 2001) (codified at 28 C.F.R. pt. 1100).

<sup>36</sup> See Cooper, *supra* note 33, at 1047.

<sup>37</sup> *Id.* The payment can be exorbitant, often accrues interest and involves the threat of violence if not paid in a timely manner. See MCGILL, *supra* note 1, at 10, 13. McGill found that many smugglers view themselves as professionals who provide a needed service—helping people with relocation. See *id.* at 124–25.

<sup>38</sup> Hearing, *supra* note 11 (statement of Director Wendy Patten).

<sup>39</sup> See Cooper, *supra* note 33, at 1047. Some traffickers do not believe that they are exploiting people for their labor, arguing that these people would be poor and jobless back in their home countries as well. Interview with Carol Gomez, Founder of Trafficking Victim Outreach and Services (TVOS) Network, in Boston, Mass. (Sept. 29, 2004).

<sup>40</sup> See Inglis, *supra* note 3, at 93.



and exploited, also deserve protection.<sup>41</sup> Law enforcement officials should consider whether victims were deceived initially rather than focus solely on coercion in determining qualifications for TVPA protections.<sup>42</sup>

Although human trafficking has existed for centuries, its recent resurgence can be traced to industrialization, which shattered subsistence farming and traditional ties of family responsibility and kinship.<sup>43</sup> These developments drove millions of peasants to the cities, concentrating the land in the hands of an elite who produced cash crops for export, ultimately making the poor more vulnerable.<sup>44</sup> Additionally, since 1945 the world population has nearly tripled from two billion to more than 5.7 billion.<sup>45</sup> For countries that were already poor, the population explosion overwhelmed the available resources.<sup>46</sup> Other operative factors include restrictive immigration policies, and the lack of appropriate legislation and political will to address the problem.<sup>47</sup> Moreover, modern technology and globalization enable small networks of criminals to operate internationally and prey upon the poor and vulnerable.<sup>48</sup>

Enforcement efforts both at borders and within countries are not enough to stop traffickers, because profit margins for trafficking are so high.<sup>49</sup> According to one estimate, the illegal immigration industry

<sup>41</sup> See *Jane Doe I v. Reddy*, No. C 02-05570 WHA, 2003 U.S. Dist. LEXIS 26120, at \*12 (N.D. Cal. Aug. 4, 2003) (finding that the victims were lured from India by false promises of education and employment opportunities in the United States, but upon arrival were forced to work long hours below minimum wage and were sexually abused and beaten). See Inglis, *supra* note 3, at 93. Some victims may respond to job advertisements to go to a new country or fall in love with men who later sell them, and end up in situations where they receive little or no pay and cannot leave. See McGill, *supra* note 1, at 81. Still others become enslaved because their debt from their journey to the new country accrues interest, and they cannot afford the monthly payments. See *id.* at 10.

<sup>42</sup> See 22 U.S.C. § 7102(2) (2000) (focusing on coercion); discussion *infra* Part II.A.

<sup>43</sup> See BALES, *supra* note 13, at 13; Aiko Joshi, *The Face of Human Trafficking*, 13 HASTINGS WOMEN'S L.J. 31, 32-34 (2002). Kinship ties provided a safety net that carried people through difficult times. BALES, *supra* note 13, at 13.

<sup>44</sup> BALES, *supra* note 13, at 12.

<sup>45</sup> *Id.* at 12.

<sup>46</sup> *Id.*

<sup>47</sup> *Trafficking in Human Misery*, *supra* note 34.

<sup>48</sup> *Hearing*, *supra* note 11 (statement of Director Wendy Patten).

<sup>49</sup> See MCGILL, *supra* note 1, at 189. The United Kingdom's National Crime Intelligence Service (NCIS) Director General John Abbott said, "I would be surprised if [increases in sentencing and fines] had a significant impact. [Illegal immigrants] pay up to £20,000 each. . . . The indications are that despite actions being taken, the market will increase and profits will remain high." *Id.*

is worth more than ten billion dollars a year.<sup>50</sup> Depending on the destination, a person pays anywhere from five thousand to fifty thousand dollars for travel arrangements.<sup>51</sup> While smugglers only receive one payment for transporting a person, traffickers receive ongoing profits from their victims' labor over a long duration.<sup>52</sup> In fact, trafficking in women is now organized crime's third most profitable trafficking industry behind drugs and guns.<sup>53</sup> In contrast to drugs, humans continue to work and earn profits for their owners, and can be resold.<sup>54</sup> Furthermore, under the scheme of debt repayment, traffickers either pay their victims either very little or nothing at all.<sup>55</sup>

## II. TVPA REQUIREMENTS FOR TRAFFICKING VICTIMS

Victims must meet many requirements to be certified to receive benefits under the TVPA.<sup>56</sup> Trafficked persons must be a victim of a "severe form of trafficking," and willing to assist in every reasonable way

<sup>50</sup> *Id.* at 1. Others have come up with different numbers. See BALES, *supra* note 13, at 23; Joshi, *supra* note 43, at 31. Joshi states that the trafficking network produced an annual profit of up to seven billion dollars. Joshi, *supra* note 43, at 31. Professor Bales estimates that the total yearly profit from slave labor would be on the order of 13 billion. BALES, *supra* note 13, at 23.

<sup>51</sup> MCGILL, *supra* note 1, at 1.

<sup>52</sup> Hyland, *supra* note 12, at 38; see *United States v. Gasanova*, 332 F.3d 297, 298 (5th Cir.), *cert. denied*, 540 U.S. 1011 (2003). A husband and wife illegally brought three Uzbekistani women to the United States and promised them modeling careers if they raised \$300,000 in topless dancing. *Gasanova*, 332 F.3d at 298. They collected over \$500,000 from the women, keeping the vast majority of the money for themselves. *Id.*

<sup>53</sup> *International Trafficking in Women and Children, Hearings Before Senate Foreign Relations Comm., Subcomm. on the Near Eastern and South Asian Affairs*, 106th Cong. 11 (2000), available at <http://www.access.gpo.gov/congress/senate/senate11sh106.html> (prepared statement of Frank E. Loy, Undersec'y of State for Global Aff.) (discussing the growing global problem of trafficking in persons, especially women and children) [hereinafter *International Trafficking Hearings*].

<sup>54</sup> Hyland, *supra* note 12, at 38.

<sup>55</sup> *Id.* McGill tells the story of Sasha, a Ukrainian girl, who answered an advertisement to become a ballet dancer in Belgium, only to find that she was brought there, along with a busload of other aspiring dancers, to be a sex slave. MCGILL, *supra* note 1, at 76, 78–79. Initially, she was told that once she made \$250,000 she would be free to go. *Id.* at 81–82. Her existence consisted of performing sex acts for up to 10 men a day. *Id.* at 86. She was later sold to a man in London, who told her that she had to earn enough to pay off her debt, ostensibly incurred by traveling with the supposed dance troupe and living in their housing. *Id.* See *United States v. Garcia*, No. 02-CR-110S-01, 2003 U.S. Dist. LEXIS 22088, at \*2 (W.D.N.Y. Dec. 2, 2003) (finding that the defendants refused to pay their farm workers, whom they had lured from Mexico, and repeatedly told them that they owed large sums of money and could not leave until they paid off their debts).

<sup>56</sup> See 22 U.S.C. § 7105(b)(1)(E) (2000).

in the investigation and prosecution of their trafficker.<sup>57</sup> Additionally, the victim must either have made a bona fide application for a T visa that has not been denied, or his or her continued presence in the United States must be necessary for the prosecution of traffickers.<sup>58</sup> Trafficked persons can only qualify for T visas by demonstrating “extreme hardship involving unusual and severe harm upon removal.”<sup>59</sup>

Part A of this Section explores the requirement that persons must be a victim of “severe forms of trafficking” to be eligible for any protections under the TVPA. It argues that this stringent requirement must be relaxed to assist victims of all forms of trafficking. Part B examines the requirements that victims must meet to obtain legal residency in the United States. It argues that the “extreme hardship involving unusual or severe harm upon removal” is also too rigorous, and should be based instead on a well-founded fear of retribution upon removal. Part C suggests that the 5,000-person cap on the number of victims who can obtain temporary residency is arbitrary and excessively low, and should be repealed.

#### A. Severe Form of Trafficking

The TVPA criminalizes only “severe forms of trafficking in persons,” which include only sex trafficking for the purpose of a commercial sex act, and labor trafficking, defined as involuntary servitude, peonage, debt bondage, or slavery.<sup>60</sup> By restricting its scope to “severe forms of trafficking,” the Act implies that other forms of trafficking exist, but makes no attempt to define or criminalize those forms.<sup>61</sup> Physical coercion is not always required, but a victim of severe

<sup>57</sup> *Id.* § 7105(b)(1)(A), (E).

<sup>58</sup> *Id.* § 7105(b)(1)(E).

<sup>59</sup> INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T) (2000).

<sup>60</sup> 22 U.S.C. § 7102(8). It defines sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” *Id.* § 7102(9). A commercial sex act means “any sex act on account of which anything of value is given to or received by any person.” *Id.* § 7102(3).

<sup>61</sup> Theresa Barone, Comment, *The Trafficking Victims Protection Act of 2000: Defining the Problem and Creating a Solution*, 17 TEMP. INT’L & COMP. L.J. 579, 594 (2003). The Act should define forms of trafficking for the purpose of:

commercial sexual exploitation, such as prostitution, pornography, and sex tourism; trafficking for the purpose of non-commercial sex, such as marriages for the purpose of child-bearing, forced marriages, early marriages, temporary marriages, and mail-order brides (i.e., bride trafficking); trafficking for the purpose of forced labor, in particular domestic service, street begging, and camel jockeying; trafficking for the purpose of illicit inter-country adoption (i.e., baby trafficking); trafficking for military purposes; trafficking for

trafficking must believe that he or she would suffer serious harm or physical restraint if he or she were to leave the trafficker.<sup>62</sup>

The Act should adopt a broader definition that includes all kinds of trafficking, similar to that of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention Against Transnational Organized Crime.<sup>63</sup> The Protocol's operative concept is exploitation, rather than coercion.<sup>64</sup> This approach recognizes that trafficked workers, primarily women, may make voluntary choices about their migration and working conditions, but may nonetheless end up in exploitative working conditions.<sup>65</sup> It goes further than the TVPA by discussing the abuse of power, a position of vulnerability, and the giving or receiving of payments or benefits to achieve the consent of a person having control over another.<sup>66</sup>

Moreover, the TVPA's standard that eligible victims must be victims of "severe forms of trafficking" is difficult to apply.<sup>67</sup> Law enforcement agents must make immediate determinations as to whether to take the victim to a detention center or an appropriate facility for trafficking

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the purpose of involvement in illegal activities, such as drug trafficking; and trafficking in human organs.

Mattar, *supra* note 9, § VIII.

<sup>62</sup> 22 U.S.C. § 7102(2). Prior to the Act, and in accordance with the Supreme Court's *Kozminski* Test, a victim had to prove the use or threat of physical or legal coercion; now, psychological coercion suffices under the TVPA. *See id.*; *United States v. Kozminski*, 487 U.S. 931, 952 (1988). The *Kozminski* case involved dairy farmers who conspired to interfere with two mentally retarded farm laborers' right to be free from involuntary servitude. *Kozminski*, 487 U.S. at 934.

<sup>63</sup> *See Protocol, supra* note 8, art. 3.

'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring, 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 [irrespective of the consent of the person]. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

*Id.*

<sup>64</sup> JANICE G. RAYMOND & DONNA M. HUGHES, COALITION AGAINST TRAFFICKING IN WOMEN, SEX TRAFFICKING OF WOMEN IN THE UNITED STATES 13 (2001), at <http://action.web.ca/home/catw/readingroom.shtml?x=16939>.

<sup>65</sup> Inglis, *supra* note 3, at 93.

<sup>66</sup> *See Protocol, supra* note 8, art. 3.

<sup>67</sup> Candes, *supra* note 14, at 594.

victims; however, this decision cannot be made on-site without investigating the facts of the case.<sup>68</sup> Therefore, victims should be presumed to qualify as a victim of severe forms of trafficking until a contrary determination is made.<sup>69</sup>

A strict interpretation of "severe" requires that victims, who are misidentified or not trafficked with enough force, be treated as criminals, detained, and deported.<sup>70</sup> The courts and the Department of Homeland Security will likely interpret this language very narrowly to prevent fraud.<sup>71</sup> Victims lack incentive to testify if they are not going to be allowed to stay in the United States or adequately protected.<sup>72</sup> Even the White House believes that the victims of severe forms of trafficking standard is stringent and the criteria for temporary residency visa is too restrictive.<sup>73</sup> A rigid reading of "severe" ultimately would prevent the TVPA from accomplishing its intended purpose.<sup>74</sup>

### B. *Extreme Hardship Requirement*

Trafficked persons must demonstrate "extreme hardship involving unusual and severe harm upon removal" to qualify for a T visa or temporary residency.<sup>75</sup> Furthermore, victims are only eligible to remain in the United States permanently if they have been in the country for three years, and have established either that they have complied with law enforcement requests during that time, or would suffer "extreme hardship involving unusual and severe harm upon removal."<sup>76</sup> This harsh standard should be liberalized to protect trafficking victims who cannot demonstrate unusual and severe harm but may face genuine danger and hardship upon removal nonethe-

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *See id.* at 594, 602. Victims who were not material witnesses were regularly detained and deported to their home country before the TVPA. *Id.* at 594.

<sup>71</sup> *Id.* at 596. In the committee report originally attached to the bill, Congress stated that the Trafficking Act intentionally included the term "victims of trafficking" in some sections instead of "victims of severe forms of trafficking." CHRIS SMITH, VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000, H.R. CONF. REP. NO. 106-939, at 90 (2000). In doing so, Congress intended to encompass a broader range of victims in these areas, and that the "severe forms of trafficking" standard is intended to be narrower than the "victims of trafficking standard." *Id.*

<sup>72</sup> *See* Candes, *supra* note 14, at 597.

<sup>73</sup> *Id.* at 596 (criticizing the strict standards for missing the stated goals of the TVPA).

<sup>74</sup> *See id.* at 597.

<sup>75</sup> INA § 101(a)(15)(T)(i)(IV), 8 U.S.C. § 1101(a)(15)(T)(i)(IV) (2004).

<sup>76</sup> *Id.* § 254(l)(C)(ii), 8 U.S.C. § 1255(l)(C)(ii).

less.<sup>77</sup> These trafficked persons are no less deserving of human rights protections than asylum seekers, who are granted asylum if they demonstrate a well-founded fear of persecution in their home country.<sup>78</sup> Therefore, the TVPA should model its standard after the criteria that asylum seekers must meet to stay in the United States, and trafficking victims would qualify for residency if they have a well-founded fear of retribution upon removal.<sup>79</sup>

At the very least, the residency criteria should conform to the minimum anti-trafficking standards that the United States sets for other countries in the TVPA.<sup>80</sup> The Act states that other governments should provide “legal alternatives to removal to countries in which [trafficking victims] would face retribution or hardship.”<sup>81</sup> This language is significantly less restrictive than the “extreme hardship involving unusual and severe harm” that victims in the United States must demonstrate to prevent removal.<sup>82</sup> This discrepancy undermines the validity of the United States’ insistence that other countries comply with anti-trafficking measures, given the lesser protections the United States provides to victims within its own borders.<sup>83</sup>

Further, to remain or be admitted to the United States, qualifying spouses and children of trafficked persons also must show that extreme hardship would otherwise result.<sup>84</sup> Victims’ family members, however,

<sup>77</sup> See Kara C. Ryf, Note, *The First Modern Anti-Slavery Law: The Trafficking Victims Protection Act of 2000*, 34 CASE W. RES. J. INT’L L. 45, 67–68 (2002).

<sup>78</sup> See INA §§ 101(a)(42), 208(b)(1), 8 U.S.C. §§ 1101(a)(42)(A), 1158(b)(1) (2000). The burden remains on asylum seekers to prove that they have a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group or political opinion to stay in the United States. *Id.* §§ 101(a)(42), 208(b)(1), 8 U.S.C. §§ 1101(a)(42)(A), 1158(b)(1).

<sup>79</sup> See *id.* §§ 101(a)(42), 208(b)(1), 8 U.S.C. §§ 1101(a)(42)(A), 1158(b)(1); SMITH, *supra* note 71, at 94 (discussing a House bill, which provided that eligibility for T visas should be based on a “well-founded fear of retribution involving the infliction of severe harm upon removal”).

<sup>80</sup> See 22 U.S.C. § 7106(b)(2) (2000). The TVPA recognizes that trafficking can only be eliminated by an international effort, and urges other countries to take strong action. *Id.* § 7101(b)(24). A country that does not comply with the United States’ minimum standards for the elimination of human trafficking receives a negative evaluation in the annual *Trafficking in Persons Report*. TIP REPORT, *supra* note 23, at 8. Such an evaluation could lead to the United States withholding non-humanitarian, non-trade-related assistance to that country. *Id.*

<sup>81</sup> 22 U.S.C. § 7106(b)(2).

<sup>82</sup> See INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T); 22 U.S.C. § 7106(b)(2).

<sup>83</sup> See INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T); 22 U.S.C. § 7106(b)(2).

<sup>84</sup> INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T). This extreme hardship may be met when traffickers threaten the victim and or her family members. See Mattar, *supra* note 9, § VII.

should be eligible for residency status based on the immigration doctrine of derivative beneficiaries, where spouses and children are allowed to follow to join the principle immigrant without further proof of hardship.<sup>85</sup> This change is needed because trafficking victims frequently migrant in order to provide financial support for their families.<sup>86</sup> Additionally, the shame and danger associated with trafficking applies not only to victims, but also to their entire family.<sup>87</sup>

In the Conference Committee report that accompanied the TVPA, Congress offered no justification for the standard of extreme hardship involving unusual and severe harm upon removal.<sup>88</sup> The only legislative history attempting to explain its meaning is the final Conference Committee report, which emphasized the narrow interpretation of the requirement:

The conferees expect that the [Department of Homeland Security] and the Executive Office for Immigration Review will interpret the "extreme hardship involving unusual and severe harm" to be a higher standard than just "extreme hardship." The standard shall cover those cases where a victim likely would face genuine and serious hardship if removed from the United States, whether or not the severe harm is physical harm or on account of having been trafficked . . . [and] shall involve more than the normal economic and social disruptions involved in deportation.<sup>89</sup>

### C. *T Visa Cap of 5,000*

Moreover, the TVPA restricts the number of available T visas a year to five thousand for trafficking victims,<sup>90</sup> an arbitrary and low

<sup>85</sup> See INA § 203(d), 8 U.S.C. § 1153(d).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> Jackson, *supra* note 20, at 554. See generally SMITH, *supra* note 71. The Clinton administration argued for reducing the T visa requirements, since victims need immediate protection before they will voluntarily report their traffickers. Hyland, *supra* note 12, at 65.

<sup>89</sup> SMITH, *supra* note 71, at 95; Jackson, *supra* note 20, at 554. The victim may have to prove: (1) that she requires medical care not available in her country of origin; (2) that denying her access to the U.S. legal system would leave her without any remedy; (3) that she will most likely be subjected to punishment because her country of origin penalizes the trafficked victim; or (4) that she will most likely be re-victimised, especially if her country of origin provides no assistance to trafficking victims. Mattar, *supra* note 9, § VI(b).

<sup>90</sup> Alien Victims of Severe Forms of Trafficking in Persons, 8 C.F.R. § 214.11(m) (2004). It includes a provision that the Attorney General should provide a yearly report to Congress on T visa rejections based on the cap. 22 U.S.C. § 7105(g) (2004).

number when compared to the estimated fifty thousand women and children trafficked into the United States every year, and to the estimated one million persons living in the United States under slave-like conditions.<sup>91</sup> Although the number of T visa recipients currently falls well below the cap,<sup>92</sup> human rights principles direct that the United States should not constrain its welcome to people who have been abused or enslaved within the nation's borders.<sup>93</sup>

The congressional members who supported the cap on T visas argued that the restriction was necessary to prevent persons from fraudulently claiming to be victims of trafficking to remain in the United States legally.<sup>94</sup> This concern is misguided, however, since victims who seek permanent residency must undergo an application process that carefully scrutinizes their trafficking history.<sup>95</sup> Furthermore, the visa cap fails to conform to the purpose of the Act—to increase the risk to traffickers and increase the protections for victims.<sup>96</sup>

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<sup>91</sup> Ryf, *supra* note 77, at 69. According to a conference report from the House Judiciary Committee, which contained an estimate of the yearly number of visa recipients provided by the Congressional Budget Office (CBO), the CBO "assume[d] that about 50,000 women and children are trafficked into the United States every year' (consistent with the CIA estimate), but 'discussions with State Department officials led CBO to assume that only about 2,000 victims would be freed each year and could potentially receive benefits.'" See Jackson, *supra* note 20, at 555 (quoting SMITH, *supra* note 71, at 24).

<sup>92</sup> See Mattar, *supra* note 9, § VII. Only 757 T visa applications have been received between the passage of the Act and the end of 2003, of which 328 visas were issued, thirty-eight denied, and the remaining applications are pending. *Id.*

<sup>93</sup> See 146 CONG. REC. 7628, 7629 (2000). Congressman Melvin Watt of North Carolina opposed the 5,000 cap on visas and discounted fraud as a justification, stating that:

The issue is would we send a woman or child who has been sexually abused and put into slavery in this country back into another country where that kind of activity was going on, so whether the victim is the 499th or the 4,099th, or the 515th or the 5,015th should not be the issue. The issue is what should our policy be, and we should open our arms to these people.

*Id.*

<sup>94</sup> See Ryf, *supra* note 77, at 68; 146 CONG. REC. at 7629 (statement of Rep. Smith). The idea for a cap originated with the administration bill, which contained a cap of only 1,000 visas for each fiscal year. 21st Century Law Enforcement and Public Safety Act, S. 2783, 106th Cong. § 7 (2000).

<sup>95</sup> Ryf, *supra* note 77, at 69.

<sup>96</sup> *Id.* If victims are uncertain whether they fall within the cap (for the few even aware of the 5,000 limit), then they will fear further danger if they go to authorities. See *id.* Additionally, victims may not cooperate with law enforcement if they are not offered witness protection or the opportunity to stay in the United States. *Id.*



### III. A NEED FOR ENHANCED PROTECTIONS

Traumatized victims of trafficking face many practical and psychological obstacles in their efforts to break free from their traffickers' control.<sup>97</sup> Not only are they unfamiliar with the laws, culture, and language of the destination country, but traffickers often threaten to harm or kill the victims or their family members if they attempt escape.<sup>98</sup> U.S. law enforcement typically lacks the power to prevent traffickers from retaliating against family members in other countries, especially when police in those countries are unresponsive, underfunded, or corrupt.<sup>99</sup> Moreover, victims are fearful of being treated as criminals or deported by law enforcement.<sup>100</sup> These factors, among others, prevent trafficking victims from coming forward of their own volition; most who have benefited from the TVPA have been identified and rescued by others.<sup>101</sup>

Therefore, any effective anti-trafficking strategy must address both the victim's fear of their traffickers and their mistrust of law enforcement.<sup>102</sup> The TVPA must enhance its protections and ensure that victims redeem their rights to safety and access justice.<sup>103</sup> Part A of this Section explores the implementation of immediate safety measures to protect victims from their traffickers. Part B discusses reforms that

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<sup>97</sup> See *Hearing*, *supra* note 11 (statement of Director Wendy Patten) (testifying that offering victims witness protection alone is insufficient given their traumatized condition, especially since traditional witness protection situations were designed for witnesses who themselves are criminals).

<sup>98</sup> 22 U.S.C. § 7101(b)(7), (20) (2000); Mattar, *supra* note 9. See *United States v. Bradley*, 390 F.3d 145 (2004) (finding that the use of physical threats as well as threats to call immigration officials were used to keep the victims from escaping).

<sup>99</sup> Jackson, *supra* note 20, at 558. There should be a mechanism for bringing protection to those family members who remain at risk in home countries before U.S. authorities go after criminal traffickers either in the form of witness protection or residency status. E-mail from Jane Rocamora, Greater Boston Legal Services Immigration Unit, to Carol Gomez, Founder of the Trafficking Victim Outreach and Services (TVOS) Network (on file with author). Thus, in certain instances, status for a trafficked victim may need to be established to protect relevant family members prior to public law enforcement efforts. *Id.*

<sup>100</sup> See Hyland, *supra* note 12, at 55. This happens commonly with trafficked women forced into prostitution. *Id.* Imposing fines and incarceration on these women for prostitution and immigration violations further victimizes the trafficked persons. *Id.*

<sup>101</sup> Interview with Gomez, *supra* note 39. See *Bradley*, 390 F.3d at 149 (stating that an anonymous tip to the police led to the rescue of Jamaican laborers held against their will).

<sup>102</sup> See *Hearing*, *supra* note 11 (statement of Director Wendy Patten); Candes, *supra* note 14, 580-81.

<sup>103</sup> Victims of trafficking prosecuted under other laws, such as the Mann Act or the Racketeer Influenced and Corrupt Organizations Act, should also be entitled to the benefits granted under the TVPA and the enhanced protections proposed in this Section. Interview with Carol Gomez, *supra* note 39.

promise to broaden victims' access to legal resources, and the victim's right to self-petition for certification.

### A. *Victims' Right to Security*

The TVPA requires agencies and departments to promulgate regulations that will ensure that trafficking victims are not held in facilities "inappropriate to their status as crime victims," but only "to the extent practicable."<sup>104</sup> Instead, the government should provide secure and immediate housing for trafficking victims before certification, to ensure their security in the interim.<sup>105</sup> If safety is not guaranteed, victims will not risk coming forward, because their abusers may inflict even greater harm on them for trying to escape.<sup>106</sup> As an additional safety measure, potential and actual trafficking victims must be able to obtain restraining orders on short notice against their traffickers either in the state or federal court.<sup>107</sup> Furthermore, NGOs and social workers should develop "trafficking safety plans" for housing, services, travel, and work based on the victims' risk of danger from their trafficker.<sup>108</sup> Service providers should look to NGOs and shelters that offer such plans for domestic violence victims for guidance.<sup>109</sup>

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<sup>104</sup> 22 U.S.C. § 7105(c) (2000). The House bill offered additional protective measures, excluded from the Act, that required that victims not be "jailed, fined, or otherwise penalized due to having been trafficked," and that they "shall be housed in appropriate shelter as quickly as possible." H.R. 3244, 106th Cong. § 7(c) (1st Sess. 1999).

<sup>105</sup> See *Hearing, supra* note 11 (statement of Sister Mary Ellen Dougherty, U.S. Conference of Catholic Bishops, Migration and Refugee Services (MRS/USCCB)). The MRS/USCCB has developed a system for short-term emergency housing provided by individuals and communities, who open their doors when there is an emergency in their area. *Id.*

<sup>106</sup> See Ryszard Piotrowicz, *European Initiatives in the Protection of Victims of Trafficking Who Give Evidence Against Their Traffickers*, 14 INT'L J. OF REFUGEE L. 263, 268 (2002).

<sup>107</sup> E-mail from Jane Rocamora, *supra* note 99. Theoretically, victims have access to local courts; however, victims often fear that they will be charged with a crime if they attempt to seek protection from the courts. *Id.* Protective measures for trafficking persons can be modeled after domestic violence restraining orders, which are issued by state courts. *Id.* Protective order statutes permit the court to issue "stay away" provisions, which order the abuser to stay away from the victim. Women's Law Initiative, *More Information on Domestic Violence*, at <http://www.womenslaw.org> (last visited Feb. 23, 2005). Victims generally can ask the court to prohibit all contact, such as communication by telephone, notes, mail, fax, or e-mail ("no contact" provisions). *Id.* Courts can also order the abuser to stop hurting or threatening the victim ("cease abuse" provisions). *Id.*

<sup>108</sup> FLORIDA RESPONDS, *supra* note 31, at 215.

<sup>109</sup> *Id.*

Shelters should also offer services that address the particular needs of trafficking victims.<sup>110</sup> For example, whenever possible, victims should be housed together in culturally sensitive shelters where their native languages are spoken, a feature that many domestic violence shelters lack.<sup>111</sup> Victims may be fearful if housed in an environment where they do not understand, much less speak the language, possibly slowing the rehabilitation process.<sup>112</sup> Ideally, shelter staff should be trained to handle the aftermath of trafficking, because victims are physically and emotionally scarred.<sup>113</sup> All victims should have access to gender-appropriate health care and psychological assistance, since talking to someone of the opposite sex can be intimidating, especially for sexually exploited victims.<sup>114</sup>

### B. Victims' Right to Access Justice

Additionally, the TVPA should ensure the trafficked person's right to access justice.<sup>115</sup> Although the Act provides "[v]ictims of severe forms of trafficking [with] access to information about their rights and translation services," such resources may not be provided until after they have been certified as being trafficked with enough force.<sup>116</sup> The law presupposes that police will first rescue trafficking victims and then interview them to determine eligibility for

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<sup>110</sup> Interview with Carol Gomez, *supra* note 39. Adequate funding for shelters and legal resources is essential to secure the victim's safety and access to justice. *Id.* The federal government granted more than \$35 million to thirty-six faith-based and community organizations to provide emergency shelter, legal, mental, and health services and English-proficiency instruction. Press Release, White House, Fact Sheet: Human Trafficking: A Modern Form of Slavery (July 16, 2004), at <http://usinfo.state.gov/gi/Archive/2004/Jul/19-648859.html> [hereinafter Press Release, White House].

<sup>111</sup> Interview with Carol Gomez, *supra* note 39. Domestic violence shelters may also not be able to offer the appropriate counseling services. *Id.* For example, one trafficking victim was housed in a domestic violence shelter where community sessions focused on abusive husbands, but she had a wonderful husband and instead needed counseling that dealt with labor exploitation. *Id.*

<sup>112</sup> *See id.*

<sup>113</sup> *See* Inglis, *supra* note 3, at 102–03; FLORIDA RESPONDS, *supra* note 31, at 126.

<sup>114</sup> *See* Inglis, *supra* note 3, at 103 (recommending gender-appropriate health services).

<sup>115</sup> *See* 22 U.S.C. § 7101(b)(20) (2000) (mentioning the difficulties of victims in accessing justice, due to fear of retribution and a lack of legal knowledge).

<sup>116</sup> *See* 22 U.S.C. § 7105(c)(2); Jackson, *supra* note 20, at 557–58. If NGOs and law enforcement do not provide translators to inform victims of their rights in their language, particularly in government raids of brothels, immigrants often remain silent because they fear criminalization or deportation, and consequently punishment in place of their traffickers. Interview with Carol Gomez, *supra* note 39.

certification.<sup>117</sup> Those who are not “rescued” by law enforcement have no way of knowing whether authorities will believe their stories, so escaping involves a stakes gamble where losing may result in deportation.<sup>118</sup> Additionally, those who escape or consider escaping on their own will find little information or assistance.<sup>119</sup> Trafficked persons, initially too afraid to identify their abusers or unable to articulate the severity of their trafficked situation, are unlikely to find representation, since few NGOs provide free assistance to undocumented immigrants.<sup>120</sup>

To address this problem, the TVPA should provide victims with access to Legal Services Corporation (LSC) attorneys upon first contact with authorities—whether they come forward, are rescued, or encounter law enforcement.<sup>121</sup> Once safely in custody, if the victim’s credibility is in doubt, law enforcement may consider the opinion of psychologists and trained professionals who understand the effects of post-traumatic stress syndrome.<sup>122</sup> This step is necessary because some seriously traumatized people have difficulty recounting their stories or suppress abusive memories that take time to surface.<sup>123</sup> Thus, these factors could, at least initially, render the stories of legitimate victims unbelievable to law enforcement officials.<sup>124</sup> Allowing more time to explore the validity of a trafficking claim would thus decrease assessment errors.<sup>125</sup>

Finally, to increase access to justice, the TVPA should allow victims to self-petition for certification to obtain its benefits.<sup>126</sup> This is

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<sup>117</sup> See Jackson, *supra* note 20, at 557.

<sup>118</sup> See *id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 558. Even fewer NGOs provide services to those in detention centers. *Id.*

<sup>121</sup> See *id.* at 557–58. LSC provides representation to the greatest number of low-income clients in the United States. *Id.* at 557. Currently, an immigrant is ineligible for LSC representation until she is certified as a victim of a severe form of trafficking. *Id.* Furthermore, there should be mandatory provision of a criminal defense attorney for trafficked victims vis-à-vis negotiations with federal authorities on providing evidence, and at a minimum, mandatory provision to trafficked victims of a list of free civil legal services for addressing immigration-related issues. Interview with Jane Rocamora, *supra* note 99.

<sup>122</sup> See Inglis, *supra* note 3, at 103 (recommending psychological services for victims who experience trauma from severe abuse); Jackson, *supra* note 20, at 558 (discussing how trauma prohibits victims from being able to tell their stories).

<sup>123</sup> Jackson, *supra* note 20, at 558.

<sup>124</sup> *Id.*

<sup>125</sup> See *id.*

<sup>126</sup> Cooper, *supra* note 33, at 1056. The language of other sections of the Act indicates that “self-petitioning” is possible. *Id.* The Reauthorization Act made a notable change by making victims eligible for receiving benefits under the TVPA if they cooperate with state

consistent with both the purpose of the Act—to protect victims and punish traffickers—as well as its legislative history, which indicates that self-petitioning should be permitted.<sup>127</sup> The TVPA could model its self-petitioning provision after the Violence Against Women Act (VAWA), in which victims of domestic violence can self-petition for legal permanent residence without relying on their citizen or legal resident spouses to sponsor them.<sup>128</sup> Like abusive spouses, traffickers often threaten their victims with deportation; thus, adopting a self-petitioning provision would prevent abusers from using deportation as a tool to maintain control over their victims.<sup>129</sup>

#### IV. COORDINATION AND PROTOCOL

For smooth and comprehensive delivery of protections, a multi-disciplinary coordinated response is necessary to address the trafficked person's variety of needs.<sup>130</sup> Lawyers, nonprofit service providers, and federal and local law enforcement must work in tandem to combat trafficking in their community.<sup>131</sup> Working groups should be established in cities nationwide, tailoring their services to the specific

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and local law enforcement, rather than requiring them to cooperate with federal law enforcement. See Pub. L. No. 108-193, § 4 (codified as amended in 22 U.S.C. § 7105(3)(iv) (2003)). This change is significant because state and local law enforcement may be the first to come in contact with the victim. See *Hearing*, *supra* note 11 (statement of Sister Mary Ellen Dougherty).

<sup>127</sup> Cooper, *supra* note 33, at 1056-57. A prior legislative proposal required a law enforcement agency request, modeling this requirement after the S visa. See H.R. 3154, 106th Cong. § 6(c)(2) (1999); Cooper, *supra* note 33, at 1056. Because Congress rejected this proposal, the DOJ and INS concluded that the legislature intended that the T visa be open to self-petitioning, and that the law enforcement agency should serve in an advisory capacity rather than as the sponsoring agency. See 8 C.F.R. § 214.11(f)(1); Cooper, *supra* note 33, at 1057. Law enforcement endorsement establishes two eligibility requirements: status as a victim and compliance with any reasonable request for assistance in the investigation or prosecution. Cooper, *supra* note 33, at 1057. To establish his or her status as a victim, the individual may submit credible secondary evidence, describing the nature and scope of any force, fraud, or coercion used against the victim. 8 C.F.R. § 214.11(f); Cooper, *supra* note 33, at 1057.

<sup>128</sup> See INA § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii).

<sup>129</sup> See *id.* See Cooper, *supra* note 33, at 1056; Candes, *supra* note 14, at 602. Congress concluded that, precisely because of their fear of retribution and deportation, trafficking victims typically find it difficult to approach law enforcement authorities. 22 U.S.C. § 7101(b)(20). Even with these immigration protections, however, abusers often misinform victims, which is why public awareness is so important. See *infra* Part IV. This distrust of law enforcement can stem from their experience of corrupt law enforcement in their country of origin, the lack of protection they have received, or the myths that traffickers tell them. See Candes, *supra* note 14, at 602; Jackson, *supra* note 20, at 558.

<sup>130</sup> See FLORIDA RESPONDS, *supra* note 31, at 195.

<sup>131</sup> See *id.* at 197-98; Press Release, White House, *supra* note 110.

needs of their given community.<sup>132</sup> Community responses should focus on, among other things: victim identification and management, victim assistance for safety and medical and rehabilitative services, crime scene investigations, and coordination among different levels of law enforcement.<sup>133</sup>

Working groups should also strive to increase public awareness, since the effectiveness of these protections depends on the wider community's knowledge of the laws.<sup>134</sup> First, federal officials should train local law enforcement entities that may not be aware of the federal law.<sup>135</sup> Professional schools in the fields of nursing, social work, law, medicine, business, and mental health should also integrate awareness of human trafficking into their curricula.<sup>136</sup> To educate the public, working groups should develop media campaigns modeled after successful public health initiatives, such as anti-smoking, HIV/AIDS, do-

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<sup>132</sup> See FLORIDA RESPONDS, *supra* note 31, at 195. Membership in the working group should include the Departments of Justice and Health and Human Services, refugee service agencies, law enforcement agencies, prosecutors, nonprofit victim advocacy agencies and immigrant-focused, or similar community programs. *Id.* at 209. Once these working groups become established, membership should be expanded to include health care professionals, agricultural interests, the business community and Department of Homeland Security personnel. *Id.* at 219. The federal government has established anti-trafficking task force coalitions in Philadelphia, Phoenix, Atlanta, and Tampa, and plans to create a dozen additional task forces in 2004. Press Release, White House, *supra* note 110. Many other cities have established their own anti-trafficking coalitions. In Boston, TVOS, a coalition of community-based organizations, has met monthly since 2002, and began meeting with law enforcement in 2004. Interview with Carol Gomez, *supra* note 39. Houston recently established a similar coalition, the Human Trafficking Rescue Alliance. CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, 1 ANTI-TRAFFICKING NEWS BULL. 1, 1 (Aug./Sept. 2004), available at [http://www.usdoj.gov/crt/crim/trafficking\\_newsletter/antittraffnews\\_augsep04.pdf](http://www.usdoj.gov/crt/crim/trafficking_newsletter/antittraffnews_augsep04.pdf) [hereinafter ANTI-TRAFFICKING NEWS BULL.].

<sup>133</sup> See FLORIDA RESPONDS, *supra* note 31, at 132–33, 216. It is important to determine a purpose for organizing and set forth a mission, such as conducting outreach or responding quickly to law enforcement raids on a trafficking crime scene. *See id.* at 198–99; Interview with Carol Gomez, *supra* note 39. This protocol information should be circulated to refugee service agencies, law enforcement agencies, prosecutors, nonprofit victim advocacy agencies and immigrant-focused or similar community programs, as well as health care providers. *See* FLORIDA RESPONDS, *supra* note 31, at 209–10.

<sup>134</sup> See FLORIDA RESPONDS, *supra* note 31, at 221 (discussing public awareness strategies and empowering trafficking survivors within their communities).

<sup>135</sup> See *Hearing*, *supra* note 11 (statement of Director Wendy Patten); FLORIDA RESPONDS, *supra* note 31, at 219. A training program can be implemented at the academy level for all state and local police. *See Hearing*, *supra* note 11 (statement of Director Wendy Patten). Florida, Missouri, Texas, and Washington have enacted state anti-trafficking laws to provide state law enforcement another tool to combat trafficking. ANTI-TRAFFICKING NEWS BULL., *supra* note 132, at 1.

<sup>136</sup> FLORIDA RESPONDS, *supra* note 31, at 209.

mestic violence, and drunk driving awareness efforts.<sup>137</sup> To be effective, education and public awareness campaigns about trafficking should utilize the media in immigrant communities, such as newspapers or newsletters circulated in other languages.<sup>138</sup>

### CONCLUSION

With an estimated four million people trafficked worldwide every year, trafficking in persons is the most widespread manifestation of modern-day slavery.<sup>139</sup> Through physical isolation and psychological trauma, traffickers economically and sexually exploit victims, instilling constant fear of arrest, deportation, and violence by traffickers themselves.<sup>140</sup> Too often, governments have treated victims as criminals and let traffickers go free.<sup>141</sup> In *Human Traffic: Sex, Slaves & Immigrants*, Craig McGill argues that current law enforcement policies do not effectively combat trafficking, and provides personal accounts that underscore why victim protection is crucial to the success of anti-trafficking strategies.<sup>142</sup> An effective anti-trafficking strategy must view trafficking not only from an enforcement perspective, but also from a human rights perspective.<sup>143</sup> Efforts to eliminate trafficking must ensure the dignity of victims, because the blatant disregard for human dignity lies at the core of human trafficking.<sup>144</sup>

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<sup>137</sup> *Id.* at 221. All of the public campaigns should include a hotline number where witnesses and victims can report trafficking cases. See Hyland, *supra* note 12, at 48 (describing the National Worker Exploitation Taskforce's hotline for reporting exploitation, abuse, and trafficking). As of April 2004, the Criminal Section of the Civil Rights Division had 153 open trafficking investigations, which is double that of 2001. TIP REPORT, *supra* note 23, at 258. Over half of these investigations originated from the "Trafficking in Persons and Worker Exploitation Task Force Complaint Line," run by the Department of Justice (1-888-428-7581) and established in February 2000. *Id.* In March 2004, an NGO activated a DDS-sponsored hotline for trafficking victims - (1-888-373-7888). *Id.* at 257.

<sup>138</sup> RAYMOND & HUGHES, *supra* note 64, at 13. Anti-trafficking messages should be posted in places frequented by trafficked persons, such as Western Union terminals and offices, highway rest stops, retail, grocery and drug stores, and laundromats. FLORIDA RESPONDS, *supra* note 31, at 210. These businesses should display information on how victims can receive help or how witnesses can help someone they suspect to be trafficked. *Id.* Any public awareness campaign and materials should warn victims of the risks involved if their captors find them with anti-trafficking material. *Id.*

<sup>139</sup> *Trafficking in Human Misery*, *supra* note 34.

<sup>140</sup> *International Trafficking Hearings*, *supra* note 53, at 4 (statement of Sen. Paul Wellstone).

<sup>141</sup> *Id.*

<sup>142</sup> See MCGILL, *supra* note 1, at 4, 209-11.

<sup>143</sup> See *Hearing*, *supra* note 11 (statement of Director Wendy Patten); Inglis, *supra* note 3, at 100.

<sup>144</sup> *Hearing*, *supra* note 11 (statement of Director Wendy Patten).

In this regard, the TVPA is bold step forward; while most international anti-trafficking laws focus primarily on law enforcement, the TVPA recognizes the fundamental human right of trafficked persons by attempting to protect and assist victims.<sup>145</sup> The TVPA, however, lacks the comprehensive protection services necessary to be effective.<sup>146</sup> The number of victims assisted and traffickers convicted will remain low until the TVPA fully assures victims of personal security and access to justice.<sup>147</sup> The strict language of the TVPA and the lack of broad protections undermine its very purpose—to eliminate trafficking and increase protections for victims.<sup>148</sup> Therefore, the TVPA must grant protection to victims of all forms of trafficking, so that they are not dissuaded from seeking assistance or are left without relief.<sup>149</sup> The United States must demonstrate its leadership on this critical human rights issue by improving this legislation.<sup>150</sup> The TVPA should signify the beginning of a movement focused on providing greater victim protections; only then, can we eradicate one of the most profound human rights abuses of our time.<sup>151</sup>

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<sup>145</sup> See 22 U.S.C. §§ 7101 (b) (22), 7105 (2000); Bruch, *supra* note 8, at 16.

<sup>146</sup> See *Hearing*, *supra* note 11 (statement of Director Wendy Patten); Inglis, *supra* note 3, at 75–76.

<sup>147</sup> See 22 U.S.C. § 7101 (b) (20) (mentioning the victims' obstacles to accessing justice due to fear of retribution and lack of legal knowledge); TIP REPORT, *supra* note 23, at 257; Interview with Carol Gomez, *supra* note 39.

<sup>148</sup> See Candes, *supra* note 14, at 593; discussion *supra* Part II.A-B.

<sup>149</sup> See Barone, *supra* note 61, 594; Mattar, *supra* note 9.

<sup>150</sup> *Hearing*, *supra* note 11 (statement of Director Wendy Patten).

<sup>151</sup> Hyland, *supra* note 12, at 70.



