

**THE TRAFFICKING  
OF WOMEN AND CHILDREN  
INTO THE UNITED STATES  
FOR THE PURPOSE OF SEXUAL EXPLOITATION**

**An analysis of the U.S. legislative response to the problem  
The Trafficking Victims Protection Act of 2000**

**Nadya Harrison  
Dean Charles H. King Scholarship Program Senior Seminar Thesis  
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Faculty Advisor: Prof. Glen Staszewski  
King Scholar Program Director: Prof. Nicholas C. Revelos**

In November of 1999, Chanti Prattipati died of carbon monoxide poisoning in a Berkeley, California apartment. The day after her death, a local newspaper reported, “Like any other immigrant, [Chanti Prattipati] too came to America with a dream. The 17-year-old wanted to have the best of college education and a professional life.”<sup>1</sup> In the months following Chanti’s death, it became devastatingly apparent that young Chanti did not come to America “like any other immigrant.” Chanti was a victim of sexual trafficking.

California real estate millionaire, Lakireddy Bali Reddy, arranged a scheme whereby Chanti and her 15-year-old sister were illegally smuggled into the United States.<sup>2</sup> Bali Reddy, according to a federal court affidavit, “bought” Chanti and her sister from their parents in a small Indian village when they were quite young.<sup>3</sup> Once in the United States, Chanti and her sister lived in an apartment together with Bali Reddy and another 18-year-old Indian woman whom Bali Reddy also had purchased and smuggled into America four years earlier.<sup>4</sup> Only upon Chanti’s death were the conditions of her unhappy life examined by prosecutors.<sup>5</sup>

The allegations against Bali Reddy were many, including that he illegally imported workers into the United States for cheap labor for his restaurant and real estate business, and that he illegally imported immigrant women and girls for prostitution and other immoral purposes.<sup>6</sup> In his plea agreement, Bali Reddy admitted only that between 1986 and January of 2000, he arranged for the entry into the United States of between 25 and 99 Indian nationals using fraudulent visas.<sup>7</sup> He further admitted that he arranged to have Chanti and her sister, as well as the other young woman living with them, brought into the U.S. for illegal sexual purposes.<sup>8</sup> In all, Bali Reddy pled guilty to charges of transporting minors for illegal sexual purposes, conspiracy, and tax evasion.<sup>9</sup> As part of his plea agreement, Bali Reddy was sentenced in June of 2001 to 8 years in federal prison.<sup>10</sup> In addition, he was ordered to pay 2 million dollars in

restitution damages to Chanti's family, her younger sister, and the third victim.<sup>11</sup>

A little more than a year after Bali Reddy was sentenced to prison, nine Indian women filed a civil suit in a California court against Bali Reddy, seeking \$100 million in damages.<sup>12</sup> The suit, which is still pending, alleges that for more than a decade, Bali Reddy engaged in an international conspiracy "to exploit, to enslave, and to abuse Indian women for illegal and immoral, yet highly profitable purposes."<sup>13</sup> Thus, Bali Reddy is possibly guilty of much more than his plea agreement evidences. Whether the numbers of victims is 3 or 300, what is certain is that Bali Reddy illegally trafficked young, vulnerable Indian women and girls into the United States and kept them, essentially, as his sex slaves.

Throughout the world, millions of women and children are victims of crimes similar to those perpetrated by Bali Reddy. The United States Department of State estimates that globally, anywhere from 700,000 to four million men, women and children are "bought, sold, transported and held against their will in slave-like conditions" each year.<sup>14</sup> This modern day form of slavery is referred to as "trafficking in persons." People are trafficked for a variety of illicit purposes, ranging from prostitution and other sexual exploitation to forced labor in orchards and farms, sweatshops, factories, construction sites and other places of labor.<sup>15</sup> In addition, children are abducted and conscripted in government or rebel armies, women and children are sold into domestic servitude, and children are abducted and used as street beggars and camel jockeys.<sup>16</sup>

In this paper, I will focus on the trafficking of women and children<sup>1</sup> for the purpose of sexual exploitation. In Part I, I will discuss the problem of trafficking in women for sexual exploitation (sex trafficking), concentrating primarily on the actors involved and their motivations for participating in the trafficking network. Additionally, I will explain how a typical sex trafficking

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<sup>1</sup> Throughout this paper, I refer to "women" as the victims of trafficking. However, all analyses should be understood to apply to children victims of sexual trafficking as well.

transaction occurs. In Part II, I will discuss the U.S. legislative responses to the sex trafficking problem, primarily examining the Trafficking Victims Protection Act of 2000, enacted to provide a comprehensive means of combating trafficking by prosecuting offenders, protecting victims, and preventing trafficking. In Part III, I will analyze various concerns raised by the U.S. legislative response to the trafficking problem. I will identify some problem areas and make recommendations as to how to address those problems.

In particular, I assert that Congress should explicitly note in the Act that consent of the trafficked woman is not a defense to a violation of the Act. Congress also should enact some measures under the Act geared towards the education and punishment of the prostitution “johns”. I furthermore assert that the courts must broadly interpret the “force, fraud and coercion” elements of the Act’s sex trafficking provision, such that the subtle means of using psychological pressure are sufficient to support a conviction under the Act. Furthermore, courts should allow prosecutors to try sex traffickers under the involuntary servitude and forced labor statutes. Additionally, federal agencies must take seriously the obligation to plan and coordinate as necessary with state agencies, with one another, and with foreign agencies to effectively investigate and prosecute traffickers. I assert that federal agencies must broadly interpret the protection measures of the Act, such that the intent of Congress to generously protect victims is not stifled. Furthermore, Congress should create some protection measures even for women who were not subjected to force, fraud or coercion, such that these women will have the ability and incentive to cooperate with federal prosecutors in investigating and prosecuting traffickers. Lastly, the U.S. agencies must follow through, as appropriate, with the “preventative” measures enacted by Congress under the Act.

**I. The trafficking of women and children for the purpose of sexual exploitation:  
an overview of the problem**

The trafficking of women and children for sexual exploitation is a global phenomenon dependent upon actors from many different nations, cultures, and socio-economic strata. Because of the international scope of trafficking, it is a difficult crime to track.<sup>17</sup> Additionally, because sex trafficking implicates a wide variety of severe criminal activities, such as kidnapping, border smuggling, prostitution, assault and rape, and even tax evasion, it is purposefully veiled in a shroud of secrecy.<sup>18</sup> Therefore, only rough estimates are available concerning the number of women and children trafficked throughout the world and, specifically, into the United States. The U.S. State Department, in its Trafficking In Persons Report, published in June of 2002, cites a 1997 U.S. government study estimating that each year, some 50,000 women and children are trafficked into the United States for exploitative purposes.<sup>19</sup> This seems to be the estimate most often used in various governmental and non-governmental reports, and is probably the most accurate available.

Women are trafficked for a variety of sexually exploitative purposes. Sexual exploitation, according to one study, includes any acts “by which a person achieves sexual gratification, financial gain or advancement through the abuse or exploitation of a person’s sexuality by abrogating that person’s human right to dignity, equality, autonomy, and physical and mental well-being; i.e. trafficking, prostitution tourism, mail-order-bride trade, pornography, stripping, battering, incest, rape and sexual harassment.”<sup>20</sup> Thus, some victims of sex trafficking may be forced to engage in prostitution, while others may be required “only” to dance topless or nude.<sup>21</sup> Still others, like Chanti Prattipati, are forced to submit to the sexual advances of their captors.

### **A. The women and children trafficked for sexual exploitation**

Across the board, the common characteristic of trafficked women is that they are economically deprived.<sup>22</sup> However, beyond that, there are a variety of reasons why a particular woman or child becomes a victim of trafficking. Before addressing some of the more prevalent factors leading to trafficking, it is worthwhile to distinguish between two classes of trafficking victims: those who are trafficked as a result of outright force, fraud or coercion (non-consenting victims), and those who, at least initially, consent to being trafficked.

#### *1) Non-consenting victims*

As with Chanti Prattipati, countless girls and women are sold into captivity by their families, who themselves are living in destitution.<sup>23</sup> This practice provides destitute families with immediate funds, and simultaneously alleviates their dowry burden and results in one less mouth to feed.<sup>24</sup> Other girls and women are not sold by their parents, but rather are kidnapped from their parents and sold, like any other commodity, to traffickers.<sup>25</sup> Once sold by their parents or kidnapers, these girls and women, like Chanti, may end up in forced prostitution or other positions of sexual exploitation in their home countries or abroad.<sup>26</sup>

Moreover, thousands of young women from economically deprived communities are lured into the sex industry through deception, typically involving false promises of legitimate employment or education.<sup>27</sup> For example, Rosa, a 20-year-old woman who worked in a tortilla factory in Veracruz, Mexico, was approached in 1998 by a woman representing the Cadena family, well-known local businessmen.<sup>28</sup> Rosa was told that the Cadena family needed waitresses for their successful Florida restaurant, and that if Rosa would work well, she could easily earn over \$400 a month and pay back a \$2,000 smuggling fee in no time. Rosa eagerly accepted the opportunity. Not until she was in Houston, with no money, no family, and no real

understanding of her surroundings, was she told that she would be working not as a waitress, but as a prostitute. Rosa was forced to have sex with numerous men on a daily basis.

Statistics reflecting the precise number of women who are tricked into becoming victims of sex trafficking are unavailable. What is certain is that with the fall of communism, the numbers of such victims is dramatically on the rise.<sup>29</sup> Thousands of young women and girls from former Eastern Bloc nations, eager to escape their home countries, willingly agree to leave for the United States, relying on nothing more than illusory promises made in informal ads and by smooth-talking local trafficking agents.<sup>30</sup> Only once in the U.S. do they discover that they have been sold into some form of sexual servitude.

## *2) Victims who initially consented to being trafficking*

Runghapha Soirahong wanted out Thailand.<sup>31</sup> She was desperate enough that she consented to sell herself to a brothel and sleep with 380 men in exchange for an airline ticket and travel documents gaining her entry into the U.S. As Runghapha tells it, only on the airplane were the true terms of the bargain revealed. “In Thailand, I talk about 380 customer”, Soirahong, 33, told a federal court jury. “But when I sit in airplane, he tell me, you know, like [I was] sold for \$40,000.”<sup>32</sup> Paying this sum would require sleeping with 1,000 men. For almost a year, Soirahong traveled the Asian brothel circuit, staying for minimal amounts of time in various brothels in New York, Chicago, Atlanta, Los Angeles, Miami and Washington, D.C.<sup>33</sup>

Soirahong is a member of large class of trafficking victims comprised of women who initially consent to being trafficked for sexually exploitative purposes, yet their consent is premised upon misrepresentations regarding the nature and scope of their subsequent obligations.<sup>34</sup> Essentially, these women are defrauded into consenting to being trafficked. Once in the U.S., a variety of factors prevent the women from fleeing. For instance, the traffickers

may have confiscated the women's passports and travel documents, and they may be using psychological and/or physical means of abusing and restraining the women.<sup>35</sup> Additionally, the women perhaps do not speak English and they may not know anyone in the U.S. outside the trafficking network.<sup>36</sup> Furthermore, the women may fear seeking help as they are afraid of being criminally sanctioned.<sup>37</sup> Although precise statistics are unavailable, a survey of existing information indicates that it is common for consenting victims to be subjected to more demanding and costlier terms and more restrictive and less humane conditions than agreed upon.<sup>38</sup>

Additionally, some women consent to being trafficked, but change their minds once in America.<sup>39</sup> These victims were not necessarily deceived as to the scope of their subsequent obligations—they simply discover that they cannot stomach the nature of degradation involved, and they want out. Their traffickers, however, do not let the women leave. Like other victims, they are forced, physically or psychologically, to remain in the trafficking network at least until they have paid off their obligations.<sup>40</sup>

It is also important to note that sex traffickers often engage in psychological abuse to obtain, in the first place, the consent of potential victims.<sup>41</sup> Traffickers seek out desperate women who have parents, siblings and children to feed, and pressure these women into consenting by promising the women huge sums of money to send home.<sup>42</sup> The line between consent freely given and consent forcibly obtained through psychological abuse can be very difficult to distinguish.

Despite the foregoing abuses, it must be noted that some women do freely and voluntarily consent, without the presence of force or fraud, to being trafficked for sexual exploitation, and are not subsequently held against their wishes through the use of force or deception.<sup>43</sup> If the

woman involved truly consented to being trafficked without the use of physical or psychological force, and is not subsequently held against her will, she has not been “trafficked” within the meaning of this paper. “Those who voluntarily migrate for the purpose of voluntary sex-work...without having been forced, defrauded, or otherwise coerced, should not be considered as having been trafficked’.... However, those women [who] are coerced or tricked into working under violent, subservient labor conditions...fall into that category of trafficked victims.”<sup>44</sup>

### **B. The traffickers responsible for the trafficking of women and children**

In the U.S., organized crime rings generally run trafficking schemes.<sup>45</sup> Although some trafficking rings are comprised of only a few individuals, such as Bali Reddy’s, which consisted mainly of himself and a few accomplices, others rings are large, well-organized and incredibly powerful international crime organizations.<sup>46</sup> These organizations are capable of acquiring numerous victims from impoverished third-world nations, transporting them into the U.S., and holding them captive—all while evading law enforcement personnel. One study notes that at least seven crime “families” in Thailand recruit and smuggle Asian women into the U.S. and throughout the world for sexual exploitation.<sup>47</sup> Another study notes that Russian organized crime syndicates are heavily involved in the trafficking of women from Russia and Eastern Europe into the U.S. and throughout the world. According to this study, “The [Russian organized crime] syndicates conduct the most sophisticated criminal operations ever seen in the United States, based on their access to expertise in computer technology, encryption techniques and money-laundering facilities that process hundreds of millions of dollars. It obtains money and power through criminal conduct, and then infiltrates our legitimate society.”<sup>48</sup> International crime rings involved with sex trafficking are typically involved in a wide range of related criminal activities, such as extortion, racketeering, money laundering, bribery of public officials,

drug use, document forgery, and gambling.<sup>49</sup>

Organized crime rings involved in sex trafficking generally work with a network of participating individuals. In addition to the trafficked women, this network includes agents in source countries who procure trafficking victims. These agents may kidnap victims, purchase them, lure them through trickery, or recruit them into consensually selling themselves in exchange for a ticket to America.<sup>50</sup> Additionally, this network may encompass corrupt police and government officials both in origin countries and in the U.S., who, in exchange for a pay-off in fees or sexual services, look the other way.<sup>51</sup> Document forgers, who create the necessary travel documents, are also an important component of this network.<sup>52</sup> The network also may involve corrupt employees at U.S. embassies or consulates abroad who provide U.S. government travel documents.<sup>53</sup> Border smugglers, who, for a fee, will transport an individual across the border, also may be involved in the trafficking process.<sup>54</sup> At the end of the trafficking chain are strip-clubs or brothels. The traffickers will sometimes sell a woman to an individual brothel or club for a fee; other times, the traffickers will “rent” the women to a variety of brothels or clubs for a certain period.<sup>55</sup> Some organized crime rings exert considerable control over a “circuit” of brothels or strip-clubs.<sup>56</sup>

If poverty is the main reason most women and children are brought into the trafficking network, profits are the motivation driving the traffickers—“profits ... is at the roots of the whole business.”<sup>57</sup> Because demand for sexual encounters with young women in destination countries is abominably high, trafficking in women for sexual exploitation is an incredibly profitable industry.<sup>58</sup> It is estimated that internationally, the trade in trafficking women and children is a seven billion dollar a year industry.<sup>59</sup> It is the third most profitable business for organized crime, exceeded only by the trade in drugs and arms.<sup>60</sup> Unlike drugs, however,

women are a reusable resource; so one smuggling transaction can result in countless, subsequent profit-earning sexual encounters.<sup>61</sup> Furthermore, one trafficker can sell a woman to another trafficker or to a brothel for a large lump sum, making a quick profit without holding on to the incriminating evidence—the woman.<sup>62</sup>

In addition to the generally immense, tax-free profits, trafficking in persons is a relatively risk-free criminal activity. Historically, and still today, most countries have either no anti-trafficking laws, or weak laws that are barely enforced.<sup>63</sup> The lack of meaningful legislation and enforcement has allowed the trade in trafficked persons to flourish to its current level. To illustrate: prior to the passing of the Trafficking Victims Protection Act of 2000, the statutory maximum sentence in the U.S. for the sale of a human into involuntary servitude was only 10 years; whereas the statutory maximum for dealing 10 grams of LSD is life in prison.<sup>64</sup> High, untaxed profits combined with low risks make trafficking an attractive activity to both small and large-scale criminal organizations.

### **C. Those who pay for the services of trafficked women and children—the “johns”**

Many brothels housing trafficked women and children cater specifically to men of a certain ethnic group.<sup>65</sup> For instance, Russian immigrants are interested in sexual encounters with Russian women; Asian men are interested in Asian women.<sup>66</sup> Thus, as immigrant communities in the U.S. expand, so does the desire for, and trade in, trafficked women.

That being said, johns come in all ages, all ethnicities and from all socio-economic strata.<sup>67</sup> They are married and unmarried, military and civilian, educated and non-educated.<sup>68</sup> Many johns are not looking for women in their own ethnic group, but rather are interested in going outside their ethnicity, searching for the “exotic”. One expert notes: “Clearly, when it comes to the sex industry, race matters to men. Difference matters. And what this says, I believe, is that

trafficking is ... very much about accessing a specific sort of woman. 'Exotic' women, 'different' women, and surprise surprise, women from the global 'south' who are seen (and I stress seen) to be more compliant, less powerful, easier to use.”<sup>69</sup>

There is not a lot, other than one's personal morals, to hinder a man interested in encounters with trafficked women from seeking them out. The penalties for those johns who are apprehended by police typically are not severe. For instance, in many U.S. cities, the maximum penalty for patronizing a prostitute is up to five year in prisons, but the usual punishment handed down upon conviction is a \$500 fine and, perhaps, mandatory attendance at an STD awareness class.<sup>70</sup> Oftentimes, the johns simply “go into court, plea out, pay a fine and drive home.”<sup>71</sup> The low risks attached to purchasing a woman for a sexual encounter do nothing to mitigate the already high demand for trafficked women. These factors have contributed to the flourishing of the trade in trafficked women and children.

#### **D. The trafficking transaction: how it work and what happens to the actors**

The typical trafficking transaction starts in the origin country, either with or without consent of the women to be trafficked.<sup>72</sup> Once the victim is procured, the next step is to ensure her entry into the U.S. This is commonly accomplished through the use of a valid tourist visa that the women subsequently overstay.<sup>73</sup> Asian traffickers often use re-use valid U.S. passports with genuine visas by substituting the photo for that of the recruited woman.<sup>74</sup> Some women are physically smuggled across the Mexican or Canadian borders, or through airport security during a stopover on an international flight transiting the U.S.<sup>75</sup>

Once in the United States, the victims are delivered to their trafficking “pimps” who generally have financed the transaction.<sup>76</sup> The women are informed that they have been trafficked for sexual exploitation, and that to acquire their freedom, they must work to pay off a

certain sum of money (a highly inflated trafficking fee), ranging anywhere from \$10,000 to \$40,000.<sup>77</sup> Until they pay off their trafficking debt, the victims are held in conditions of captivity. These conditions are vividly described in a report produced by the Central Intelligence Agency:

The women's passports or travel documents are taken, their movements are restricted, and their wages are withheld until their smuggling debt is repaid. And because traffickers can also re-sell the women's debts to other traffickers or employers, victims are often caught in a cycle of perpetual debt bondage. Women are prevented from leaving by security guards, violence, threats, debt bondage, and/ or retention of their documents. The traffickers may maintain control through isolation; in many cases, the women must live and work at the location. The women may also be denied outside medical assistance when needed. Threats of physical abuse against themselves and/ or their families are also common in order to force cooperation. Traffickers also play upon the women's fears of arrest and deportation. In additional cases, trafficking victims suffer extreme physical and mental abuse, including rape, imprisonment, forced abortions, and physical brutality.<sup>78</sup>

Many traffickers insist upon moving the women frequently from one brothel or strip-club to another, sometimes within one city; other times throughout the nation.<sup>79</sup> This practice both diminishes the likelihood that law enforcement personnel will suspect criminal activities or be able to investigate adequately, and ensures that the victims will not succeed in forming attachments with customers or in gaining a sense of comfort with their surroundings, such that they will attempt an escape.<sup>80</sup>

What happens to women once they have been brought to America and forced into sexual exploitation depends upon a variety of circumstances. Certainly, some women fail to make it out of the industry alive—there are documented cases of trafficking victims killed by their traffickers for failure to cooperate.<sup>81</sup> Many victims serve their time in debt bondage and eventually purchase their freedom. These women sometimes remain in the United States and subsequently enter the legitimate work force. One woman familiar with the sex industry in the U.S. has noted that she knows many women who were smuggled into the United States, worked in brothels and strip-clubs, and subsequently “moved on to become very good citizens.”<sup>82</sup> Other women remain in the sex industry long after having worked enough to pay off their debt, either continuing as prostitutes or becoming traffickers themselves.<sup>83</sup>

Typically, women who were picked up by U.S. law enforcement personnel and who were not material witnesses in prosecutions against traffickers were held in government detentions centers or jails, and eventually deported to their home countries.<sup>84</sup> Even those who were needed as material witness were generally held in local jails.<sup>85</sup> One study describes a case in which Asian women who had been trafficked for prostitution and were being held captive until their debts were paid off were all deported immediately upon arrest, and thus before the case against their traffickers went to court.<sup>86</sup> Once back in their home countries, the women are often subjected to social humiliation or treated as criminals, such that they are worse off after returning from the U.S. than they were before departing to the U.S.<sup>87</sup>

As for the traffickers, the majority successfully evades arrest and prosecution by law enforcement personnel.<sup>88</sup> According to one study, uncovering, investigating and prosecuting sex trafficking cases is a vast undertaking requiring the coordination of many agencies at both the state and federal level.<sup>89</sup> This coordination requires inter-agency planning and information

sharing, neither of which occurs satisfactorily.<sup>90</sup> Add to this the intensive caseloads of personnel, and a picture begins to emerge explaining why the crime of sex trafficking has not been investigated nearly enough to halt its growth. “Even within the Department of Justice, information is not always shared among the concerned offices. Moreover, case information is often kept at the field offices. Many FBI agents say it is difficult, if not impossible, to formally write-up the cases and lessons learned once they are completed given their demanding workload, inadequate staffing, and pressing new cases. Furthermore, there is no one central repository of all the trafficking in women and children cases within the United States.”<sup>91</sup>

Additionally, because sex trafficking is a crime with international aspects, US authorities must sometimes seek cooperation from foreign law enforcement personnel when investigating and prosecuting sex traffickers. The requisite cooperation of foreign personnel is not always forthcoming, both because of extensive corruption in some foreign governmental agencies, and because of the dearth of information sharing among the agencies within any specific foreign nation, and among agencies of various nations.<sup>92</sup> Thus, many investigations are either not begun or are not effectively carried through.

A survey of sex trafficking prosecutions in the U.S. shows that those traffickers who are prosecuted typically receive a prison sentence ranging from 2 to 8 years and must pay some restitution, ranging from 1 to 4.5 million dollars.<sup>93</sup>

## **II. The U.S. legislative response: the Trafficking Victims Protection Act of 2000**

In October of 2000, the United States Congress passed the Trafficking Victims Protection Act of 2000 (the Act).<sup>94</sup> Prior to the passage of the Act, a variety of criminal and immigration laws were used to prosecute alleged sex traffickers.<sup>95</sup> The Mann Act, specifically under 18 U.S.C. §§ 2421-2423, was the principal criminal law used to prosecute traffickers.<sup>96</sup> The Mann

Act prohibits knowingly transporting another individual “with the intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense.”<sup>97</sup> The Mann Act also makes it a crime to persuade, induce, entice, or coerce any individual to travel in interstate or foreign commerce to engage in prostitution or any other criminal sexual activity.<sup>98</sup> Violations of the Mann Act are punishable by a fine and/or up to 10 years in prison if the individual who was transported or induced to travel for prostitution is over 18 years of age, and up to 15 years if the individual is under 18.<sup>99</sup> Consent of the transported individual is *not* a defense to a Mann Act violation.<sup>100</sup> Various Title 8 sections, such as those prohibiting the recruiting, smuggling, and transporting of aliens<sup>101</sup> or the harboring of aliens for prostitution,<sup>102</sup> were the principal immigration laws used to prosecute traffickers. Most traffickers who have been prosecuted successfully under these Acts have received prison sentences ranging from 2 to 8 years.<sup>103</sup>

Congress declared in the “purposes and findings” section of the Trafficking Victims Protection Act that “[e]xisting legislation and law enforcement...are inadequate to deter trafficking and bring traffickers to justice.... No comprehensive law exists in the United States that penalizes the range of offenses involved in the trafficking scheme. Instead, even the most brutal instances of trafficking in the sex industry are often punished under laws that also apply to lesser offenses, so that traffickers typically escape deserved punishment.”<sup>104</sup> To remedy this situation, Congress passed the Act, intending it to be a comprehensive measure to effectively prosecute traffickers, protect victims, and prevent further trafficking.<sup>2</sup>

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<sup>2</sup> The Act also contains provisions geared towards combating trafficking in persons for purposes of peonage, slavery, involuntary servitude and forced labor; however, I will concentrate on the provisions relevant to trafficking for sexual exploitation.

One study notes that Congress was forced to distinguish trafficking for sexual exploitation from other forms of trafficking in the Act’s provisions because under U.S. law, prostitution, due to its illegality, is not recognized as a form of labor. Therefore, trafficking for prostitution cannot fall under involuntary servitude or forced labor statutes.

Under the Act, the phrase “*severe forms of trafficking in persons*” is used to define the trafficking instances to which the enforcement provisions of the Act apply.<sup>105</sup> Severe forms of trafficking is defined 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...”<sup>106</sup> “Sex trafficking” is further defined as: “...the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”<sup>107</sup> The Act defines a “commercial sex act” as “...any sex act on account of which anything of value is given to or received by any person.”<sup>108</sup> Thus, the Act broadly applies to instances where a person is recruited, harbored, transported, supplied or obtained for the purposes of inducing that person to engage in a sex act involving the exchange of something of value. The person induced must have been under 18 at the time, or force, fraud or coercion must have been used in inducing the sex act.

The terms “fraud” and “force” are not specifically defined in the Act. However, under the “purposes and findings” section, Congress provided that the force used in sex trafficking “includes rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion.”<sup>109</sup> Although this provision may not provide a legally binding definition of “force”, it evidences that Congress intended the term to include not only the use of physical means, but also the use of subtle, psychological means of inducing a person to

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See Melissa Ditmore, *Contemporary anti-trafficking legislation in the United States*, at: [<http://www.nswp.org/pdf/NSWPTVPA.PDF>].

See also Neal Kumar Katyal, *Men who Own Women: A Thirteenth Amendment Critique of Forced Prostitution*, 103 YLJ 791 (December 1993), wherein the author argues that forced prostitution is a modern form of slavery that should be punishable under involuntary servitude statutes (such as 18 U.S.C. § 1584), citing *U.S. v. Harris*, 534 F.2d 207, 1976. In *U.S. v. Harris*, the U.S. Court of Appeals for the Tenth Circuit upheld an involuntary servitude conviction under 18 U.S.C. § 1584 against defendants who forced a woman, against her will, to prostitute herself.

engage in a commercial sex act.<sup>3</sup>

“Coercion” is defined by the Act as: “(A) threats of serious harm to or physical restraint against any person; (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (C) the abuse or threatened abuse of the legal process.”<sup>110</sup> The Act, therefore, expressly applies to instances where a trafficker induces a woman to engage in a commercial sex act by using threats or psychological pressure to produce in the woman a fear of *legal* sanctions or of *physical* harm or restraint against herself or against someone else (such as her family members).

#### **A. “Prosecution” provisions of the Trafficking Victims Protection Act**

The 2000 Act creates new provisions strengthening the applicable penalties for perpetrators of *severe* forms of trafficking. Whereas, under the Mann Act, such offenses are punishable by not more than ten years imprisonment, or 15-year imprisonment if the victim is under 18, the Act creates new criminal offenses under Title 18 of the United States Code, punishable by up to life in prison.<sup>111</sup> The most significant new offense created by the Act in the realm of sex trafficking is 18 U.S.C. § 1591, which provides that anyone who knowingly perpetrates an act of severe sex trafficking (as defined above) in or affecting interstate commerce, or who benefits, financially or through receiving something of value, from participation in a venture knowing it has engaged in severe sex trafficking, shall be punished.<sup>112</sup>

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<sup>3</sup> Congress, however, also provides in the preamble of the Act that the “*involuntary servitude* statutes are intended to reach cases in which persons are held in a condition of servitude through *nonviolent* [i.e., psychological] coercion.” Act, section 102(b)(13), 22U.S.C. § 7101(b)(13) (emphasis added). Thus, Congress specifically mentions that involuntary servitude may occur without the use of physical or legal force. Congress failed to make an explicit mention of this sort concerning sex trafficking and forced sexual exploitation.

Congress wrote this in response to the U.S. Supreme Court opinion in *U.S. v. Kozminski*, 487 U.S. 931 (1988), in which the Court held that 18 U.S.C. § 1584 (prohibiting involuntary servitude) should be narrowly interpreted, “absent a definition of involuntary servitude by Congress, 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.” Act, section 102(b)(13), 22U.S.C. § 7101(b)(13) (emphasis added).

A violation of 18 U.S.C. § 1591 can be punished by any term of years up to life imprisonment and/or a fine if the offense was effectuated by fraud, force or coercion (regardless of the age of the transported person) or if the transported person was not yet 14 (regardless whether force, fraud or coercion was used). If force, fraud or coercion was not used, and the transported person is at least 14 but under 18, the offense is punishable by a maximum of 20 years imprisonment and/or a fine.<sup>113</sup> Thus, if the transported victim is at least 18 years of age, and neither force, fraud nor coercion was used to induce the performance of a commercial sex act, the trafficking incident is not punishable under the Act.

The Act also requires a court to order the defendant to pay the victim restitution equal to the “full amount of the victim’s losses.” The Act gives this term the same meaning as under 18 U.S.C. § 2259: restitution for medical services relating to physical, psychiatric or psychological care; physical and occupational therapy or rehabilitation; necessary transportation, temporary housing, and child care expenses; lost income; attorneys’ fees, as well as other costs incurred; and any other losses suffered by the victim as a proximate result of the offense.<sup>114</sup> The “lost income” provision is probably not significant in most *sex* trafficking cases, as prostitution is illegal, and the victim cannot claim as “income” money derived from illegal activities.<sup>115</sup> However, the Act further stipulates that in addition to the meanings provided under 18 U.S.C. § 2259, the term “full amount of the victim’s losses” also includes the “value to the defendant of the victim’s services.”<sup>116</sup> It is unclear whether this provision would allow a victim of severe sex trafficking to recover, as a form of lost income, money the defendant earned directly through prostituting the victim.<sup>117</sup>

To aid in the prosecution of sex traffickers, the Act encourages victims to testify against their traffickers by making witnesses (including victims) to a proceeding for any violation of the Act

eligible for the witness protection program, regulated by the Witness Protection Act.<sup>118</sup> The witness protection program provides protection to the witness if a violent crime is likely to be committed against the witness on account of the proceeding.<sup>119</sup> Protection under the witness protection program covers financial assistance such as housing, living expenses, employment, and “other services necessary to assist the person in becoming self-sustaining.”<sup>120</sup> Protection also includes ensuring the confidentiality of the witness’s identity in consideration for that person’s testimony.<sup>121</sup>

#### **B. “Victim protection” provisions of the Trafficking Victims Protection Act**

Prior to the passage of the Act, when a trafficking ring in the United States was uncovered, the women involved generally were imprisoned and then deported.<sup>122</sup> Some were subject to criminal sanctions for violating immigration or anti-prostitution laws.<sup>123</sup> This response generated unfavorable consequences. Because victims rightly feared being criminally sanctioned and imprisoned, they were afraid to report even egregious abuses to authorities.<sup>124</sup> This, in turn, allowed traffickers to act with a certain amount of impunity: no matter what abuses they committed, their crimes would not be reported. Furthermore, once in prison and facing deportation, the women had very little incentive to cooperate with U.S. prosecutors, and of course, once deported, their cooperation is near impossible to attain. Because prosecutors are unable to build, or even uncover, a good case without the cooperation of the women involved, investigations were often not begun or carried through, or traffickers escaped with minimal penalties.<sup>125</sup>

The Act aimed to rectify this situation by ensuring some protections to victims of severe forms of trafficking. Two such protections were already described in the section above: the restitution measure applicable to victims of severe trafficking, and the provision providing that

witnesses, including victims, to a proceeding for any violation of the Act may be eligible for the witness protection program. The Act further provides that victims of severe trafficking, while in custody of the federal government, shall, to the extent practicable, not be detained in “inappropriate” facilities (such as jails) and shall receive necessary medical care and other assistance. Additionally, such victims shall be provided protection against further harm or recapture by the trafficker, including protecting the victim’s family members from threats and reprisals, and maintaining the confidentiality of the victim’s identity. Victims of severe trafficking shall have access to information about their rights and to translation services.<sup>126</sup>

Additionally, the Act provides that certain alien victims of severe trafficking may be entitled to receive Federal and State program benefits and services to the same extent as an alien admitted to the U.S. as a refugee.<sup>127</sup> The victims eligible to receive these benefits include alien victims who were under the age of 18 at the time of the offense (thus, force, fraud or coercion were not necessary elements) and who have not yet attained the age of 18.<sup>128</sup> Also eligible are alien victims of severe trafficking who are over 18 but have been “certified” by the Secretary of Health and Human Services in consultation with the U.S. Attorney General (“AG”).<sup>129</sup> A certification is granted provided the victim is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking.<sup>130</sup> Additionally, the victim must have applied for, and not been denied, a T-visa<sup>131</sup> (discussed below), or must be recognized as someone whose continued presence in the U.S. is, in the estimation of the AG, necessary for the prosecution of traffickers.<sup>132</sup> A certification of a victim who has not applied for the T-visa, but whose presence is determined necessary for the prosecution of traffickers, is valid for as long as the attorney general deems necessary.<sup>133</sup>

Finally, the Act creates a new visa category under 8 U.S.C. § 1101(T), the T-visa, for victims

of severe trafficking and their family members.<sup>134</sup> Up to 5,000 T-visas may be issued in any fiscal year (excluding T-visas issued to family members).<sup>135</sup> To be eligible for a T-visa, the AG must have determined that the person is a victim of a severe form of trafficking, is present in the U.S. because of such trafficking, has complied with reasonable requests for assistance in the investigation or prosecution of acts of trafficking or is under 15 years of age, and would suffer extreme hardship involving unusual and severe harm upon removal.<sup>136</sup> The spouse, children and parents of such individual also may be eligible for such visas if the AG deems it necessary.<sup>137</sup> If there is “substantial reason to believe that the alien [applying for the T-visa] has committed an act of a severe form of trafficking in persons,” that alien shall not be granted a T-visa.<sup>138</sup> Aliens who have a T-visa may be granted permanent status after 3 years of continued presence in the U.S. To receive permanent status, the AG must have determined that the alien has been a person of “good moral character,” has assisted with all reasonable investigation and prosecution requests, and would suffer extreme hardship upon removal from the U.S.<sup>139</sup>

### **C. “Prevention of trafficking” provisions of the Trafficking Victims Protection Act**

To prevent further trafficking, the Act encourages international initiatives to enhance the economic alternatives for potential victims of trafficking, including micro-credit lending programs, job training and counseling programs, educational programs for victims and potential victims, and programs that will help to accelerate the participation of women in decision-making roles in source countries.<sup>140</sup> Additionally, the Act requires certain U.S. governmental agencies to establish programs that will increase public awareness in source countries as to the “dangers of trafficking and the protections that are available for victims of trafficking.”<sup>141</sup> Furthermore, to assist victims of trafficking upon repatriation in their home countries, and thereby prevent re-trafficking, the Act requires that the U.S. agencies establish programs and initiatives in foreign

countries “to assist in the safe integration, reintegration, or resettlement, as appropriate, of victims of trafficking” upon repatriation in their home countries.<sup>142</sup>

To effectively combat trafficking, Congress has provided for the establishment of an “interagency task force to monitor and combat trafficking,” and for an office within the U.S. Department of State to provide support for the task force, the “Office to Monitor and Combat Trafficking in Persons.”<sup>143</sup> The task force is charged with coordinating the implementation of the act; evaluating the progress of the U.S. and other countries in preventing trafficking, protecting victims of trafficking and prosecuting traffickers; collecting and organizing data regarding domestic and international trafficking; facilitating cooperation among origin, transit and destination countries in the prevention and prosecution of trafficking and reintegration of victims; examining the role of sex tourism in the exploitation of women and children; and engaging in consultation with governmental and non-governmental organizations to advance the purposes of the Act.<sup>144</sup>

Further, the Act requires the Secretary of State to submit an annual report to Congress detailing the status of severe forms of trafficking in source, transit and destination countries.<sup>145</sup> The report must provide separate lists of those countries whose governments fully comply with the Act’s “minimum standards for the elimination of trafficking” (“Tier 1” countries); whose governments do not fully comply with the minimum standards but are making serious efforts to do so (“Tier 2” countries); and whose governments do not comply with the minimum standards and are not making significant efforts to do so (“Tier 3” countries).<sup>146</sup> The “minimum standards” applicable to governments consist of four standards.<sup>147</sup> The governments should: (1) prohibit severe forms of trafficking and punish acts of trafficking; (2) prescribe an appropriate punishment for sex trafficking involving aggravated circumstances such as force, fraud,

coercion, rape, kidnapping, or death, or that are directed against a minor; (3) prescribe punishment levels for severe forms of trafficking that are sufficiently stringent to deter the offense; and (4) make “serious and sustained” efforts to eliminate severe forms of trafficking in persons.<sup>148</sup>

In determining whether a specific government meets the minimum standards, several factors should be considered, including whether the government vigorously investigates and prosecutes trafficking acts that take place in its territory; protects and assists victims of severe forms of trafficking and refrains from penalizing them for unlawful acts committed as a direct result of being trafficked; adopts preventive measures to deter severe forms of trafficking; cooperates with other governments in investigating and prosecuting severe forms of trafficking; and extradites persons charged with severe forms of trafficking.<sup>149</sup> Additionally, the Secretary of State should consider whether the law enforcement agencies of the country effectively respond to the problem of trafficking, and whether the country investigates and prosecutes public officials who participate in or facilitate severe forms of trafficking.<sup>150</sup>

The Act provides for assistance to foreign nations to meet the minimum standards for the elimination of trafficking.<sup>151</sup> However, the Act also stipulates that upon a determination made by the President, the U.S. will not provide “nonhumanitarian, nontrade-related foreign assistance” to the government of any country that does not meet the minimum standards and is not making significant efforts to do so for the subsequent fiscal year after the determination is made until such government complies with the minimum standards or makes significant efforts to do so.<sup>152</sup> Thus, the Act provides a means of punishing foreign governments that do not make some minimum efforts to combat international trafficking in women and children for sexual exploitation.

### **III. Areas of concern raised by the U.S. response and recommendations**

#### **A. Prosecution of traffickers**

##### *1) Possible gaps in the application of the Act*

Many investigations under the Act are currently underway, and some plea bargains have been reached. However, to date, no sex trafficking proceeding under the Act has been brought to conclusion through trial in a court of law<sup>153</sup>. Therefore, a court has not interpreted the provisions of the Act relevant to the prosecution of sex traffickers.<sup>154</sup> Some concerns exist as to how provisions of the Act will be applied and interpreted. For instance, the act does not define the term “sex act”—presumably, it includes acts that involve some physical contact other than intercourse. However, it is unclear whether it includes certain forms of sexual exploitation, such as nude dancing, or dancing if the trafficked woman is forced to dance in just a thong and pasties. By not providing a definition of “sex act”, Congress risks a narrow interpretation and application of the Act by prosecutors and courts. A narrow interpretation might defeat the act’s purpose of providing a comprehensive means of combating sex trafficking. To avoid this, the term “sex act” must be given a broad application.

Additionally, the enforcement provisions of the act apply to cases where a “commercial sex act” has been required of the trafficked victim.<sup>155</sup> Chanti Prattipati was not subjected to commercial sex acts in the traditional sense, as she was not forced to engage in a sex act for which her captor, Bali Reddy, received payment. However, she was forced to provide sex in exchange for room and board. It is to be hoped that prosecutors and courts include within the definition of “commercial sex act” the types of transactions to which Chanti Prattipati was subjected. Otherwise, the Act will fail to encompass within its jurisdiction a host of victims and

traffickers.

The new sex trafficking criminal law created under the Trafficking Victims Protection Act, 18 U.S.C. § 1591, targets “severe” forms of sex trafficking.<sup>156</sup> Unless force, fraud or coercion have been used, or unless the victims is under 18, the Act does not apply. This is problematic in that it provides alleged traffickers a ready defense—traffickers may plead that the victims (if they are 18 or over) freely consented, with no elements of force, fraud or coercion, to being trafficked for the purpose of engaging in commercial sex acts, and the onus will be on the prosecution to prove otherwise. This is interesting to note, as traditionally under both international and U.S. law, consent has not been a defense to transporting women for prostitution.<sup>157</sup> Under the Mann Act, consent of the women transported is not a defense to a violation.<sup>158</sup> Therefore, in cases of sex trafficking where the victim is 18 or over and force, fraud or coercion are not present or cannot be proven, the general purpose Mann Act with its lower maximum sentencing remains the primary prosecution tool available.

The Act is generating much publicity, and is the object of considerable resources and efforts of federal agencies. Because of this, and because of the higher sentences permissible under the Act and the Act’s various protection measures, it is to be hoped that 18 U.S.C. § 1591 will be widely applicable and effectively used to combat sex trafficking.<sup>4</sup> As explained above, some women are clearly deceived into being trafficked for purposes of sexual exploitation.<sup>159</sup> The applicability of the Act to such cases generally is not questioned. However, in some sex trafficking cases, the presence of force, fraud or coercion is not easily discernable or provable, especially where the force involved is of a psychological nature. It is these cases that will

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<sup>4</sup> Additionally, in some instances, the Act’s provisions may be applied more broadly than the Mann Act. Under 18 U.S.C. § 1591, the US may prosecute not only those who traffic a victim, but also those who knowingly benefit from participating in a venture that has engaged in severe sex trafficking. Therefore, it is hoped that 18 U.S.C. § 1591 will be a broadly applicable and widely used prosecution measure.

ultimately decide whether 18 U.S.C. § 1591 will, as intended by Congress, supplant the Mann Act as the dominant means of prosecuting sex traffickers and provide a means of successfully combating sex trafficking.

Unfortunately, it is far from clear that the Act generally will apply to cases where the women involved initially consented to being trafficked, but discovered once in America that the terms and conditions of their service are far from what was agreed upon, or that they no longer are interested in engaging in commercial sex acts. Theoretically, such cases would be prosecutable under the Act. Depending upon the facts of the case, the prosecution might argue that although the particular victim originally consented, she now wants out and her trafficker is using force, fraud or coercion to prevent her from leaving and to induce her into continuing to perform commercial sex acts. However, once a victim has consented to engage in sex trafficking, it may be difficult to prove, given the high evidentiary standards required in sex trafficking cases,<sup>160</sup> that now, force, fraud or coercion are being used to induce her to engage in sex acts in which, initially, she agreed to engage.

Alternately, the prosecution might argue, depending on the facts of the case, that the victim was fraudulently induced from the get-go into consenting to engage in commercial sex acts. However, fraud is a high-threshold claim to prove, and especially may be difficult to prove where the victim perhaps fears testifying, or where the trafficker standing trial in the U.S. is not necessarily the same individual who allegedly defrauded the women into consenting. In such cases, the prosecution would have to prove not only that fraud was used to induce the women to consent, but it would also have to show that the trafficker standing trial was aware of those fraudulent activities, because the Act makes punishable those who benefit from a venture *knowing* that it engaged in severe sex trafficking.<sup>161</sup>

To ensure that the Act does apply to such instances of sex trafficking, at the very least, courts must construe the terms “force, fraud and coercion” broadly. Especially the term “force” should be interpreted broadly (in the manner elaborated upon by Congress in the preamble to the Act)<sup>162</sup> so as to ensure that traffickers who are preventing women, through whatever means—subtle or overt, psychological or physical—from leaving their positions of sexual exploitation, are liable under the Act. Additionally, I would argue that courts should interpret the fact that an individual has trafficked another person for sexual exploitation as *prima facie* evidence that “force, fraud or coercion” was present. The burden should be on the trafficker to prove otherwise. This seems especially true considering the subtle means of psychological pressure traffickers use to secure consent.

Additionally, Congress should provide explicitly that for purposes of the *prosecution* provisions of the Act, if a trafficked woman is being made to engage in commercial sex acts against her will, her initial consent is irrelevant to a determination of liability under the Act. By failing to state explicitly that such consent is irrelevant, Congress risks the issue of consent becoming the pivotal question in sex trafficking cases under the Act, and not the issue of whether force, fraud or coercion have been used. Courts must not be allow “consent” to become a threshold barrier to a trafficking prosecution under the Act, or a ready-defense to an allegation of force, fraud or coercion. The issue of initial consent in such cases should be, if not wholly irrelevant, then significant only in determining the length of prison time to which the trafficker is sentenced, and not whether the trafficker is liable under the Act—such that those traffickers who outright deceived women into sexual exploitation would be subject generally to a more severe punishment than those who trafficked women with their initial consent, but used force, fraud or coercion nonetheless. In this manner, the Act would truly provide a “comprehensive” means,

under 18 U.S.C. § 1591, of combating trafficking in persons, rather than merely another tool to be used, in addition to the Mann Act, in the clearly egregious, minority cases of sex trafficking.<sup>5</sup>

Furthermore, courts should not hesitate to allow trafficking cases resulting in forced sexual exploitation, as opposed to forced manual labor, to be prosecuted under the forced servitude and forced labor statutes of Title 18 of the U.S. Code, specifically 18 U.S.C. § 1584 and 18 U.S.C. § 1590. These provisions emphasize the “involuntary” or “forced” nature of the servitude, as opposed to the presence of force, fraud or coercion in inducing the victims to engage in sex acts.<sup>163</sup> Additionally, Congress’ statements as to the Kozminski case and the sufficiency of *psychological* force in proving the involuntary aspect of the servitude (see footnote 3, page 16) more certainly apply to the involuntary servitude provisions than to 18 U.S.C. § 1591.<sup>164</sup> Thus, these provisions theoretically provide another means of prosecuting those cases in the “gray area” of sex trafficking, where the women initially consented but later wants out, and is held through either physical or psychological force. Prosecutors and courts should pursue this avenue of prosecution.

## 2) *The interplay between protection and prosecution*

Although it is understandable to deny women who have not been induced into performing commercial sex acts through the use of force, fraud or coercion the *full protection* measures of the Act, the denial of all protection measures raises some prosecutory concerns. As noted in Part I, victims who have consented to being trafficked are often deported immediately, even before the cases against their traffickers go to trial.<sup>165</sup> Unless these trafficked women are allowed to

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<sup>5</sup> A more aggressive approach would be to do away with the force, fraud or coercion requirement altogether, such that even in cases where the woman consented and does *not* subsequently want out of the situation, the trafficker would be liable under the Act. As mentioned in Part I, those cases do not fall within this paper’s definition of trafficking for sexual exploitation, and are better left to the Mann Act. The issue under consideration here is where the woman consents, but subsequently “wants out.” In such cases, the victim’s initial consent should be irrelevant to liability, and the courts should broadly interpret the “force, fraud or coercion” element of 15 U.S.C. § 1591.

remain in the U.S. for a temporary amount of time rather than being immediately deported, they will not be able to testify against their traffickers. If the Act is to result in a substantial decrease in the trafficking of women for sexual exploitation, it must provide some means of attaining the cooperation during law enforcement investigations and proceedings of all trafficked women, including those who fully consented, while still reserving the right to deport these women upon conclusion of the trial.<sup>6</sup>

Women who fully consented to trafficking must be given incentives to cooperate with law enforcement personnel, as these women know that, eventually, they likely will be deported. One way to give these women such incentives is by allowing them to remain in the U.S. temporarily, and by providing them with decent shelter, medical services and counseling while here. Additionally, they should be granted immunity from criminal sanctions. As a further incentive, consensual victims should be given the ability to attain some amount of modest restitution from the defendants. In addition to motivating consensual trafficking victims to testify, monetary restitution might possibly aid them in their repatriation efforts once deported and home.

According to research done in the United Kingdom, only a small minority of trafficked victims agrees to testify.<sup>166</sup> Most *ask* to be deported, “preferably within 48 hours, ‘fearful that their exploiters will think they have given evidence against them, and carry out threats made to themselves and their families.’”<sup>167</sup> However, the research also notes that in countries where *non-governmental* organizations offer support to victims of trafficking, the victims are much more likely to testify against their traffickers.<sup>168</sup> Therefore, the federal government should provide

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<sup>6</sup> As noted, the Act adds victims of trafficking to the witness protection program regulated by the witness protection act. See Act, section 112(a), 18 U.S.C. §§ 3521-3528. In some instances, this protection might extend to victims who fully consented to being trafficked, if this victims will act as a witness in the proceeding against “an organized criminal activity or other serious offense” and a violent crime is likely to be committed against the women on account of the proceeding. However, even in cases where the witness protection act might apply, the women must be allowed to remain in the U.S. long enough to make that determination.

encouragement and funds to non-governmental organizations that work with victims of trafficking, and should seek to ensure that as a part of their assistance, those organizations discuss with victims the importance of testifying.

*3) The need for cooperative enforcement strategies: local, federal, and international*

The passage of the Trafficking Victims Protection Act is an important step in eradicating sex trafficking. However, passing new legislation does little good unless it is effectively and comprehensively enforced. As noted in part I, the lack of planning and cooperation among various governmental authorities stifles sex trafficking investigations and prosecutions; thus, various applicable laws (such as the Mann Act) have not been enforced effectively against traffickers.<sup>169</sup> This is a significant reason behind the growth of the sex trafficking industry.

Local police will sometimes be the first to encounter a trafficking ring. Therefore, they must be trained on how to recognize a possible trafficking ring and how to proceed upon uncovering one.

"The local police are the true front lines on this," said one high-ranking federal law enforcement official who asked not to be identified. "You need more funding for these investigations. You can pay lip service to focusing on the problem, but you need money."<sup>170</sup>

Unless the federal government supports, with an adequate amount of funding, resources and training programs, local police departments throughout the nation, it risks missing potential sex trafficking investigation and prosecution opportunities.

Additionally, sex trafficking investigations generally require the participation of personnel from numerous federal agencies, including the FBI, the Immigration and Naturalization Service (INS), Customs Service and the Department of State, as well as from foreign investigation

bodies.<sup>171</sup> Such participation requires an enormous amount of inter-agency planning and cooperation.<sup>172</sup> Unless this cooperation is forthcoming, sex trafficking investigations and prosecutions will continue to proceed in insufficient quantities.

To ensure the coordination of anti-trafficking efforts and the implementation of the Act, the Act, as noted, requires the establishment of an interagency presidential task force and an office to monitor and combat trafficking.<sup>173</sup> The Task Force was established on February 13, 2002, more than a year after the Act's enactment; the Office to Monitor and Combat Trafficking in Persons was established one year after the passage of the Act, in October of 2001.<sup>174</sup> The obligations imposed in the Act upon the Task Force and its supporting office are understandably broad.<sup>175</sup> However, if the Act is to result in significant sex trafficking investigations and prosecutions, these broad statutory duties must be interpreted as requiring the implementation of training and cooperative programs among *all* agencies involved in anti-trafficking efforts, including local police departments and the many federal agencies. Additionally, the Task Force and its supporting office must work tirelessly to educate foreign law enforcement personnel as to the importance of cooperating in anti-trafficking efforts. The Task Force and its supporting office must take these necessary steps without delay.

### *3) The "johns" and the failure of the Act to address their role in combating trafficking*

In light of the significant, causal connection existing between the demand for trafficked women and the profitability of the trafficking enterprises of such women,<sup>176</sup> the complete failure of the "comprehensive" Trafficking Victims Protection Act to include within its ambit any measures geared towards dealing effectively with the "johns"—the men who purchase the services of the trafficked women for acts of sexual gratification—presents a concern. Unless the demand for trafficked women is substantially dampened, the trade in trafficked women likely

will not subside.

The federal government should encourage and support both local governmental and non-governmental programs aimed specifically at educating the men who frequent brothels as to both the illegality of their behavior and the abusive and inhumane conditions to which many of the trafficked women are subjected. Additionally, the Act should ensure that such customers, when apprehended, will be prosecuted and subjected to a punishment more significant than an hour in jail. As an example of effective “john” punishments, several American cities, including Denver, Orlando, Oklahoma City, and Kansas City, have successfully decreased their prostitution rates by posting the names and pictures of convicted “johns” on the Internet, on television, or in local newspapers.<sup>177</sup> Other punishment methods suggested by anti-prostitution advocates include impounding or confiscating the cars of convicted “johns” and/or requiring them to attend “john schools,” where they are educated as to the harms of prostitution.<sup>178</sup> The Act should contain provisions geared towards encouraging the education and effective punishment of the “johns.”

## **B. Protection of victims**

As a preliminary note, the definition of a “severe form of sex trafficking” makes no stipulation that movement across international borders is required or that citizenship of the victim is relevant. Yet only foreign nationals are eligible for most of the Act’s victim protection measures.<sup>179</sup> Thus, victims of severe sex trafficking who are American citizens are not entitled to the same level of benefits as victims who are foreign nationals.<sup>180</sup> Although some benefits, such as the “T-visa”, may be irrelevant for citizen victims of severe sex trafficking, the remainder protection measures may well be appropriate for citizen victims. This issue should be studied in greater depth to determine if the Act should be amended to extend some of the protection provisions to citizen victims.

The Act's protection provisions currently apply to foreign nationals who were subjected to severe sex trafficking—thus, the traffickers must have used force, fraud or coercion or the victim must have been under 18 at the time of the offense.<sup>181</sup> Denying the Act's protection provisions to women who freely agreed to being trafficked for sexual exploitation and who were not subjected to force, fraud or coercion seems an appropriate policy. Additionally extending the Act's protection provisions to all trafficked women would likely create dangers in that it might provide women an added incentive to consent to being trafficked—a woman might be more inclined to consent on the premise that she either may work off her debt and then continue making money; or alternately, she may contact federal authorities and receive protection as a victim of trafficking. If the Act provides women in source countries reason to believe that America will protect them should they desire, women may be more inclined to consent to being trafficked, and this would lead to an increase in trafficking—thus making the Act counterproductive.

Nonetheless, the requirements of the protection provisions raise some concerns. As discussed above, denying consensual victims any motivation to testify against their traffickers creates obstacles to the effective prosecution of traffickers. Additionally, if the relevant federal authorities too strictly apply the Act's protection provisions, many victims who initially consented to being trafficked only to find themselves subsequently living in near-slavery conditions may be denied protections due to the difficulty in proving they were subjected to force, fraud or coercion. Additionally, there exists accounts of cases where numerous women were smuggled into the U.S. together as part of the same trafficking operation and were subjected to identical, degrading treatment upon arrival in the U.S. by identical traffickers.<sup>182</sup> Yet some women are said to have consented while others were allegedly victims of trickery.<sup>183</sup>

The women who consented may have may have been simply less naïve than the others. In these cases, the Act places different burdens on women subjected to the same level of abuse and degradation, and might ultimately deny any protections to those who can be said to have consented.

Because, in many instance, the between those women who were obvious victims of trafficking and those who consented but nonetheless were subject to force, fraud or coercion line may be hard to draw,<sup>184</sup> the federal agencies and authorities involved should broadly interpret and apply the protection provisions of the Act. To do otherwise risks failing to redress many instances of human rights violations perpetrated, at least in part, by citizens or residents of the United States.

Unfortunately, the “T-visa Regulation” interim rule that was recently published by the Department of Justice (DOJ)<sup>185</sup> leads one to conclude that it is unlikely that women who initially consented to being trafficked will receive protection under the Act. Under the “Background and Legislative Authority” section of the regulation preamble, the DOJ provides:

*“In most cases, aliens who are voluntarily smuggled into the United States will not be considered victims of a severe form of trafficking in persons. However, individuals who are voluntarily smuggled into the United States in order to be used for labor or services may become victims of a severe form of trafficking in persons if, for example, after arrival the smuggler uses threats of serious harm or physical restraint to force the individual into involuntary servitude, peonage, debt bondage, or slavery. Federal law prohibits forced labor regardless of the victim's initial consent to work.”*<sup>186</sup>

Thus, as a general rule, the DOJ provides that those who initially consented to being

trafficked will be ineligible for protection. However, the DOJ provides a possible exemption to the general rule of non-eligibility specifically for those persons who were voluntarily smuggled but subsequently forced into labor or servitude (in a sweatshop or factory for instance). Such persons may become victims of a severe form of trafficking. Conspicuously lacking is any mention of a possible exemption to the general rule for women who were voluntarily smuggled for sex trafficking, but subsequently forced by threats into working under terms more onerous than agreed to—presumably, such women will, “in most cases...not be considered victims of a severe form of trafficking in persons....”

In addition to this concern, the interim regulations raise many additional concerns, most of which are beyond the scope of this paper. However, some examples include the T-visa application fee, which under the regulations is set at \$200.00.<sup>187</sup> It is doubtful that many victims of severe trafficking will have the funds necessary to apply for a T-visa. The DOJ should either substantially lower the fee, or generously grant waivers. Another concern is the DOJ interpretation of the statutory requirement that a victim of a severe form of trafficking must comply with “any reasonable request for assistance in the investigation or prosecution of acts of trafficking”, unless the victim is under the age of 15.<sup>188</sup> Under the preamble to the interim regulations, the DOJ provides that “[t]he [Law Enforcement Agency] endorsement<sup>189</sup> serves as primary evidence that the alien is a victim of severe form of trafficking in persons, and *has not unreasonably refused to assist* in the investigation or prosecution of trafficking in persons.”<sup>190</sup> The DOJ should replace the phrase “has not unreasonably refused to assist” with “has complied with reasonable requests,” thereby preserving the intent of Congress that the burden of reasonableness is on the law enforcement agency, not the victim.<sup>191</sup> It is imperative that the DOJ regulations correctly interpret and apply the Act so as not to undermine its protection measures.

An additional issue worth mentioning concerns the restitution provisions. Women subjected to the degradation of sexual exploitation should be eligible to receive “lost income” restitution<sup>192</sup> to the same extent as trafficking victims subjected to other forms of involuntary servitude and forced labor. To provide trafficking victims of forced labor with “lost income” and not do the same for victims of sexual exploitation would be highly unfair and discriminatory.

## **B. Prevention of trafficking**

Trafficking is truly a global phenomenon, and eradicating the problem in the U.S. will require sustained, intensive international efforts. Congress recognized this, and therefore included in the Act provisions to encourage and promote various international education and training efforts.<sup>193</sup> In theory, the provisions in the Act related to the prevention of trafficking are extremely laudable, and could ultimately lead to a decrease in the trafficking of women and children both into the U.S. and throughout the world. However, for the most part, it is too soon to analyze the effectiveness of the Act’s provisions regarding the U.S. international initiatives. Following are some thoughts of what must be done, on an international scale, if trafficking is to be prevented.

The U.S. must make concerted efforts to understand who the potential trafficking victims in source countries are, and must devise programs specifically geared towards keeping those women out of trafficking networks. For instance, a study released in March of 2001 by the Coalition Against Trafficking in Women notes that women who are already engaged in the sex industry in their home countries are particularly vulnerable to consenting to being trafficked for sexual exploitation.<sup>194</sup> Additionally, girls who are, from an early age, victims of sexual exploitation in their home countries are more likely to consent to being trafficked into the U.S.<sup>195</sup> These girls and women must be found and targeted by U.S. agencies abroad with educational,

job training, and micro-lending programs.

It is imperative that U.S. government officials work with their counterparts in other nations. Foreign lawmakers must be convinced of the importance of enacting and enforcing effective anti-trafficking legislation—lacking in virtually every country at this point.<sup>196</sup> Foreign police and other law enforcement personnel and prosecutors must be educated as to how to effectively investigate and prosecute traffickers. Foreign governmental and non-governmental agencies must be provided insight as to how to best help repatriated sex trafficking victims. The U.S. must support international efforts to combat trafficking in persons for sexual exploitation, including efforts conducted by the United Nations.

In many nations, corrupt government officials turn a blind eye to trafficking, or worse yet, benefit financially from the trafficking in persons.<sup>197</sup> The complicity of government officials in source, transit and destination countries has played a tremendously important role in allowing the trafficking in persons to flourish to its current levels.<sup>198</sup> Therefore, the Trafficking Victims Protection Act provides that in determining whether a country meets the Act's "minimum standards," the Department of State should consider whether the specific country investigates and prosecutes government officials engaged in trafficking in persons. Some advocates do not believe the State Department is regarding this issue in a sufficiently weighty manner.<sup>199</sup> The State Department must not consider the issue of government corruption or complicity lightly. Corrupt government officials must be dealt with effectively if trafficking in persons is to be prevented.

Further, many advocates question the placement of various nations in the State Department's Annual Trafficking in Persons Report "tier" lists. For example, in the first report of June 2001, Pakistan was placed in Tier 3. In the June 2002 report, Pakistan was placed in Tier 2. The

movement from Tier 3 to Tier 2 was not explained in the Trafficking Report.<sup>200</sup> The State Department must adequately explain tier placement, and must resist allowing non-trafficking issues to determine a country's placement in a specific tier.

As an additional example, sixteen of the eighteen Tier 1 countries have legalized prostitution.<sup>201</sup> In these countries, a high percentage of the prostitutes are believed to be trafficked persons. For instance, it is estimated that 80% of the prostitutes in Vienna, Austria, are trafficked persons; in Germany, the estimate is 75%; and in Amsterdam, Netherlands, 80%.<sup>202</sup> If the Trafficking Report tier system is to aid in the prevention of trafficking in women for sexual exploitation, the State Department must consider as a placement factor whether prostitution is legal in the specific country. This is because destination countries that do not criminalize prostitution are significant contributors to the global trafficking problem.<sup>203</sup>

#### **IV. Conclusion**

The Trafficking Victims Protection Act of 2000 is a highly commendable law. It is the most comprehensive anti-trafficking Act yet passed in any nation. The Act creates many obligations on various governmental agencies and authorities. The successful application and implementation of the Act will require strenuous efforts and a generous spirit. The federal law enforcement agencies must work diligently, cooperatively and creatively to investigate trafficking cases and bring traffickers to justice. The courts, likewise, must broadly construe the requirements of the enforcement provisions of the Act so to not to render the efforts of law enforcement personnel futile. The Department of Justice must generously implement the protection provisions of the Act so as not to render them moot. Only in this way will the harm that has resulted through many year of treating sex trafficking victims as criminals be fully redressed and countered. And, perhaps most importantly, sustained, international initiatives are

required if further trafficking is to be prevented. This necessitates fully understanding the forces that lead women into trafficking, and honestly attempting to provide alternate life-choices for such women. It remains to be seen whether, in effect, the Trafficking Victims Protection Act will prove to be a successful tool in combating the trafficking of women and children into the U.S. for the purpose of sexual exploitation.

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## ENDNOTES AND CITATIONS

<sup>1</sup> Rediff On The Net, *Gas Leak Claims New Teen Immigrant* (Nov. 27, 1999), at [<http://www.rediff.com/news/1999/nov/27us.htm>].

<sup>2</sup> Rediff On The Net, *Candlelight vigil planned at Reddy restaurants* (Jan. 28, 1999), at [<http://www.rediff.com/news/2000/jan/28us1.htm>].

<sup>3</sup> Id.

<sup>4</sup> Mae M. Cheng, *Major Offense Against Minors*, Newsday.com (March 12, 2001), at [<http://www.newsday.com/news/local/newyork/ny-smuggled-offense,0,3860158.story>].

<sup>5</sup> Rediff On The Net, *Silicon Valley landlord arrested in prostitution charges* (Jan. 20, 2000), at [<http://www.rediff.com/news/2000/jan/20us1.htm>].

<sup>6</sup> Rediff.com, *It's Repentance Time for Reddy*, (March 8, 2001), at [<http://www.rediff.com/news/2001/mar/08usspec.htm>].

<sup>7</sup> Press Release, U.S. Department of Justice, Lakireddy Bali Reddy sentenced to 97 months and restitution of \$2 million (June 21, 2001), at [<http://www.oig.dol.gov/public/media/oi/lbreddy.html>].

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Glenn Chapman, *Wealthy Berkeley landlord faces hearing*, Oakland Tribune, November 1, 2002, at [<http://www.oaklandtribune.com/Stories/0,1413,82%257E1726%257E963428,00.html?search=filter>].

See also:

[[http://beta.kpix.com/news/bcn/2002/10/23/n/HeadlineNews/Nine\\_Indian\\_Women\\_File\\_Suit\\_Against\\_Berkeley\\_Landowner.html](http://beta.kpix.com/news/bcn/2002/10/23/n/HeadlineNews/Nine_Indian_Women_File_Suit_Against_Berkeley_Landowner.html)].

<sup>13</sup> Id.

<sup>14</sup> U.S. Department of State, *Trafficking in Persons Report*, June 2002, available at: [<http://www.state.gov/documents/organization/10815.pdf>]; referred to in subsequent cites as the “Trafficking Report”.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> See the CRS Report for Congress, *Trafficking in Women and Children: The U.S. and International Response*, updated March 18, 2002, available at: [<http://fpc.state.gov/documents/organization/9107.pdf>], referred to in subsequent cites as the “CRS Report”.

<sup>18</sup> Id.

<sup>19</sup> Trafficking Report, *supra* note 14.

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<sup>20</sup> Donna M. Hughes, The "Natasha" Trade: The Transnational Shadow Market of Trafficking in Women, 53 J. Int'l Aff. 625 (Spring 2000), available at: [<http://www.uri.edu/artsci/wms/hughes/natasha.htm>].

<sup>21</sup> See, for instance, Mae M. Cheng, *New Law's First Test, Anti-trafficking statute to be used to prosecute Alaska case*, *Newsday.com* (March 15, 2001), at: [<http://www.newsday.com/news/local/newyork/ny-smuggled-roadahead,0,3768204.story>], recounting the story of young Russian women deceived into coming into the US and forced to dance nude once here.

<sup>22</sup> *Id.* The author of this article notes that poverty, while not the sole cause leading a women into trafficking, is a crucial element: "Poverty, unemployment, inflation, war and lack of a promising future are compelling factors that facilitate the ease with which traffickers recruit women...".

<sup>23</sup> Each year, thousands of children across the globe are sold by their parents. Many of these children eventually are smuggled into western nations and sold into the sex industry or into positions of involuntary labor. See Louise Corradini, *Children in Chains*, *The UNESCO Courier* (June 2001), available at: [[http://www.unesco.org/courier/2001\\_06/uk/droits.htm](http://www.unesco.org/courier/2001_06/uk/droits.htm)]. See also Tran Dinh Thanh Lam, *Trading in Children*, The media project, 'On the Asian Migration Trail', supported by the Ford Foundation, at: [<http://www.ipsnews.net/migration/stories/trading.html>].

<sup>24</sup> CRS Report, *supra* note 17, at CRS-2.

<sup>25</sup> *Id.* at CRS-3.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at CRS-3, 4.

<sup>28</sup> Sean Gardiner, *Choices Made of Fear and Pressure*, *Newsday.com*, March 12, 2001, at: [<http://www.newsday.com/news/local/newyork/ny-smuggled-choices.story>]. This entire account of Rosa's story is taken from this on-line news article.

<sup>29</sup> See The "Natasha" Trade, *supra* note 20, in which the author cites an estimate of the International Organization for Migration indicating that between 1991 and 1998, 500,000 women from Ukraine *alone* were trafficked into the West. See also *Dreams Ending In Nightmare, Many immigrant women, girls trapped in sex industry*, *Newsday.com* (March 11, 2001), at: [<http://www.newsday.com/news/local/newyork/ny-smuggled-nysex111.story>].

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

<sup>31</sup> Sean Gardiner, *The Gray Area of Prostitution*, *Newsday.com* (March 15, 2001), at: [<http://www.newsday.com/news/local/newyork/ny-smuggled-grayarea,0,1321525.story>]. This entire account of Runghapa Soirahong is taken from this on-line news article.

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

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

<sup>34</sup> *Id.* In this article, Kamala Kempadoo, a professor at the University of West Indies who heads the Center for Gender Development Studies, contrasts the extreme cases of trafficking victimization, comprised of kidnapped victims or others deceived and held against their will, from those cases in the "gray area", comprised of women who, at least initially, consented to being trafficked for sexual exploitation.

<sup>35</sup> Amy O'Neill Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*, DCI Exceptional Intelligence Analyst Program: An Intelligence Monograph, November 1999 (April 2000), at Part III, available at:

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[<http://usinfo.state.gov/topical/global/traffic/report/chapt06.htm>], referred to in subsequent cites as the “CIA Report”.

<sup>36</sup> See *Dreams Ending In Nightmare*, Newsday.com, supra note 29.

<sup>37</sup> Id. See also CIA report, supra note 35, Part III.

<sup>38</sup> *Dreams Ending In Nightmare*, Newsday.com, supra note 29. See also Gardiner, *The Gray Area of Prostitution*, supra note 31. See also Graham Rayman, *Stripped Of Their Dignity Czech women lured to work at NYC sex clubs*, Newsday.com (March 13, 2001), at: [<http://www.newsday.com/news/local/newyork/ny-smuggled-easturope,0,4558166.story>].

<sup>39</sup> Id.

<sup>40</sup> Id.

<sup>41</sup> CIA Report at Part III.

<sup>42</sup> Candace de Russy, *Clinton and the Slave Trade*, Independent Women’s Forum, July 13, 2000, at: [<http://www.iwf.org/news/000724.shtml#search>]. This article cites a letter written by feminist leaders, including Gloria Steinem and Patricia Ireland, to President Clinton, wherein it was noted that “some of the most common methods of sex trafficking [consist of] prey[ing] on and profit[ing] from the economic desperation of women, girls and their families by securing their 'consent' to sale in prostitution.”

<sup>43</sup> Anthony M. Destefano, *The Brothels of Queens*, Newsday.com, at: [<http://www.newsday.com/news/local/newyork/ny-smuggled-nykor11,0,6551654.story>]. In this article, the author recounts trafficking transactions that occur without the use of force or deception.

<sup>44</sup> Michelle O. P. Dunbar, *The Past, Present, and Future of International Trafficking in Women for Prostitution*, 8 Buff. Women’s L.J. 103, 104 (1999-2000), citing a Report from the Roundtable on the Meaning of “Trafficking in Person”: A Human Rights Perspective, Women’s Rights Advocacy Program (WRAP), 20 WOMEN’S RIGHTS . REP. 11, 11 (1998).

<sup>45</sup> CIA report, supra note 35, Part VI.

<sup>46</sup> Id. See also: Zalisko, Walter, *Russian organized crime*, Law and Order 47(10) (October 1999), at 219-27.

<sup>47</sup> CIA report at Part VI.

<sup>48</sup> Zalisko, *Russian Organized Crime*, supra note 46.

<sup>49</sup> CIA report at Part VI. See also, Janice G. Raymond and Donna M. Hughes, *Sex Trafficking of Women in the United States*, Coalition Against Trafficking in Women (March 2001), at 49, available at: [[http://action.web.ca/home/catw/attach/sex\\_traff\\_us.pdf](http://action.web.ca/home/catw/attach/sex_traff_us.pdf)], referred to in subsequent cites as the “Coalition Against Trafficking in Women Report”.

<sup>50</sup> CIA report at Part III. Some recruiters are past victims of trafficking, who, after paying off their debt, agree to work as recruiters. Such women are especially effective recruiters: they have experience and they are women and thus appear trustworthy to other vulnerable women and girls. See also Associated Press, *Trafficking in women for sex* (Nov. 1, 2001), available at: [<http://fpmail.friends-partners.org/pipermail/stop-traffic/2001-December/001786.html>].

<sup>51</sup> CRS report, supra note 17, at CRS-3: “In some cases, police and other governmental authorities accept bribes and collude with traffickers by selling fake documentation, etc.” See also Human Rights Watch, *U.S. State Department Trafficking Report a “Mixed Bag,”* Human Rights News (July 12, 2001), at:

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[<http://www.hrw.org/press/2001/07/traffick-0712.htm>], citing Human Rights Watch Acting Executive Director of the Women's Rights Division, LaShawn R. Jefferson, who noted, "...Trafficking cannot flourish without the involvement of corrupt police, border guards, and state officials."

See also: Coalition Against Trafficking in Women Report, *supra* note 49, at 71, wherein the authors note that many US police, in exchange for sexual services, look the other way when encountering a trafficked prostitute.

<sup>52</sup> CIA Report at Part IV.

<sup>53</sup> See Rayman, *Stripped Of Their Dignity Czech women lured to work at NYC sex clubs*, *supra* note 38: "And in Washington, a State Department investigator receives the disturbing news that there is a corrupt employee at the U.S. Embassy in Prague."

<sup>54</sup> CIA Report at Part IV.

<sup>55</sup> CIA Report at Part VI. See also Gardiner, *The Gray Area of Prostitution*, *supra* note 31, detailing one trafficked woman's movements on the "Asian brothel circuit" through New York, Chicago, Atlanta, Los Angeles, Miami and Washington, D.C.

<sup>56</sup> CIA report at Part VI.

<sup>57</sup> Susan W. Tiefenbrun, *Sex Sells But Drugs Don't Talk: Trafficking of Women Sex Workers*, 23 T. Jefferson L. Rev. 199, 212 (Spring 2001).

<sup>58</sup> In addition to the basic desires for sexual satisfaction that support any sex industry, globalization has increased the demand for, specifically, trafficked women. This is because the increasing numbers of foreign-born men living in the U.S. are interested in having sexual encounters with women of their own nationality. See Coalition Against Trafficking in Women Report, *supra* note 49, at 69.

<sup>59</sup> See message of Secretary-General Kofi Annan to the International Summit on Human Trafficking, Child Abuse, Labour and Slavery, delivered at Abuja, Nigeria on August 2-4, 2002 by Antonio Maria Costa, Director-General of the United Nations Office at Vienna and Executive Director of the Office for Drug Control and Crime Prevention, wherein the Secretary-General cites a "Europol" study that the trafficking industry in women and children is now worth \$7 billion annually. This is the figure most often quoted in relevant materials. See, for instance, the European Parliament Directorate-General for Research "Trafficking in Women" working paper, March 2000, available at: [[http://www.europarl.eu.int/workingpapers/libe/pdf/109\\_en.pdf](http://www.europarl.eu.int/workingpapers/libe/pdf/109_en.pdf)].

<sup>60</sup> Trafficking Report, *supra* note 14.

<sup>61</sup> 23 T. Jefferson L. Rev. at 212, *supra* note 57.

<sup>62</sup> CIA Report at Part III.

<sup>63</sup> CRS Report at CRS-3.

<sup>64</sup> CIA Report at Part XI.

<sup>65</sup> Coalition Against Trafficking in Women Report, *supra* note 49, at 69.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 70.

<sup>68</sup> *Id.* at 70-71.

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<sup>69</sup> Speech by Ms Kathleen Maltzahn, given in Canberra, Australia on August 28, 2001 to the Australian Women Conference. The speech is available on the Australian “Commonwealth Office of the Status of Women” website, at: [[http://www.osw.dpmc.gov.au/resources/conference/trafficking\\_in\\_women.html](http://www.osw.dpmc.gov.au/resources/conference/trafficking_in_women.html)].

<sup>70</sup> For instance, such is the case in New Bedford, MA (see [<http://www.s-t.com/daily/09-98/09-04-98/a011o005.htm>]) and Seattle Washington (see [[http://www.geocities.com/un\\_csd/legal.html](http://www.geocities.com/un_csd/legal.html)]).

<sup>71</sup> According to Lt. Kurt Byrd of Cincinnati, Ohio. See Craig Garretson, *Police seize 'johns' cars*, The Cincinnati Post On-Line Edition (Oct. 21, 2002), at: [<http://www.cincypost.com/2002/10/21/vice102102.html>].

<sup>72</sup> CIA Report at Part III.

<sup>73</sup> CIA Report at Part IV.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Dreams Ending In Nightmare*, Newsday.com, *supra* note 29.

<sup>78</sup> CIA Report at Part III.

<sup>79</sup> CIA Report at Part V. See also Gardiner, *The Gray Area of Prostitution*, *supra* note 31.

<sup>80</sup> CIA Report at Part V and VI.

<sup>81</sup> See Nick Davies, *When sex abuse can lead to murder*, Guardian Unlimited (Nov. 27, 2000), at: [<http://www.guardian.co.uk/child/story/0,7369,403435,00.html>]. See also Coalition Against Trafficking in Women Report, *supra* note 49, at 64. See also, Associated Press, Anna Dolgov, *Russian Women Fight Sex Trafficking*, (May 16, 2001), available at: [<http://www.angelcoalition.org/media.html>].

<sup>82</sup> Gardiner, *The Gray Area of Prostitution*, *supra* note 31.

<sup>83</sup> See Destefano, *The Brothels of Queens*, *supra* note 43.

<sup>84</sup> CIA Report at Part XII.

<sup>85</sup> *Id.*

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

<sup>87</sup> 23 T. Jefferson L. Rev at 204, *supra* note 57.

<sup>88</sup> See CIA Report at Part XI, wherein the author discusses at length many of the obstacles to investigating effectively and prosecuting traffickers.

<sup>89</sup> CIA Report at Part XI.

<sup>90</sup> *Id.* See also *Dreams Ending In Nightmare*, Newsday.com, *supra* note 38.

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

<sup>92</sup> *Id.*

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<sup>93</sup> CIA Report at Appendix I.

<sup>94</sup> The Trafficking Victims Protect Act was passed as part of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (H.R. 3244), hereinafter, the Act. The Act comprises 13 sections of Pub. L. No 106-386, sections 101 through 113. The Act has been codified under Title 22 of the United States Code: 22 U.S.C. 7101-7110.

<sup>95</sup> CIA Report at Part XI.

<sup>96</sup> 18 U.S.C. §§ 2421-2423.

<sup>97</sup> 18 U.S.C. § 2421.

<sup>98</sup> 18 U.S.C. § 2422.

<sup>99</sup> 18 U.S.C. § 2421-2423.

<sup>100</sup> See *US v. Pelton*, 578 F2d 701 (1978), *cert. denied*, 439 U.S. 964 (1978).

<sup>101</sup> 18 U.S.C. § 1324.

<sup>102</sup> 18 U.S.C. § 1328.

<sup>103</sup> CIA Report at Appendix I.

<sup>104</sup> Act, section 102(14), 22 U.S.C. § 7101(b)(14).

<sup>105</sup> Act, section 103(8), 22 U.S.C. § 7102(8).

<sup>106</sup> *Id.*

<sup>107</sup> Act, section 103(9), 22 U.S.C. § 7102(9).

<sup>108</sup> Act, section 103(3), 22 U.S.C. § 7102(3).

<sup>109</sup> Act, section 102(b)(6), 22 U.S.C. § 7101(b)(6).

<sup>110</sup> Act, section 103(2), 22 U.S.C. § 7102(2).

<sup>111</sup> See Act, section 112.

<sup>112</sup> Act, section 112(a), 18 U.S.C. § 1591.

<sup>113</sup> Act, section 112(a), 18 U.S.C. § 1591.

<sup>114</sup> Act, section 112(a), 18 U.S.C § 1593, and 18 U.S.C. § 2259(b)(3), incorporated by reference.

<sup>115</sup> Melissa Ditmore, *Contemporary anti-trafficking legislation in the United States*, at: [<http://www.nswp.org/pdf/NSWPTVPA.PDF>].

<sup>116</sup> Act section 112(a), 18 U.S.C § 1593.

<sup>117</sup> Furthermore, the victims are not prohibited from instituting civil proceedings under other laws against the trafficker.

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<sup>118</sup> Act, section 112(b), 18 U.S.C §§ 3521.

<sup>119</sup> 18 U.S.C. § 3521(a)(1).

<sup>120</sup> 18 U.S.S. § 3521(b)(1).

<sup>121</sup> Id.

<sup>122</sup> CIA Report at Part XII, supra note 35.

<sup>123</sup> Id.

<sup>124</sup> CIA Report at Part XII. See also H. Patricia Hynes and Janice G. Raymond, *Policing the National Body: Put in Harm's Way*, (Jael Silliman and Anannya Bhattacharjee ed., South End Press 2002) at 20, available at: [<http://action.web.ca/home/catw/attach/Put%20in%20Harm%5C%27s%20Way3.doc>], wherein the authors note: "...current immigration and criminal justice system in the United States is weighted against trafficked women. The current system hampers undocumented victims of trafficking from coming forward for fear of deportation and the lack of INS assurance that victims will be allowed to remain in the country if they choose."

<sup>125</sup> CIA Report at Part XII.

<sup>126</sup> Act, section 107(c)(1)-(2).

<sup>127</sup> Act, section 107(b)(10(A), 22 U.S.C. § 7105(b)(1)(A).

<sup>128</sup> Act, section 107(b)(10(C), 22 U.S.C. § 7105(b)(1)(C).

<sup>129</sup> Act, section 107(b)(1)(E), 22 U.S.C. § 7105(b)(1)(E).

<sup>130</sup> Id.

<sup>131</sup> Id.

<sup>132</sup> Id.

<sup>133</sup> Id.

<sup>134</sup> Act, section 107(e), 8 U.S.C. § 1101(a)(15)(T). Thus, the act makes it possible for victims of severe sex trafficking to receive a resident visa even though the victims cannot otherwise meet asylum requirements. Under 8 U.S.C. § 1158(c) and 8 U.S.C. § 1101(42), an individual must be able to claim that he or she faces persecution because of membership in a particular social group to be granted asylum. This is a condition that the typical sex trafficking victim likely would not be able to show.

<sup>135</sup> Act, section 107(e), 8 U.S.C. § 1184(n).

<sup>136</sup> Act, section 107(e), 8 U.S.C. § 1101(a)(15)(T).

<sup>137</sup> Act, section 107(e), 8 U.S.C. § 1101(T).

<sup>138</sup> Act, section 107(e), 8 U.S.C. § 1184(n).

<sup>139</sup> Act, section 107(f), 8 U.S.C. § 1255(l).

<sup>140</sup> Act, section 106(a), 22 U.S.C. § 7104(a).

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<sup>141</sup> Id.

<sup>142</sup> Act, section 107(a), 22 U.S.C. § 7105(a).

<sup>143</sup> Act, section 105, 22 U.S.C. § 7103.

<sup>144</sup> Act section 105(d), 22 U.S.C. § 7103(d).

<sup>145</sup> Act, section 110(b), 22 U.S.C. § 7107(b).

<sup>146</sup> Id.

<sup>147</sup> Act, section 108(a), 22 U.S.C. § 7106(a).

<sup>148</sup> Id.

<sup>149</sup> Act, section 108(b), 22 U.S.C. § 7106(b).

<sup>150</sup> Id.

<sup>151</sup> Act, section 109(a), 22 U.S.C. § 2152d.

<sup>152</sup> Act, section 110(d), 22 U.S.C. § 7107(d). See Act, section 103(7), 22 U.S.C. § 7102(7) for a definition of “nonhumanitarian, nontrade-related foreign assistance” under the Act.

<sup>153</sup> See [[http://www.usembassy.it/file2003\\_02/alia/a0322511.htm](http://www.usembassy.it/file2003_02/alia/a0322511.htm)] for an up-date of sex trafficking prosecutions. See also [[http://www.eagle1.american.edu/~aa5971a/singerman\\_class/DOJcases.htm](http://www.eagle1.american.edu/~aa5971a/singerman_class/DOJcases.htm)]. Additionally, this information was attained through telephone conversations with employees at the Office to Monitor and Combat Trafficking in Persons, and with a US attorney who works in the Criminal Section of the Civil Rights Division of the U.S. Justice Department, the federal department responsible for prosecuting sex trafficking cases under the Act.

<sup>154</sup> Id.

<sup>155</sup> Act, section 103(8), 22 U.S.C. § 7102(8).

<sup>156</sup> Act, section 112(a), 18 U.S.C. § 1591.

<sup>157</sup> See, for instance, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, a 1949 United Nations Convention, signed Mar. 21, 1950, 96 U.N.T.S. 271. Under Article 1 of this convention, consent was irrelevant in determining whether a woman was victimized by trafficking for the purpose of prostitution.

Additionally, under the new United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, adopted in December of 2000 and signed, to date, by approximately 117 countries, including the U.S., a person is a trafficking victim, regardless whether that person consented to being trafficked, if the trafficking occurred “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...” The Protocol is available at: [[http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_%20traff\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf)]. For a list of signatory nations, see [[http://www.odccp.org/odccp/crime\\_cicp\\_signatures\\_trafficking.html](http://www.odccp.org/odccp/crime_cicp_signatures_trafficking.html)].

Additionally, under the Mann Act, consent of the victim is not a defense. See *US v. Pelton*, 578 F2d 701 (1978), *cert. denied*, 439 U.S. 964 (1978).

<sup>158</sup> See *US v. Pelton*, 578 F2d 701 (1978), *cert. denied*, 439 U.S. 964 (1978).

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<sup>159</sup> CRS Report, *supra* note 17, at CRS-3,4.

<sup>160</sup> CIA Report, *supra* note 35, at Part XI.

<sup>161</sup> Act, section 112(a), 18 U.S.C. § 1591.

<sup>162</sup> Act, section 102(b)(6), 22 U.S.C. § 7101(b)(6).

<sup>163</sup> 18 U.S.C. § 1584 provides:

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both ..

18 U.S.C. § 1590 provides:

Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both

<sup>164</sup> Act, section 102(b)(13), 22U.S.C. § 7101(b)(13) and *U.S. v. Kozminski*, 487 U.S. 931 (1988).

<sup>165</sup> CIA Report at Part III.

<sup>166</sup> UK study cited in a speech by Ms Kathleen Maltzahn, *supra* note 69.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> CIA Report at Part XI. See also Anthony M. Destefano, *Policing Prostitution* *Newsday.com* (March 14, 2001), at: [<http://www.newsday.com/news/local/newyork/ny-smuggled-police,0,2129745.story>].

<sup>170</sup> Destefano, *Policing Prostitution*, *supra* note 169.

<sup>171</sup> CIA Report at Part XI; Destefano, *Policing Prostitution*, *supra* note 169: Ultimately, federal officials must take the reigns in any international trafficking investigation to prosecute under the federal Trafficking Victims Protection Act. However, some prosecution cases have occurred under state laws.

<sup>172</sup> *Id.*

<sup>173</sup> Act, section 105, 22 US.C. § 7103.

<sup>174</sup> See The U.S. State Department website for information, at: [<http://usinfo.state.gov/topical/global/traffic/02021403.htm>] and [<http://www.state.gov/r/pa/prs/ps/2002/8031.htm>]. The “Office to Monitor and Combat Trafficking in Persons” can be accessed through [<http://state.gov/g/tip/>].

<sup>175</sup> See Act section 105(d), 22 US.C. § 7103(d).

<sup>176</sup> Coalition Against Trafficking in Women Report, *supra* note 49, at 68.

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<sup>177</sup>See [<http://www.denvergov.org/Channel8/154press967.asp>]; See also the John Jay College “Law Enforcement News” publication, October 10<sup>th</sup>, 1997, available at [<http://www.lib.jjay.cuny.edu/len/97/10oct/html/6.html>]. Kansas City was the first city to broadcast photos of “johns” over the television, and the show, “John TV” was credited with initiating an almost 50% decline in the city’s prostitution arrest rate. The “John TV” program aired in Kansas City from 1996 through 1997 and was cut due to a lack of funding. Police attribute the dramatic decline in prostitution arrests during that time period to both “John TV,” and increased beat patrol.

<sup>178</sup> Coalition Against Trafficking in Women Report, *supra* note 49, at 96.

<sup>179</sup> Act, section 107(b)(10)(C), 22 U.S.C. § 7105(b)(1)(C).

<sup>180</sup> Interestingly, a textual reading of the Act provides that a foreign national, already living in the U.S., but subsequently recruited, harbored, transported, supplied, or obtained through force, fraud or coercion for the purpose of a commercial sex act, *wholly within the borders of the U.S.*, is a victim of severe sex trafficking and may be entitled to the Act’s protection benefits. A U.S. citizen subjected to the same treatment will be denied some of those benefits.

<sup>181</sup> Act, section 107(b)(10)(C), 22 U.S.C. § 7105(b)(1)(C).

<sup>182</sup> See Rayman, *Stripped Of Their Dignity Czech women lured to work at NYC sex clubs*, *supra* note 38, in which Graham Rayman writes about a Czech trafficking ring uncovered in New York in 2001. He writes that some of the trafficked women had been prostitutes in the Czech republic and others had been go-go dancers. These women ostensibly knew they would be subject to some sexual exploitation. A third of the victims thought they would be given legitimate employment.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> The “T-visa regulation” interim rule on new classification for victims of severe forms of trafficking in persons and eligibility for T nonimmigrant status. See 67 FR 4784 (Jan. 31, 2002), available at: [<http://www.immigrationlinks.com/news/news1250.htm>].

<sup>186</sup> 67 FR 4787.

<sup>187</sup> See Proposed Regulation 8 CFR § 103.7.

<sup>188</sup> Act, section 107(e)(1)(C), 8 U.S.C. § 1101(T)(i)(III)(aa).

<sup>189</sup> The Law Enforcement Agency Endorsement is a form whereby by the authorities conducting the relevant investigation or prosecution attests that the victim cooperated with any reasonable law enforcement requests. This form is a necessary component to the T-visa application under the interim regulations. See 67 FR 4788.

<sup>190</sup> See 67 FR 4788.

<sup>191</sup> The author would like to thank the United States Conference of Catholic Bishops (USCCB) for its insight into the many concerns raised by the T-visa interim regulations. The United States Conference of Catholic Bishops, its related legal services corporation, the Catholic Legal Immigration network, Inc, and a host of Catholic Social Service Programs under the auspices of the UCSSB, provide invaluable services across the country to many of the victims of severe and non-severe forms of trafficking.

<sup>192</sup> Under Act, section 112(a), 18 U.S.C § 1593, and 18 U.S.C. § 2259(b)(3), incorporated by reference.

<sup>193</sup> See Act, section 106(a), 22 U.S.C. § 7104(a).

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<sup>194</sup> Coalition Against Trafficking in Women Report, *supra* note 49, at 46.

<sup>195</sup> *Id.*

<sup>196</sup> CRS Report at CRS-3, *supra* note 17.

<sup>197</sup> CIA Report, *supra* note 35, at Part XI. See also Dimpler R. Shah, *Trafficking in Human Beings: The U.S. Department of State Issues 2002 Trafficking in Persons Report*, International Enforcement Law Reporter (August 2002) MIGRATION ENFORCEMENT; Vol. 18, No. 8, at: [[http://www.freetheslaves.net/trafficking\\_in\\_human\\_beings.htm](http://www.freetheslaves.net/trafficking_in_human_beings.htm)].

<sup>198</sup> See Human Rights Watch, *U.S. State Department Trafficking Report a "Mixed Bag,"* *supra* note 51.

<sup>199</sup> *Id.* In this report, Human Rights Watch Acting Executive Director of the Women's Rights Division, LaShawn R. Jefferson, is cited as noting, "One of the report's chief weaknesses...was that it glosses over the problems of state complicity and corruption. Trafficking cannot flourish without the involvement of corrupt police, border guards, and state officials."

<sup>200</sup> Human Rights Watch, *Letter to Secretary Powell regarding the U.S. State Department's Trafficking Report*" Human Rights News (June 18, 2002), at: [<http://www.hrw.org/press/2002/06/powell-ltr.htm>], wherein the author questions whether the movement of Pakistan to Tier 2 is a reward for its anti-terrorism efforts, and not indicative of any progress made in combating trafficking.

<sup>201</sup> Shah, *Trafficking in Human Beings: The U.S. Department of State Issues 2002 Trafficking in Persons Report*, *supra* note 197.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*