

Human Trafficking Enforcement in the United States

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I. INTRODUCTION

On December 3, 2005, the United States formally joined ninety-four other countries as an official party to the Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (U.N. Protocol).¹ The U.N. Protocol signed in Palermo is a multilateral component of the worldwide effort to combat modern-day slavery. It seeks to prevent trafficking, protect victims, and promote antitrafficking cooperation among governments.² Consistent with the U.N. Protocol, the United States and other governments have developed antitrafficking programs which include the so-called “Three P’s”: *prosecution* of traffickers through enhanced penalties and investigative priorities, *protection* of victims, and *prevention* of future trafficking.³ To combat human trafficking, the United States has incorporated the Three P’s into a broader, multidisciplinary and victim-centric approach.

While efforts to protect victims and prevent further victimization are clearly important goals for the United States and the international community, effective prosecution is the linchpin to eradicating human trafficking. Prosecution, combined with the imposition of significant penalties, not only provides protection by eliminating the perpetrator’s immediate ability to exploit the victim, but also serves to deter future

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1. 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, Annex II, U.N. Doc. A/55/383 (Nov. 15, 2000).

2. *Id.* art. 2.

3. *See id.*

criminal acts. Without aggressive enforcement efforts by the United States and its global partners, the contemporary slave trade will continue to flourish and devastate the lives of untold numbers of victims.

Thousands of victims are trafficked into the United States annually.⁴ Countless other U.S. citizens and lawful permanent residents are trafficked interstate within the United States.⁵ Prosecutors and law enforcement officers have many statutory tools with which to dismantle criminal organizations that engage in or support human trafficking. To make true headway toward eradicating the contemporary slave trade, however, assertive and coordinated efforts must be funded on federal, state, and local levels.

II. BACKGROUND

Human trafficking affects all nations and takes many forms. Traffickers exploit those who are at risk and generate enormous profits from the sale of vulnerable men, women, and children.⁶ In the United States and around the world, traffickers force men, women, and children to work in the commercial sex industry or to endure horrible conditions in homes, fields, and factories. These victims are often held in debt bondage, with little or no hope of escaping from the grips of their captors.

4. U.S. DEP'T OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 9-10 (June 2004), available at http://www.usdoj.gov/crt/crim/wetf/us_assessment_2004.pdf [hereinafter 2004 ASSESSMENT] ("As of May 2004, the U.S. Government estimates that 14,500 to 17,500 people are trafficked annually into the United States, and 600,000 to 800,000 are trafficked globally. . . . Approximately 80 percent of the victims are female; 70 percent of those females are trafficked for the commercial sex industry.").

5. See Bay Fang, *Young Lives for Sale*, U.S. NEWS & WORLD REP., Oct. 24, 2005, at 30 ("The trafficking in children for sex was once thought to be a problem beyond America's borders. But the FBI and the Justice Department have now started focusing intently on the issue. . . . Thousands of young girls and boys are falling victim to violent pimps, who move them from state to state, which makes it a federal matter."); Richard J. Estes & Neil Alan Weiner, Univ. of Pa., *The Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico* 11-12 (2001), available at http://caster.ssw.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf (estimating that between 200,000 and 300,000 American youth are at risk of becoming victims of commercial sexual exploitation). See generally Trafficking Victims Protection Reauthorization Act of 2005 (2005 TVPRA), Pub. L. No. 109-164, 119 Stat. 3558 (2006). No comprehensive government database currently compiles the number of trafficking victims who are U.S. citizens. However, provisions in the 2005 TVPRA call for better tracking of these cases. *Id.* § 104.

6. INT'L LABOUR ORG., A GLOBAL ALLIANCE AGAINST FORCED LABOUR 55 (2005), available at http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5059. Estimates of the magnitude of profits generated by human trafficking vary widely. The International Labour Organization (ILO) estimates that globally, forced labor—which includes sexual exploitation—generates \$32 billion, half of which comes from the industrialized world, and one-tenth in transitional countries; this translates to \$13,000 annually for every trafficked forced laborer. *Id.*

The vast majority of those who illegally enter U.S. borders are smuggled rather than trafficked.⁷ Although they are related concepts, and sometimes intertwine in practice, human trafficking and migrant smuggling differ in important ways.⁸ The central difference between smuggling and trafficking is the presence of exploitation.⁹ Human trafficking involves the use of force, coercion, or fraud resulting in the conditions of servitude, slavery, or peonage (debt bondage).¹⁰ In contrast, migrant smuggling occurs with the consent of the person being smuggled, who often agrees to pay an exorbitant sum of money to enter a destination country.¹¹ By definition, migrant smuggling involves “the facilitation, transportation, attempted transportation or illegal entry of a person[s] across an international border.”¹² In contrast, the crime of human trafficking need not involve any border crossing.¹³ An individual can become a trafficking victim without ever leaving his or her home country. Whether trafficking is international or domestic, for commercial sex or labor, the trafficking and exploitation of women and children is increasing.¹⁴ Factors that encourage this increase in trafficking include the rise of globalization, with its attendant lowering of barriers to travel; the expansion of transnational organized crime; the widening gap between developing and developed countries; the increase in poverty and unemployment; and the persistent conditions of gender inequality and unequal opportunities. All of these factors create a favorable environment for many types of crime, including trafficking in persons.

Traffickers often succeed in their criminal endeavors with the assistance of organized criminal groups and corrupt officials.¹⁵ The relationship of human trafficking to organized crime, especially transnational criminal syndicates, “fosters official corruption and threatens the rule of law.”¹⁶ Sophisticated human smuggling and

7. HUMAN SMUGGLING & TRAFFICKING CTR., U.S. DEP’T OF JUSTICE, FACT SHEET: DISTINCTIONS BETWEEN HUMAN SMUGGLING AND HUMAN TRAFFICKING 2 (Jan. 2005), *available at* http://www.usdoj.gov/crt/crim/smuggling_trafficking_facts.pdf.

8. *Id.* at 1-6.

9. *Id.* at 2.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at 3.

14. *See* U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT § 1 (2001), *available at* <http://www.state.gov/g/tip/rls/tiprpt/2001/3929.htm>.

15. *See* Press Release, George W. Bush, U.S. President, Trafficking in Persons National Security Presidential Directive (Feb. 25, 2003), *available at* <http://www.whitehouse.gov/news/releases/2003/02/20030225.html> [hereinafter Presidential Press Release].

16. *Id.*

trafficking networks span the globe and move their clients through a variety of criminal methods, including passport, visa, and identity fraud.¹⁷ Hopeful migrants and trafficking victims are also transported as stowaways, fraudulent crewmen on ships, human cargo on smuggling vessels and trucks, or even on foot.¹⁸ Collectively referred to as “illicit travel facilitators,” these networks serve to circumvent established border security mechanisms and corrupt the legal migration process.¹⁹

Each year, hundreds of thousands of illegal migrants are moved by international smuggling organizations around the globe.²⁰ Organized criminal activity enables complex smuggling and trafficking schemes by facilitating the falsification of travel documents. These groups set up and organize the recruitment of potential victims, who are promised false employment and illusionary futures, and pay corrupt public officials who can facilitate illegal entry into the destination country and/or refrain from exercising their duties throughout the investigation and prosecution of trafficking cases.²¹

The methods by which trafficking victims are brought to the United States are often the same as those employed by traditional alien smugglers. Some willing smugglees become victims after they arrive in the United States; their identification is confiscated and an insurmountable debt is placed upon them.²² In other instances, victims are simply deceived by the promise of legitimate employment and a fair wage.²³

III. TOOLS TO BREAK THE TRADE

Prosecutors and law enforcement officials across the United States are committed to ensuring that traffickers are held accountable within the criminal justice system. In addition to the Thirteenth Amendment’s

17. PAULA J. DOBRIANSKY ET AL., ESTABLISHMENT OF THE HUMAN SMUGGLING AND TRAFFICKING CENTER: A REPORT TO CONGRESS (2005), *available at* <http://www.state.gov/documents/organization/49600.pdf>.

18. *Id.*

19. *Id.* at iv.

20. *See* Presidential Press Release, *supra* note 15.

21. *See id.* at 11; U.S. Dep’t of Justice, *Trafficking in Persons*, http://www.usdoj.gov/whatwedo/whatwedo_ctip.html (last visited Mar. 31, 2006).

22. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT § 1 (2004), *available at* <http://www.state.gov/g/tip/rls/tiprpt/2004/34021.htm>.

23. Presidential Press Release, *supra* note 15.

prohibition of slavery and involuntary servitude,²⁴ the federal government has an arsenal of statutes which can be employed to prosecute traffickers.

Human trafficking is now defined and criminalized in U.S. federal law by the Trafficking Victims Protection Act of 2000 (TVPA)²⁵ and the Trafficking Victims Protection Reauthorization Act of 2003 (2003 TVPRA).²⁶ The TVPA proscribes human trafficking and specifically defines certain terms of the offense, including “coercion,” “commercial sex act,” “debt bondage,” and “involuntary servitude.”²⁷ It sets forth a comprehensive approach to assisting “victims of severe forms of trafficking” within the context of U.S. enforcement efforts.²⁸ The TVPA also enhanced statutory penalties by raising the maximum sentence from ten to twenty years.²⁹ A term of up to life imprisonment is also

24. U.S. CONST. amend. XIII, § 1 reads: “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”

25. Trafficking Victims Protection Act of 2000, 18 U.S.C. §§ 1589-1594, 22 U.S.C. §§ 7101-7110, 2152(d) (2000).

26. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003).

27. 22 U.S.C. § 7102(2)-(5).

28. *Id.* § 7105. The TVPA defines “severe forms of trafficking in persons” as:

- (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Id. § 7102(8); *see also* Office of Refugee Resettlement, Dep’t of Health & Human Servs., State Letter #01-13 (May 3, 2001), *available at* <http://www.acf.dhhs.gov/programs/ofa/traffic/stateltr.htm>. The United States Department of Health and Human Services, Office of Refugee Resettlement (ORR), has the authority to certify an adult victim of a severe form of trafficking who

- (I) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons; and
- (II) (aa) has made a bona fide application for a [“T” nonimmigrant status] visa; or (bb) is a person whose continued presence in the United States the Attorney General is ensuring in order to effectuate prosecution of traffickers.

Id. Victims under the age of eighteen do not need certification to receive benefits. Certified victims of trafficking are eligible, regardless of immigration status, for federal and state benefits to the same extent as refugees. *Id.* This includes economic and social assistance, medical care, employment services, and skills training. Office of Refugee Resettlement, Dep’t of Health & Human Servs., State Letter #02-31 (Sept. 24, 2002), *available at* <http://www.acf.dhhs.gov/programs/orr/policy/sl02-31at.htm>. Provided that they meet specific program requirements, certified victims may be eligible for food stamps, Supplemental Security Income, Temporary Assistance to Needy Families, Medicaid, Matching Grant Program, Unaccompanied Minors Program, and Refugee Cash Assistance.

29. 18 U.S.C. § 1590. In addition to the enhanced criminal penalties, the TVPA created a civil remedy that allows trafficking victims to sue their traffickers in federal district court.

authorized where force, fraud, or coercion are used in the commission of the offense and/or the victim is under the age of fourteen.³⁰ The recently passed Trafficking Victims Protection Reauthorization Act of 2005 (2005 TVPRA) includes important new provisions which strengthen the 2003 TVPRA, as well as other antitrafficking provisions that are set forth in the United States Code.³¹

In addition to the prohibition against sex trafficking set forth in 18 U.S.C. § 1591, there are other antitrafficking statutes frequently employed in human trafficking cases. For example, 18 U.S.C. § 1584 prohibits involuntary servitude, an offense requiring that an individual be held against his or her will by actual force, threats of force, or threats of legal coercion.³² This section also prohibits compelling a person to work against his or her will by creating a “climate of fear” through the use of force, the threat of force, or the threat of legal coercion.³³

An offense closely related to involuntary servitude is peonage, a condition of compulsory service based on the indebtedness of one person to another.³⁴ Section 1581 prohibits holding a person in or returning a person to such a condition.³⁵ Further, the disjunctive phrasing of this

Although not specified, large fines are also a potential penalty for this and the other offenses enumerated in this Article. *See id.* §§ 1593, 1595. The 2003 TVPRA “added responsibilities to the U.S. Government’s anti-trafficking portfolio,” such as mandating the implementation of “new information campaigns to combat sex tourism.” 2004 ASSESSMENT, *supra* note 4, at 6. The 2003 TVPRA also requires the Attorney General to submit annual reports to Congress. *Id.*

30. 18 U.S.C. § 1591. The 2003 TVPRA broadened § 1591, making it illegal to recruit, entice, obtain, provide, move, or harbor a person or to benefit from such activities knowing that the person will be caused to engage in commercial sex acts where either the person is under eighteen years old or where force, fraud, or coercion exists. Pub. L. No. 108-193, § 5, 117 Stat. 2875, 2879 (2003) (amending 18 U.S.C. § 1591(b)). This statute does not require that either the defendant or the victim actually travel. *See id.* § 5, 117 Stat. at 2879.

31. *See* Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, §§ 103-104, 119 Stat. 3558, 3562-66 (2006). In addition, many other provisions—including the allocation of additional funds to state, local, and federal antitrafficking efforts—the 2005 TVPRA extends the application of extraterritorial jurisdiction for trafficking offenses committed by U.S. citizens abroad, enhances forfeiture provisions, and expands prosecutors’ ability to prosecute traffickers for money laundering and racketeering. *Id.* §§ 103-104, 119 Stat. at 3562-66.

32. 18 U.S.C. § 1584; *see also* United States v. Kozminski, 487 U.S. 931 (1988) (holding that involuntary servitude statutes are intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion). *Kozminski* came to stand for the premise that § 1584 “should be narrowly interpreted, absent a definition of involuntary servitude by Congress.” 22 U.S.C. § 7101(b)(13) (citing *Kozminski*, 487 U.S. at 948). Consequently, § 1584 “was interpreted to criminalize only servitude that is brought about through use or threatened use of physical or legal coercion, and to exclude other conduct that can have the same purpose and effect.” *Id.* (citing *Kozminski*, 487 U.S. at 948). The TVPA sought to correct this apparent gap in the law.

33. *See* 18 U.S.C. § 1584; United States v. Warren, 77 F.2d 827, 833-34 (11th Cir. 1985).

34. United States v. Reynolds, 235 U.S. 133, 144 (1914).

35. 18 U.S.C. § 1581.

section makes the acts of holding, arresting, and returning an individual to peonage separately punishable offenses.³⁶ Both involuntary servitude and peonage are punishable by a range of imprisonment up to a term of twenty years—or even life imprisonment in cases of kidnapping or where death or rape results.³⁷

Additionally, 18 U.S.C. § 1589 proscribes forced labor and authorizes a penalty of up to twenty years imprisonment for violators.³⁸ Significantly, § 1589 broadens the notion of “coercion” to include psychological pressures that are frequently employed in contemporary trafficking settings.³⁹ Moreover, asset forfeiture, which has proven to be a most efficient weapon in undermining criminal offenders and criminal organizations, is authorized under the same chapter.⁴⁰

Prostitution-oriented statutes provide another useful mechanism to prosecute traffickers. The Mann Act (formally known as the Importation of Aliens for Immoral Purpose) prohibits the transportation of any individual in interstate or foreign commerce for the purpose of engaging in prostitution or other “sexual activity for which any person can be charged with a criminal offense.”⁴¹ The statute authorizes a maximum penalty of ten years imprisonment, which is doubled for repeat offenders.⁴²

The statute criminalizing interstate or international transportation of minors for illegal sexual activity is 18 U.S.C. § 2423. This statute was amended and enhanced by the Prosecutorial Remedies and Other Tools To End the Exploitation of Children Today Act of 2003 (Protect Act); the maximum sentence for a violation of § 2423 is now thirty years

36. *United States v. Gaskin*, 320 U.S. 527, 528-29 (1944).

37. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 4(b)(5), 117 Stat. 2875, 2879 (2003) (amending 18 U.S.C. §§ 1581, 1584). The U.S.C. section which criminalizes kidnapping victims into slavery (“Enticement into slavery”), is another useful tool in contemporary federal prosecutions and carries the same penalties as involuntary servitude and peonage). 18 U.S.C. § 1583.

38. 18 U.S.C. § 1589(3).

39. It is a crime under § 1589 “to knowingly provide[] or obtain[] the labor or services of another person” in any of three ways: (1) threatening that person or another person with serious harm or physical restraint; (2) using “any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint”; or (3) abusing or threatening to abuse the law or the legal process. *Id.* §§ 1589(1)-(3).

40. *Id.* § 1594(b); *see id.* §§ 1956-1957. Where applicable, money laundering charges and convictions combined with related forfeiture actions can cripple criminal organizations.

41. *Id.* § 2421. There are several other statutes which may be charged concurrently with this offense including persuading and enticing illegal sexual activity. *Id.* § 2422.

42. *See id.* §§ 2422, 2426.

imprisonment.⁴³ The Protect Act also authorizes a mandatory minimum sentence of five years for a violation of § 2423(a).⁴⁴

The Protect Act provides new and invaluable tools for prosecutors to end child trafficking, child sex tourism, and other forms of child exploitation.⁴⁵ Moreover, the Protect Act's extension of extraterritorial jurisdiction allows U.S. law enforcement to curtail U.S. citizens' "illicit sexual conduct" abroad.⁴⁶ Similarly, the 2005 TVPRA authorizes extraterritorial jurisdiction for trafficking in persons offenses committed by persons employed by or accompanying the federal government outside the United States.⁴⁷ The Protect Act also eliminates the statute of limitations for prosecuting offenses committed against children⁴⁸ and authorizes the interception of wire, oral, or electronic communications in the investigation of kidnapping, sex trafficking, and sex offenses against children.⁴⁹

Given the varied means by which trafficked victims enter the United States, vigorous prosecution of immigration and document fraud offenses can effectively hinder human traffickers, as well as their support organizations. Alien smuggling and harboring are proscribed in Title 8 of the United States Code. Each offense carries a penalty of up to ten years imprisonment.⁵⁰ Additionally, passport and visa fraud may be charged under several sections of the United States Code.⁵¹ A more specific provision proscribes "[u]nlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor" and authorizes a penalty of up to five years imprisonment.⁵²

43. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (2003).

44. *Id.* § 103(2)(C), 117 Stat. at 652 (amending 18 U.S.C. § 2423(a)).

45. *Id.* §§ 103, 105, 108, 117 Stat. at 652-59 (amending 18 U.S.C. § 2423).

46. *Id.* § 105(a), 117 Stat. at 653-54 (amending 18 U.S.C. § 2423(f)). "Illicit sexual conduct" means "(1) a sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States; or (2) any commercial sex act (as defined in section 1591) with a person under 18 years of age." *Id.* § 105(a), 117 Stat. at 653-54.

47. Pub. L. No. 109-164, § 103(a)(1), 119 Stat. 3558, 3562-63 (introducing 18 U.S.C. §§ 3271-3272).

48. *See* United States v. Jeffries, 405 F.3d 682 (8th Cir. 2005) (noting that the PROTECT Act extends the limitation period for "offenses against children" until the death of the child); *see also* 18 U.S.C. § 3282 (stating that the general statute of limitations for noncapital crimes is five years).

49. *See* Pub. L. No. 108-21, §§ 201-202, 117 Stat. at 659-60 (amending 18 U.S.C. §§ 2516, 3283).

50. 8 U.S.C. § 1324(a) (2000).

51. *See generally* 18 U.S.C. §§ 1541-1544, 1546.

52. *Id.* § 1592.

There are many other criminal statutes which can serve as important tools in disabling human traffickers and dismantling their supporting organizations. The Racketeer Influenced and Corrupt Organizations Act (RICO), along with the offenses of conspiracy and money laundering, are significant and worthy of special note for their effectiveness in the prosecution of criminal networks.⁵³ Because most cases of trafficking require the collusion of two or more persons, a charge of conspiracy to commit some underlying offense is an effective means to prosecute and hold accountable all culpable parties. Nearly every contemporary human trafficking indictment contains some allegation of conspiratorial activity. Money laundering offenses are ubiquitous in the criminal world. At the same time, money laundering and related forfeiture provisions have been the Achilles' Heel of criminal organizations.⁵⁴ Like most crimes, human trafficking is driven by the traffickers' desire for large monetary profits. To reap fully the benefits of their crimes traffickers must seek shelter for their criminal proceeds and engage in the "secondary" offense of money laundering. Money laundering statutes make it a crime to transfer money derived from human trafficking (and almost all related criminal offenses) into seemingly legitimate channels, in an attempt to disguise the origin of the funds.⁵⁵ Trafficking in persons; selling or buying of children; sexual exploitation of children; or transporting, recruiting, or harboring a person (including a child) for commercial sex acts are all specifically enumerated as "specified unlawful activities" (SUAs) under 18 U.S.C. § 1956.⁵⁶ Once a defendant is convicted of a money laundering violation under §§ 1956 or 1957, all money and property "involved in" or facilitating the violation—fees generated from the act of money laundering as well as proceeds from the underlying SUAs—are subject to forfeiture.⁵⁷

53. *Id.* §§ 371, 1956-1957, 1960-1962.

54. *Id.* §§ 1956-1957, 1960, 1981-1982.

55. *Id.* §§ 1956-1957, 1960. Section 1956 requires proof of a specific intent to promote criminal activity; to conceal the nature, source, or ownership of the illegal proceeds; to avoid a reporting requirement; or to evade taxes. Section 1957 has no such requirement and focuses on the spending of the ill-gotten gains, although it contains a transactional threshold of greater than \$10,000. Both §§ 1956 and 1957 criminalize the actions of third parties who aid traffickers or other criminals by allowing them to dispose of their illegal proceeds. Section 1960 makes it an offense to conduct an illegal money transmitting business, which is defined as a business affecting interstate or foreign commerce and operating without a state money transmitting license. *Id.*

56. Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 103(2)(b)(3), 119 Stat. 3558, 3563 (2006) (amending 18 U.S.C. § 1956(c)(7)(B)(vii)).

57. 18 U.S.C. §§ 981-982. Section 982(a)(6) is a comparatively broad forfeiture provision for alien smuggling. *See United States v. McGauley*, 279 F.3d 62 (1st Cir. 2002); *see also* Pub. L. No. 109-164, § 103(d)(1), 119 Stat. at 3563 (amending 18 U.S.C. § 2428) (stating

Under certain circumstances, a prosecution under RICO allows greater flexibility for prosecutors to disrupt and dismantle large human trafficking organizations. Provisions under RICO enable prosecutors to present evidence of long-term criminal activity, as well as the ability to present evidence of crimes that have already been prosecuted.⁵⁸ A racketeering prosecution permits the joinder of multiple defendants who are members of the enterprise, as well as the joinder of a wide variety of crimes. In addition to federal offenses, some state crimes can be charged as predicate acts in a RICO indictment.⁵⁹ Additionally, in some cases, offenses can be charged as RICO predicates where the statute of limitations has otherwise run. Trafficking in persons has been a prosecutable predicate act under RICO since 2003.⁶⁰ Alien smuggling, money laundering, public corruption, and fraud-related offenses are similarly listed among the predicates which can be enforced through RICO.⁶¹

State prosecutors are also beginning to have the tools to fight human trafficking in their localities. While many states have laws that could be used to address various aspects of the crime of trafficking in persons, comprehensive antitrafficking statutes are needed to deter and punish the wide range of coercive tactics used by traffickers. In an effort to assist state lawmakers, the Department of Justice (DOJ) has drafted a model state antitrafficking statute.⁶² As a result, sixteen states have either passed or are actively considering antitrafficking legislation.⁶³ Prior to

that in alien smuggling cases and in most instances, only the property involved in the convicted offense may be forfeited).

58. Under RICO, prosecutors can establish a "pattern of racketeering" by proving that at least two of the requisite offenses occurred within ten years of each other. 18 U.S.C. § 1961(5).

59. *Id.* § 1961(1) (defining "racketeering activity").

60. *Id.* §§ 1588-1591. The 2003 TVPRA made §§ 1588-1591 (the offenses of peonage, slavery, and trafficking in persons) enforceable under RICO. Pub. L. No. 108-193, § 5(b), 117 Stat. 2875, 2879 (2003). The 2005 TVPRA added § 1592 as a RICO predicate. Pub. L. No. 109-164, § 103(c), 119 Stat. 3558, 3563. Other trafficking crimes have been enforceable under the provisions of RICO for many years. *See, e.g.*, *United States v. Pipkins*, 378 F.3d 1281 (11th Cir. 2004). In this case, the defendants were convicted of RICO conspiracy (violating 18 U.S.C. § 1962(d)), prostituting juveniles (violating 18 U.S.C. § 2422(b)), using interstate facilities to carry on prostitution (violating 18 U.S.C. § 1952(a)(3)), and involuntary servitude (violating 18 U.S.C. § 1584). *Pipkins*, 378 F.3d at 1287.

61. 18 U.S.C. § 1961(1).

62. U.S. Dep't of Justice, Model State Anti-Trafficking Criminal Statute (2005), available at http://www.usdoj.gov/crt/crim/model_state_law.pdf.

63. HumanTrafficking.org, US Citizens Interested in Helping To Combat Trafficking in the US and Abroad, http://www.humantrafficking.org/countries/united_states_of_america/helping (last visited Apr. 13, 2006). Arizona, Arkansas, California, Florida, Idaho, Kansas, Missouri, New Jersey, and Washington have formally defined and criminalized human trafficking as a state offense. There are pending bills in Illinois, Louisiana, New Mexico, New York, Oregon, Pennsylvania, and South Carolina. *Id.*

the passage of these bills, trafficking crimes would either be reduced to the most readily prosecutable offense (such as prostitution, assault, or workplace violations) or be left uncharged completely due to lack of criminality under state law. Even though there is overlap with the federal system, a greater number of overall prosecutions will have a greater impact on a local level. We need only look to states' increased prosecution of racially motivated crimes over the last two decades to see the benefits increased state-level enforcement might have on involuntary servitude and human exploitation in the United States.⁶⁴

IV. FIGHTING THE FIGHT

The principal responsibility for prosecuting trafficking crimes lies with the DOJ.⁶⁵ Prosecutors from the Civil Rights Division's Criminal Section work with federal and local law enforcement agencies to apprehend and prosecute both small- and large-scale trafficking operations.⁶⁶

The Federal Bureau of Investigation (FBI) and Immigration and Customs Enforcement (ICE) are the dominant law enforcement agencies leading these investigations.⁶⁷ Both the FBI and ICE capitalize on their well-developed areas of expertise to comprehensively address human trafficking both domestically and internationally. The FBI's Civil Rights Unit and ICE's Human Smuggling/Trafficking Unit (HSTU), for example, work to ensure that smuggling cases are identified appropriately as trafficking cases when human exploitation is present and that organized crime groups that traffic in commodities are identified as trafficking operations if applicable.⁶⁸ Moreover, ICE investigative divisions—including the HSTU—capitalize on their immigration-enforcement skills to identify individuals and organizations which engage in human smuggling and trafficking in persons to better target them for enforcement.⁶⁹

64. Model State Anti-Trafficking Criminal Statute, at 62.

65. See *Trafficking in Persons*, *supra* note 21 (noting the DOJ's high priority of pursuing and prosecuting traffickers).

66. See *id.*

67. U.S. DEP'T OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS 13-14 (Sept. 2005), available at <http://www.usdoj.gov/ag/annualreports/tr2005/assessmentofustipactivities.pdf> [hereinafter 2005 ASSESSMENT] (detailing the roles played by the FBI, ICE, and other investigative partners).

68. See *id.* at 14 (noting these units are responsible for U.S. enforcement of the TVPA).

69. See *id.*

The State Department's Diplomatic Security Service (DSS) also contributes to U.S. antitrafficking efforts.⁷⁰ The DSS Criminal Investigative Division investigates passport and visa fraud violations—offenses which are often components of illicit travel networks and are frequently present in trafficking cases.⁷¹ In some instances, these charges may be prosecuted without detailed involvement or testimony from a victim. This is tactically advantageous and beneficial when witnesses are unable or unwilling to testify in a criminal trial. Prosecutions of this sort may also provide an avenue to obtain additional intelligence and information upon which larger, subsequent enterprise-oriented prosecutions may be built.

Another component in the fight against human trafficking is the Wage and Hour Division of the Department of Labor (DOL), which investigates complaints of labor law violations.⁷² DOL investigators from the Office of the Inspector General investigate compliance with and enforcement of labor standards laws, focusing on where the highest percentage of forced labor occurs, such as low-wage industries, agriculture, and garment manufacturing.⁷³ These investigators also coordinate with other federal criminal investigators on human trafficking and worker exploitation investigations.⁷⁴

Interagency task forces have set the benchmark for effective cooperation and prosecutorial success. One of the first cases to be brought under the TVPA involved Victor Nikolayevich Virchenko.⁷⁵ A Russian national, Virchenko trafficked women and underage girls from Russia into Alaska and forced them to dance nude in a strip club.⁷⁶ After being found guilty, he was sentenced to thirty months in prison for his role in the trafficking scheme.⁷⁷ The investigation and prosecution resulted from the “coordinated effort of the Trafficking in Persons and Worker Exploitation Task Force, an interagency effort that brings together different agencies to combat the problem of trafficking in persons and modern-day slavery in the United States.”⁷⁸ The *Virchenko*

70. *Id.*

71. U.S. Dep't of State, *Investigating Passport and Visa Fraud*, <http://www.state.gov/m/ds/investigat/> (last visited Mar. 31, 2006).

72. 2005 ASSESSMENT, *supra* note 67, at 14.

73. *Id.*

74. *Id.*

75. Press Release, U.S. Dep't of Justice, Alaska Man Sentenced to 30 Months for Immigration Fraud and Transporting Minors from Russia To Dance in an Anchorage Strip Club (Aug. 28, 2001), *available at* <http://www.usdoj.gov/opa/pr/2001/August/438cr.htm>.

76. *Id.*

77. *Id.*

78. *Id.*

case was investigated jointly by the INS (prior to the formation of ICE), FBI, and Anchorage Police Department, and prosecuted by the Criminal Section of the DOJ Civil Rights Division, along with the United States Attorney's Office for the District of Alaska.⁷⁹

In light of this success, and to enhance the law enforcement agencies' unilateral efforts to combat trafficking in persons, the DOJ has created antitrafficking task forces in high-risk jurisdictions throughout the United States.⁸⁰ These task forces and working groups are comprised of investigators and prosecutors from the federal, state, and local levels.⁸¹ The original funding awarded more than \$7.6 million to localities throughout the country.⁸²

Recently, through the leadership of the DOJ and the United States Attorney's Office, a coalition of law enforcement and social service agencies was formed "to improve efforts to identify and assist victims of human trafficking, and to prosecute traffickers" in Los Angeles, California.⁸³ The task force includes representatives from the FBI, ICE, DOL's Office of Inspector General, the Los Angeles Police Department (LAPD), Coalition to Abolish Slavery & Trafficking (CAST) (a private victim assistance organization), and the Legal Aid Foundation of Los Angeles.⁸⁴ In addition, the DOJ also awarded a substantial grant (\$450,000) to the LAPD to aid its antitrafficking efforts.⁸⁵ With its combined areas of expertise, the task force coordinates training, prosecution, and investigation efforts, and works with state authorities to assist nonfederal prosecutions.

Coordinated and collaborated efforts have also been directed at so-called "domestic" human trafficking, where the victims are U.S. citizens

79. *Id.*

80. 2005 ASSESSMENT, *supra* note 67, at 18.

81. *Id.*

82. In its original round of funding in 2004, DOJ's Bureau of Justice Assistance awarded a total of \$7,674,614 to eighteen jurisdictions. *Id.* at 8. The recipients were: Phoenix, AZ; Los Angeles, CA; Oakland, CA; San Diego, CA; the District of Columbia; Collier County, FL; Cobb County, GA; Atlanta, GA; Hawaii; Boston, MA; New Jersey; Nassau County, NY; Suffolk County, NY; Austin, TX; El Paso TX; Harris County, TX; Seattle, WA; and American Samoa. Press Release, U.S. Dep't of Justice, Department of Justice Announces Human Trafficking Task Force in the District of Columbia and Grants for Law Enforcement To Fight Human Trafficking and Assist Victims (Nov. 23, 2004), *available at* <http://www.ojp.usdoj.gov/newsroom/2004/DOJ04760.htm>. At the close of fiscal year 2005, there were thirty-two task forces operating, with total funding of \$13 million. Bureau of Justice Assistance, Office of Justice Programs, U.S. Dep't of Justice, *What's News*, <http://www.ojp.usdoj.gov/BJA/> (last visited Mar. 31, 2006).

83. *U.S., LAPD, Others Form Task Force To Fight Human Trafficking*, METRO NEWS ENTERPRISE, Jan. 25, 2005, at 3, *available at* <http://www.metnews.com/articles/2005/task012505.htm>.

84. *Id.*

85. *Id.*

who are trafficked across state lines. In 2003, the FBI's Criminal Investigative Division/Violent Crimes Section, the DOJ's Child Exploitation and Obscenity Section, and the National Center for Missing and Exploited Children (NCMEC) initiated a nationwide focus on child victims of interstate sex trafficking.⁸⁶ This program, known as "Innocence Lost," is specifically designed to address the growing problem of children forced into prostitution, focusing on U.S. cities which have a historically high rate of child prostitution.⁸⁷ In less than two years, the Innocence Lost initiative has resulted in more than 500 arrests and at least 67 convictions.⁸⁸ The FBI has also launched the National Hispanic Sex Trafficking Initiative "to combat the sex traffickers who are bringing increasing numbers of female victims into the U.S. primarily from or via Mexico and Central and South America."⁸⁹

In a similar fashion, in July 2003, ICE officials launched "Operation Predator," a comprehensive plan to protect children from human traffickers, foreign national pedophiles, international sex tourists, and Internet child pornographers.⁹⁰ This DHS program is run by ICE's Cyber Smuggling Center, which partners with other entities, such as the Bureau of Customs and Border Protection (CBP), the United States Secret Service, the United States Postal Inspection Service, the FBI, state and local law enforcement agencies, and the NCMEC.⁹¹ ICE has been especially aggressive in enforcing the sex tourism provisions of the PROTECT Act and, by the middle of 2005, reported at least thirteen arrests under the statute.⁹²

Even in the absence of DOJ or other organized federal sponsorship, task forces comprised of federal and state law enforcement agents have collaborated to address the distinct but related crimes of alien smuggling, immigration fraud, and human trafficking. In April 2005, an

86. Chris Swecker, Assistant Dir., Criminal Investigative Div. FBI, Statement Before the Commission on Security and Cooperation in Europe, U.S. Helsinki Commission (June 7, 2005), available at <http://www.fbi.gov/congress/congress05/swecker060705.htm>.

87. *Id.* The original fourteen cities identified as part of the initiative were Atlanta, Chicago, the District of Columbia, Dallas, Detroit, Las Vegas, Los Angeles, Miami, Minneapolis, New York, San Diego, San Francisco, St. Louis, and Tampa. *Id.*

88. Alberto R. Gonzales, Att'y Gen., Address at the "Innocence Lost" Press Conference (Dec. 16, 2005), available at http://www.usdoj.gov:80/ag/speeches/2005/ag_speech_0512161.html.

89. Swecker, *supra* note 86.

90. See U.S. Immigration & Customs Enforcement, *Major Initiatives: Predator* <http://www.ice.gov/graphics/predator/index.htm> (last visited Mar. 31, 2006).

91. Press Release, U.S. Dep't of Homeland Sec., Fact Sheet: Operation Predator (July 9, 2003), available at <http://www.dhs.gov/dhspublic/display?content=1067>.

92. U.S. Immigration & Customs Enforcement, *Operation Predator: Statistics*, available at <http://www.ice.gov/graphics/news/factsheets/statistics.htm> (last visited Mar. 31, 2006).

investigation in Virginia that began as one focused on the illegal practices of immigration brokers and consultants in Northern Virginia and Maryland ended with the prosecution of twenty-seven defendants and charges of sex trafficking.⁹³ Federal and state agents were able to interrupt the traffickers before the would-be victims left Indonesia only because they continued to pursue their investigation after the conspirators were arrested and charged with asylum fraud. Consequently, two men were convicted of conspiracy to commit sex trafficking.⁹⁴ The men conspired to use false documents to bring Indonesian girls—ranging in age from fifteen to twenty-three—to the United States where their documents would be confiscated, they would be closely monitored while living in a house under the control of the men, and ultimately would be forced into the sex trade.⁹⁵ After pleading guilty, these men were sentenced to sixty-six months imprisonment for their crimes.⁹⁶

In New York, a team of prosecutors and law enforcement agents investigated a married couple who smuggled young Korean women into the United States and forced them to work for little or no pay at their bar.⁹⁷ Kang met the victims in South Korea and promised them legitimate paying jobs in the United States in exchange for payment of travel expenses.⁹⁸ Once they were smuggled into the United States, Kang and her coconspirators held the victims' passports and forced them to work for virtually no money, while the agreed-upon debt mushroomed.⁹⁹ Ultimately, Kang and her husband, Wun Kang, were convicted of forced labor and will be sentenced to lengthy terms of imprisonment—they

93. Press Release, U.S. Dep't of Justice, News Release Regarding Hans Gouw (Apr. 26, 2005), *available at* http://www.usdoj.gov/usao/vae/Pressreleases/05-MayPDFArchive/05/5305gouw_komalanr.pdf. At the time the traffickers were convicted, seventeen of their associates were also convicted of crimes including document fraud, asylum fraud, labor certification fraud, and money laundering. The investigation was conducted by a task force of federal and state law enforcement agencies, including ICE, FBI, DOL, DSS, the Fairfax County Police Department, the Internal Revenue Service, the Social Security Administration, the Virginia Department of Motor Vehicles, the United States Postal Inspection Service, and the Secret Service. The task force received additional assistance from other agencies, including the Office of Refugee, Asylum, and International Operations within Citizenship and Immigration Services (a part of the DHS); the Executive Office for Immigration Review (within the DOJ); the Virginia Employment Commission; and the Employment and Training Administration (within the DOL). *Id.*

94. *Id.*

95. *Id.*

96. OFFICE OF INSPECTOR GEN., U.S. DEP'T OF LABOR, 54 SEMI-ANNUAL REPORT TO THE CONGRESS 15 (2005), *available at* <http://www.oig.dol.gov/public/seminannuals/54.pdf>.

97. Press Release, U.S. Dep't of Justice, U.S. Customs and Border Protection Inspector Arrested for Obstructing Justice (Feb. 2, 2004), *available at* <http://www.usdoj.gov/usao/nye/pr/2004feb2.htm> [hereinafter Justice Press Release].

98. *Id.*

99. *Id.*

were also forced to forfeit property, including two homes and interests in five local businesses.¹⁰⁰ A corrupt official from CBP was convicted along with the Kangs for his attempts to obstruct the investigation by trying to forcibly remove a potential witness from the United States.¹⁰¹

With so many entities engaged in the effort against human trafficking, coordination becomes critical. Vigorously enforcing the laws against human traffickers requires enforcement agencies to work together. To the extent legally permissible, prosecutors and law enforcement need to share information and leverage the strengths, authorities, and resources within each of their respective agencies.

Investigative efforts in the United States have been enhanced by the creation of the Human Smuggling and Trafficking Center (HSTC or the Center). In July 2004, the Attorney General, the Secretary of State, and the Secretary of Homeland Security jointly formed the HSTC.¹⁰² The center was formally established under section 7202 of the Intelligence Reform and Terrorism Prevention Act of 2004.¹⁰³ This interagency fusion center was created, in part, to unify intelligence collection on human trafficking.¹⁰⁴ The Department of Justice, the Department of State, and the Department of Homeland Security, along with other government agencies, actively participate in the Center. The HSTC amalgamates federal agency representatives from the prosecutorial, law enforcement, policy, intelligence, diplomatic, and consular arenas to work together on a full-time basis to attempt to curtail human trafficking in the United States and worldwide.¹⁰⁵

The HSTC brings together experts from federal agencies engaged in combating migrant smuggling, human trafficking, and clandestine terrorist mobility. The Center has access to interagency national and international databases containing critical information relative to human smuggling, human trafficking, and terrorist travel. This combination of onsite expertise and accessibility to critical information provides U.S.

100. See *United States v. Kang*, Crim. No. 04, CR87 (ILG), 2006 WL 208882 (E.D.N.Y. Jan. 25, 2006).

101. Justice Press Release, *supra* note 97.

102. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT § VII (2005), available at <http://www.state.gov/g/tip/rls/tiprpt/2005/46618.htm>.

103. Human Smuggling & Trafficking Ctr., U.S. Dep't of State, *Human Smuggling and Trafficking Center*, <http://www.state.gov/p/inl/c14079.htm> (last visited Mar. 31, 2006).

104. See Human Smuggling & Trafficking Ctr., U.S. Dep't of State, *Functions*, <http://www.state.gov/p/inl/c14097.htm> (last visited Mar. 31, 2006). The HSTC's mission is three-fold: to address the separate but related issues of alien smuggling, trafficking in persons, and smuggler support of clandestine terrorist travel. Resources at the HSTC are devoted to all three mission areas, with matters of national security taking priority. *Id.*

105. *Id.*

government agencies and foreign partners with a unique opportunity to more effectively identify, disrupt, and dismantle illicit travel networks and facilitators.

The HSTC is a valuable new tool that is designed to collate and evaluate raw and finished information from a vast range of sources and disseminate actionable leads to federal law enforcement, intelligence, and diplomatic agencies. It draws upon the resources, knowledge, and expertise of all participating agencies and leverages the strengths and authorities of those organizations. The HSTC works with its federal law enforcement partners to enhance their effectiveness by providing them with investigative leads and value-added information that facilitates intelligence-driven initiatives. With this assistance, law enforcement and partner agencies are better able to make informed investigative and operational decisions in human trafficking and other illicit travel cases.

V. CONCLUSION

To eradicate human trafficking in the twenty-first century, the criminal infrastructure that supports it must be dismantled. Concerted efforts must be made to apprehend and incarcerate traffickers, seize their assets, disrupt transportation pipelines, and eliminate the corruption that facilitates human trafficking.

The United States has adopted an approach targeting both the supply and demand sides of the trafficking trade.¹⁰⁶ Federal funds support federal, state, and local law enforcement task forces. These multiagency task forces provide the best means to leverage law enforcement agencies' specialties and effectuate maximum apprehension. The 2005 TVPRA was designed "to allow law enforcement to continue to liberate the women and children who are forced and coerced into slavery."¹⁰⁷ With its passage, millions of dollars of new funding will be devoted to task forces and other efforts to end human trafficking.

The 2005 TVPRA is a promising development in U.S. efforts to end modern day slavery. As with attempting to end any organized criminal endeavor, however, this effort will take years. To end the trade, prosecutors and law enforcement need to remain alert to the issue and

106. See Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, §§ 103-204, 119 Stat. 3558, 3561-71 (2006). The 2005 TVPRA includes a \$25 million grant program for local law enforcement to investigate and prosecute human trafficking and related offenses and includes initiatives to attack the demand for prostitution, which is believed to fuel sex trafficking. See *id.* §§ 103-204, 119 Stat. at 3561-71.

107. See Rep. Smith's Trafficking Victims Protection Act To Become Law, U.S. NEWSWIRE, Dec. 12, 2005, available at <http://releases.usnewswire.com/GetRelease.asp?id=58567> (quoting comments of Rep. Chris Smith who sponsored the 2005 TVPRA).

continue to be aggressive and innovative with all of the existing legal tools. As other issues of national and border security dominate the media, society must not lose sight of the cost of human exploitation and the toll the denigration of human rights takes on all of society.