
The Missing “P”: Prosecution, Prevention, Protection, and *Partnership* in the Trafficking Victims Protection Act

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With the continued commitment, coordination, and collaboration among federal and state law enforcement agencies and nongovernmental organizations, we can continue to move toward a day when involuntary servitude in the United States is truly a thing of the past.²

INTRODUCTION

Scholars estimate that at the height of the slave trade 20,000 Africans were transported from their homes and enslaved in the United States.³ Today, involuntary servitude continues, with estimates that over 800,000 individuals, primarily women and children, are trafficked for sexual exploitation or labor each year.⁴ The U.S. Department of Justice (DOJ) estimates that between 18,000 and 20,000 individuals, including immigrants as well as U.S. citizens,⁵ are trafficked each year in the United States alone.⁶ Trafficking is so prevalent that it is now the third

2. Mark Kappelhoff, *Federal Prosecutions of Human Trafficking Cases: Striking a Blow Against Modern Day Slavery*, 6 U. ST. THOMAS L.J. 9, 20 (2008).

3. Alese C. Wooditch, M.A. DuPont-Morales, Don Hummer, *Traffick Jam: A Policy Review of the United States' Trafficking Victims Protection Act of 2000*, 12 TRENDS IN ORGANIZED CRIME 235, 235 (2009) (citing M.G. MULHALL, THE DICTIONARY OF STATISTICS (1892)).

4. Wooditch et al., *supra* note 3, at 236. The United Nations estimates that this number is much greater, affecting approximately 12.3 million persons internationally. See Harry R. Dammer, *The Crime of Human Trafficking*, 35 DAJV NEWSL. 29, 29-30 (2010).

5. Kappelhoff, *supra* note 2, at 9.

6. Wooditch et al., *supra* note 3, at 236 (citing W.F. Horn, *U.S. Human Service Agencies Respond to Trafficking*, 8 GLOBAL ISSUES 10 (2003)); see also Edward Schauer & Elizabeth Wheaton, *Sex Trafficking into the United States: A Literature Review*, 31 CRIM. J. REV. 146 (2006); OFFICE OF THE ATT'Y GEN., U.S. DEP'T OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS (2005), available at <http://www.justice.gov/archive/ag/annualreports/tr2005/assessmentofustipactivities.pdf>. Some argue that the estimate of 18,000 to 20,000 is likely under representative, as trafficking is largely unreported and therefore difficult to estimate. See,

most extensive and fastest growing criminal industry,⁷ generating approximately seven to ten billion dollars annually.⁸ It exists in all 50 states and in over 150 countries around the world.⁹

One approach the United States has used to deter trafficking, punish offenders, and protect victims is the Trafficking Victims Protection Act (TVPA).¹⁰ Passed by Congress and signed into law by President Clinton in 2000, the TVPA’s anti-trafficking strategy has three primary purposes, commonly referred to as the “three P’s”:¹¹ to punish traffickers; to support countries in preventing trafficking; and to provide restorative services to victims of trafficking.¹² Despite its stated mission, there remains a disconnect between the three goals of the TVPA, as policymakers, law enforcement agencies, and non-governmental organizations (NGOs) that provide services to victims try to prioritize these goals and achieve their individual missions.¹³

e.g., Johnny E. McGaha & Amanda Evans, *Where are the Victims? The Credibility Gap in Human Trafficking Research*, 4 INTERCULTURAL HUM. RTS. L. REV. 239, 243-44 (2009) (“[B]y the very nature of the crime, human trafficking is largely hidden, and accurate data on the extent and nature of human trafficking is hard to calculate. . .”).

7. Kara Ryf, *The First Modern Anti-Slavery Law: The Trafficking Victims Protection Act of 2000*, 34 CASE W. RES. J. INT’L L. J. 45, 46 (2002); *Human Trafficking Victims: Overview of Human Trafficking*, CAL. DEP’T OF SOC. SERV., available at <http://www.cdss.ca.gov/refugeeprogram/PG1268.htm> (last visited Oct. 30, 2012) (“After drug dealing, trafficking humans is tied with arms dealing as the second largest criminal industry in the world, and is the fastest growing.”).

8. NORTHEASTERN UNIV. INST. ON RACE, UNDERSTANDING AND IMPROVING LAW ENFORCEMENT RESPONSE TO HUMAN TRAFFICKING 13 (2008) [hereinafter LAW ENFORCEMENT RESPONSE TO TRAFFICKING] (estimating that trafficking produces \$9.5 billion annually, supporting other criminal activities including money laundering, drug trafficking, document forgery, and human smuggling); U.S. DEP’T OF STATE, TRAFFICKING IN PERSON (TIP) REPORT 9 (2003), available at <http://www.state.gov/documents/organization/21555.pdf> [hereinafter 2003 TIP REPORT].

9. Shashi Irini Kara, Note, *Decentralizing the Fight against Human Trafficking in the United States: The Need for Greater Involvement in Fighting Human Trafficking by State Agencies and Local Non-Governmental Organizations*, 13 CARDOZO J.L. & GENDER 657 (2007) (noting that trafficking has been documented in at least 30 states); see also *State Map*, THE POLARIS PROJ., <http://www.polarisproject.org/state-map> (last visited Oct. 30, 2012) (documenting the total number of National Human Trafficking Resource Center hotline calls by state).

10. The Trafficking Victims Protection Act (TVPA) of 2000 (P.L. 106-386) was reauthorized in 2003, 2005, and 2008 by the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 (P.L. 108-193), the TVPRA of 2005 (P.L. 109-164), and the William Wilberforce Trafficking Victims Reauthorization Act of 2008 (P.L. 110-457).

11. See Barbara Stolz, *Educating Policymakers and Setting the Criminal Justice Policymaking Agenda: Interest Groups and the “Victims of Trafficking and Violence Act of 2000,”* 5 CRIM. J. 407, 409 (2005).

12. 22 U.S.C. § 7101(a) (2006) (“The purposes of this chapter are to combat trafficking in persons . . . to ensure just and effective punishment of traffickers, and to protect their victims.”).

13. See *infra* Part II.

Of particular concern are the lack of federal prosecutions under the TVPA, a lack of state and local involvement in the anti-trafficking movement, and an insufficient focus on rehabilitating victims.¹⁴ Critics of the TVPA generally fall into one of two camps: those who are prosecutorially minded and those who are attuned primarily to victims' rights. Prosecutorial-minded proponents of the TVPA argue that reform must concentrate both on strengthening provisions of the law that criminalize trafficking activities and on enhancing law enforcement training and specialization in trafficking.¹⁵ Victims' advocates, however, maintain that it is fundamentally problematic to use a law enforcement perspective in fighting trafficking, particularly with regard to a law that, as evidenced by its name, was enacted to provide protection to trafficking victims.¹⁶ These critics thus urge legislators to adopt a more victim-centered model for addressing trafficking.¹⁷

While many scholars have analyzed the shortcomings of the TVPA, with particular attention to strengthening prosecution and ensuring adequate access to victims' services,¹⁸ there has been only cursory discussion of how the United States can meet the goals of the TVPA in concert.¹⁹ In particular, there has been minimal evaluation of the

14. See *infra* Part II.

15. See, e.g., Anne Gallagher & Paul Holmes, *Developing an Effective Criminal Justice Response to Human Trafficking: Lessons From the Front Line*, 18 INT'L CRIM. J. REV. 318, 323, 327 (2009) ("Law enforcement agencies should be organized, empowered, and funded in a manner that enables them to respond appropriately to the crime of trafficking.").

16. Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337 (2007); Joyce Koo Dalrymple, *Human Trafficking: Protecting Human Rights in the Trafficking Victims Protection Act*, 25 B.C. THIRD WORLD L.J. 451, 454 (2005).

17. Haynes, *supra* note 16, at 373.

18. See, e.g., Gallagher & Holmes, *supra* note 15; Jennifer Chacón, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 FORDHAM L. REV. 2977 (2006); Angela D. Giampolo, Note, *Trafficking Victims Protection Reauthorization Act of 2005: The Latest Weapon in the Fight Against Human Trafficking*, 16 TEMP. POL. & CIV. RTS. L. REV. 195 (2006); Michelle R. Adelman, Note, *International Sex Trafficking: Dismantling the Demand*, 13 S. CAL. REV. L. & WOMEN'S STUD. 387 (2004); Juliet Stumpf & Bruce Friedman, *One Step Forward, Two Steps Back?*, 6 N.Y.U. J. LEGIS. & PUB. POL'Y 131 (2002).

19. See, e.g., Haynes, *supra* note 16, at 375; Bo Cooper, *A New Approach to Protection and Law Enforcement Under the Victims of Trafficking and Violence Protection Act*, 51 EMORY L.J. 1041 (2002). In 2010, the U.S. Department of Homeland Security launched the "Blue Campaign" to unify the efforts of law enforcement, victim service providers, and others to combat trafficking. U.S. DEP'T OF HEALTH & HUM. SERVS., HUMAN TRAFFICKING (2012), available at <http://www.dhs.gov/topic/human-trafficking> ("By expanding our collaboration within the department, as well as among domestic and international governments, law enforcement, non-governmental

effectiveness of law enforcement and NGO cooperation, a partnership I argue is critical to the success of ending trafficking and is central to addressing the common criticisms of the TVPA. Although eradicating trafficking will almost certainly require further legislative reform, there are feasible solutions for increasing the efficacy of the laws and procedures already in effect. Thus, while this piece contemplates emphasizing victims’ rights within a prosecutorial-model, it should not be construed as a justification of the law in its current form, but rather as a means to work within it.

This Article focuses on partnership—the missing “P” in the “three P” paradigm—by discussing the theoretical and practical benefits of law enforcement and NGO collaboration in working within the confines of the TVPA to deter traffickers and provide relief to victims. Specifically, this Article analyzes DOJ-funded task forces and their success in partnering law enforcement with victim service providers to unite the goals of the TVPA. This Article also examines the potential struggles task forces face and proposes means for extending current success. Ultimately, I argue that understanding these partnerships, evaluating them, and enhancing their effectiveness is fundamental to ensuring that the United States fully meets the goals of the TVPA.

Part I outlines the history of trafficking in the United States and the development of legislation to combat it. Parts II and III review the common criticisms of the TVPA and examine how its recent reauthorizations, along with the DOJ’s mission to combat trafficking, have begun to address many of these concerns. Part IV analyzes the theoretical and practical benefits of partnership—one of the most vital components of preventing, prosecuting, and protecting against human trafficking—and specifically evaluates DOJ-funded task forces and their success, with attention to how these groups can work most effectively with NGOs in increasing prosecutions and providing services for victims. Part IV also discusses the conflicts and tensions posed by DOJ task forces in working together to combat trafficking. Finally, Part V proposes potential mechanisms for better establishing and sustaining relationships between law enforcement and NGOs to strengthen DOJ task forces, foster improved collaboration, and facilitate successful prosecutions and enhanced services for victims.

This Article is not necessarily a call for additional funding or a reauthorization of the TVPA. Nor is it a whole-sale condemnation of the government’s and NGOs’ current practices. Rather, it is an invitation to local and federal law enforcement and victim service providers to

organizations, and the private sector, DHS is helping to protect victims from being trafficked both within the United States and around the world.”).

recognize and understand how each can assist the others in fulfilling the three goals of the TVPA. It is also a recommendation to the United States that, in order to finally meet its obligations of prosecuting traffickers, providing relief to trafficked victims, and preventing future trafficking endeavors, it must devote significant attention to establishing and sustaining partnerships between federal and local law enforcement and NGOs.

I. BACKGROUND

Trafficking operates in many arenas, the two overarching areas being the commercial sex and labor industries.²⁰ Both industries manifest themselves in a variety of forms. Sex trafficking, for instance, commonly includes forced prostitution, stripping, mail-order marriages, and pornography.²¹ Labor trafficking involves domestic servitude and forced farm or factory labor.²² Victims of trafficking and their traffickers live and work amongst us; their lives are frequently and often unknowingly embedded in our own. With victims of forced labor working in the cotton, chocolate, steel, rubber, tin, sugar, and seafood industries, we encounter products manufactured by trafficking almost daily.²³

Traffickers prey on the most vulnerable members of society, targeting the poor, the unemployed, the drug-dependent, the uneducated, and those with mental illness or disability.²⁴ Individuals of all ages and gender can be victims of human trafficking.²⁵ Women, however, are

20. Developments in the Law—Jobs and Borders, *The Trafficking Victims Protection Act*, 118 HARV. L. REV. 2180, 2185 (2005) [hereinafter *Developments, Trafficking Victims*] (“Many victims end up in prostitution, forced labor, or domestic servitude—the three most common forms of ‘employment’ for trafficking victims.”); see also FREE THE SLAVES & HUM. RTS. CTR., UNIV. OF CAL. BERKELEY, HIDDEN SLAVES: FORCED LABOR IN THE UNITED STATES 14 (2004), available at <http://www.freetheslaves.net/document.doc?id=17> [hereinafter *HIDDEN SLAVES*] (“The data from our press and service provider surveys suggest that prostitution is the sector in which the largest amount of forced labor occurs in the United States.”). Other areas where forced labor occurs include agricultural work, sweatshop factories, restaurant and hotel work, and entertainment. *Id.*

21. OFFICE OF REFUGEE RESETTLEMENT, U.S. DEP’T OF HEALTH & HUM. SERVS., SEX TRAFFICKING FACT SHEET (2012), available at <http://www.acf.hhs.gov/sites/default/files/orr/factsheetsextrafficking.pdf>.

22. Jayashri Srkikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 28 IMMIGR. & NAT’LITY L. REV. 741, 748-49 (2007); *Developments, Trafficking Victims*, *supra* note 20, at 2185.

23. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 30 (2010), available at <http://www.state.gov/j/tip/rls/tiprpt/2010/> [hereinafter 2010 TIP REPORT].

24. Kappelhoff, *supra* note 2, at 9, 11.

25. Theresa Barone, *The Trafficking Victims Protection Act of 2000: Defining the Problem and Creating a Solution*, 17 TEMP. INT’L & COMP. L.J. 579, 580 (2003).

particularly vulnerable, as they often occupy low-status, impoverished positions in society.²⁶ Worldwide, women account for at least 56 percent of trafficking victims.²⁷ Within the United States, the DOJ estimates that women account for 94 percent of victims of all forms of trafficking and 99 percent of sex trafficking victims.²⁸ While these numbers reflect the heightened risk women face, they may also result in part from the fact that sex trafficking, as the most lucrative form of trafficking,²⁹ accounts for 83 percent of all trafficking reports in the United States.³⁰

Traffickers use many tactics to supply their operations, enticing individuals of low social or political status and economic means with promises of money, education, or steady employment opportunities.³¹ Young women and children, in particular, are often sold into trafficking by their families in return for immediate financial support and promises of future continued resources.³² Once individuals leave their homes and arrive in an unfamiliar destination, they often find themselves stripped of their personal identity.³³ Traffickers typically confiscate their personal documents and belongings, systematically destroying any sense of autonomy and rendering the victim wholly reliant on the trafficker for her³⁴ protection and livelihood.³⁵ Using physical and psychological

26. *Id.* at 580.

27. 2010 TIP REPORT, *supra* note 23, at 34; *see also* U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 44 (2012), available at <http://www.state.gov/j/tip/rls/tiprpt/2012/> [hereinafter 2012 TIP REPORT] (noting that the International Labour Organization estimates that 55% of forced labor victims are women and girls, and 98% of sex trafficking victims are women and girls).

28. Geneva Brown, *Women and Children Last: The Prosecution of Sex Traffickers As Sex Offenders and the Need for a Sex Trafficker Registry*, 31 B.C. THIRD WORLD L.J. 1, 6 (2011). The difference in these numbers does not necessarily reflect women's heightened risk in the United States as compared to worldwide. Rather, such discrepancies may result from the fact that sex trafficking is more commonly reported in the United States than labor trafficking, with 83% of all reports of trafficking incidents in the United States involving sex trafficking. *Id.*

29. *Id.* at 6.

30. *Id.*

31. *Id.*; Stephanie Mariconda, Note, *Breaking the Chains: Combating Human Trafficking at the State Level*, 29 B.C. THIRD WORLD L.J. 151, 156-57 (2009).

32. Sarah Shannon, *Prostitution and the Mafia: The Involvement of Organized Crime in the Global Sex Trade*, in *ILLEGAL IMMIGRATION AND COMMERCIAL SEX* 119, 122 (1999).

33. April Rieger, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 HARV. J.L. & GENDER 231, 239 (2007).

34. Throughout this Article, I use feminine pronouns when referring to trafficking victims because the majority of identified victims, especially in the United States, are women. This editorial decision should not undermine the reality that both men and women are victims of trafficking in the United States and around the world. *See generally* JANICE G. RAYMOND & DONNA M. HUGHES, *COALITION AGAINST TRAFFICKING WOMEN, SEX TRAFFICKING OF WOMEN IN THE UNITED STATES: INTERNATIONAL AND*

coercion, including violence, sexual assault, threats of deportation, and threats against the individual's family, traffickers subject their victims to inhumane and slave-like working conditions.³⁶ Debt bondage, including inflated and fictitious amounts owed for travel and everyday living expenses, keep the trafficking victim forever indebted to her trafficker.³⁷

Trafficking victims lead lives of isolation and coercion, facing continual threats, harassment, and physical and psychological abuse.³⁸ They are also exposed to serious health risks, including HIV and other sexually transmitted diseases.³⁹ These conditions, along with abuse, threats of deportation, and language barriers, keep trafficking victims vulnerable, dependent, and unlikely to escape.⁴⁰ As a consequence, trafficking victims frequently spend their entire lives in slavery.⁴¹ Those who do escape cannot easily return to their homes either because of the expense of travel or the shame that they experience upon return to their communities.⁴²

A. *Legal Foundation for Anti-Trafficking Prior to the TVPA*

As it is most commonly understood, human trafficking refers to the forced or coerced exploitation of one human being by another.⁴³ Contrary to popular misconceptions, trafficking, unlike smuggling, does not require the transportation of individuals from one place to another.⁴⁴ Modern criminal trafficking statutes are founded upon the Thirteenth Amendment's prohibition against slavery and involuntary servitude.⁴⁵

DOMESTIC TRENDS 53 (2001), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/187774.pdf>.

35. Brown, *supra* note 28, at 6-7.

36. Kathleen Kim, *Psychological Coercion in the Context of Modern-Day Involuntary Labor: Revisiting United States v. Kozminski and Understanding Human Trafficking*, 38 U. TOL. L. REV. 941, 956-59 (2007); Ryf, *supra* note 7, at 51.

37. Ryf, *supra* note 7, at 7. One study found that the amount of debt varies depending on the victim's country of origin. For example, the average debt for someone trafficked from China was \$40,000 to \$47,000. For someone trafficked from Korea, the average debt was \$35,000. The average debt for a person trafficked from Mexico was \$2,000 to \$3,000.

38. See, e.g., Rieger, *supra* note 33, at 241-43; Hussein Sadruddin, Natalia Walter, & Jose Hidalgo, *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL'Y REV. 379, 405 (2005).

39. Kara, *supra* note 9, at 661.

40. Rieger, *supra* note 33, at 241.

41. Ryf, *supra* note 7 at 51.

42. Rieger, *supra* note 33, at 237.

43. Kappelhoff, *supra* note 2, at 11.

44. *Id.*

45. U.S. CONST. amend. XIII; Kappelhoff, *supra* note 2, at 11.

The hallmark of these statutes is the compelled or coerced provision of labor or sexual services.⁴⁶

Prior to the TVPA’s enactment, traffickers were prosecuted under less stringent involuntary servitude or slavery statutes⁴⁷ enacted soon after the Civil War.⁴⁸ These statutes, codified at 18 U.S.C. §§ 1581-1584, included a prohibition against involuntary servitude,⁴⁹ peonage,⁵⁰ and enticement into slavery.⁵¹ However, the laws were often ineffective in prosecuting modern-day forms of trafficking because, as the Supreme Court held in *United States v. Kozminski*, it applied only to physical or overt forms of coercion, including physical force or restraint, threats of physical force or restraint, or threats of legal coercion amounting to incarceration.⁵² Accordingly, these statutes failed to reach more subtle forms of coercion, including psychological oppression, blackmail, and fraud commonly used by traffickers to control their victims.⁵³

Crimes of trafficking were also commonly prosecuted under the Mann Act of 1910,⁵⁴ legislation designed to prohibit the transport of individuals in interstate commerce for the purpose of prostitution.⁵⁵ Although effective for its purpose at the time, the Mann Act was similarly ineffective in criminalizing the wide-range of offenses involved in modern-day slavery.⁵⁶

Accordingly, prosecution of traffickers under these statutes was limited.⁵⁷ Prior to the enactment of the TVPA, the United States prosecuted no more than six trafficking cases in a single year.⁵⁸

B. The Trafficking Victims Protection Act of 2000

In response to the inadequacies of the existing law in combating modern-day trafficking, and persuaded by the growing anti-trafficking

46. Kappelhoff, *supra* note 2, at 11.

47. 18 U.S.C. §§ 1581-84 (2006).

48. Kappelhoff, *supra* note 2, at 12; Barone, *supra* note 25, at 582.

49. 18 U.S.C. § 1584 (2006).

50. 18 U.S.C. § 1581 (2006).

51. 18 U.S.C. § 1583 (2006).

52. *See* *United States v. Kozminski*, 487 U.S. 931, 944 (1988).

53. Kappelhoff, *supra* note 2, at 11; Kara, *supra* note 9, at 682.

54. 18 U.S.C. §§ 1421-24 (2006).

55. Wooditch et al., *supra* note 3, at 236 (citing M.D. Beckman, *The White Slaves Traffic Act: The Historical Impact of a Criminal Law Policy on Women*, 72 GEO. L.J. 1111 (1983)).

56. Wooditch et al., *supra* note 3, at 236.

57. Kappelhoff, *supra* note 2, at 13.

58. *Id.* at 11.

rhetoric around the world,⁵⁹ Congress passed, and President Clinton signed into law, the Trafficking Victims Protection Act of 2000.⁶⁰ Adopting a “victim-centered” approach to addressing trafficking,⁶¹ the TVPA is the first federal law to criminalize trafficking in persons.⁶² With the stated intent to “combat trafficking in person, a contemporary manifestation of slavery whose victims are predominantly women and children,” the law sets forth three primary purposes: to prosecute traffickers, to prevent trafficking worldwide, and to provide restorative services to trafficking victims.⁶³

1. Prosecuting Traffickers

To address the failures of previous legislation in criminalizing modern acts of slavery, the TVPA seeks to regulate “severe forms of trafficking in persons,”⁶⁴ including both sex trafficking and involuntary servitude for labor or services.⁶⁵ With new criminal provisions, including the forced labor statute⁶⁶ and the sex trafficking statute,⁶⁷ the TVPA criminalizes broader forms of coercion including threats of non-physical harm and threats to third persons.⁶⁸ Conviction of either form of “severe” trafficking requires a showing of “force, fraud, or coercion” used by the trafficker to control the victim.⁶⁹

The labor trafficking statute, for example, prohibits obtaining labor services by: (1) means of force, threats of force, physical restraint, or threats of physical restraint; (2) serious harm or threats of serious harm; (3) abuse or threatened abuse of the law or legal process; or (4) a

59. Barone, *supra* note 25, at 583 (“As a signatory to the U.N. Protocol Against Trafficking in Persons, the United States is required to criminalize human trafficking, provide assistance to victims, and take steps to prevent trafficking.”).

60. 22 U.S.C. § 7101 (2006).

61. Kappelhoff, *supra* note 2, at 13.

62. Mohamed Y. Mattar, *Interpreting Judicial Interpretations of the Criminal Statutes of the Trafficking Victims Protection Act: Ten Years Later*, 19 AM. U. J. GENDER SOC. POL’Y & L. 1247, 1250 (2011).

63. 18 U.S.C. § 1589 (2006 & Supp. II 2008).

64. 22 U.S.C. § 7102(8) (2006).

65. Wooditch et al., *supra* note 3, at 236.

66. 18 U.S.C. § 1589 (2006).

67. 18 U.S.C. § 1591 (2006 & Supp. II 2008).

68. 18 U.S.C. § 1591 (2006 & Supp. II 2008) (prohibiting the use of labor “by means of a scheme, plan, or pattern intended to cause the person to believe that they or another would suffer serious harm or physical restraint if they did not perform [labor or services]”); 22 U.S.C. § 7101 (2006) (recognizing that traffickers “often make representations to their victims that physical harm may occur to them or others should the victim escape or attempt to escape” and noting that “such representations can have the same coercive effects on victims as direct threats to inflict such harm”); *see also* Kappelhoff, *supra* note 2, at 13; Kim, *supra* note 36, at 943.

69. 22 U.S.C. § 7102(8) (2006).

scheme, plan, or pattern intended to cause a person to believe they or another would suffer serious harm or physical restraint if they resisted.⁷⁰ To convict under the forced labor statute, a prosecutor must show that the defendant knowingly used one or more of these means to coerce the labor of another.⁷¹

Similarly, the sex trafficking statute prohibits recruiting, enticing, harboring, transporting, providing, obtaining, maintaining by any means, or benefitting financially or by anything of value from participation in a venture that causes a person to engage in a commercial sexual act.⁷² Unlike prior trafficking statutes, serious harm encompasses non-physical types of harm, including psychological coercion or threats to third persons such as family members.⁷³ Thus, it addresses more subtle means of coercion such as psychological coercion, trickery, and other activities that were difficult to prosecute under preexisting involuntary servitude statutes.⁷⁴ The TVPA also criminalizes attempts at trafficking⁷⁵ as well as the activities that often accompany trafficking, such as withholding identification documents.⁷⁶

In addition to creating new crimes, the TVPA increases criminal penalties for offenses.⁷⁷ For example, if a trafficking crime results in death, attempted killing, kidnapping, attempted kidnapping, or aggravated or attempted sexual abuse, traffickers can face a life sentence.⁷⁸ Traffickers who use force, fraud, or coercion to traffic children for sex can also face life imprisonment.⁷⁹ To further law enforcement’s ability to prosecute crimes of trafficking and to stem trafficking at its source, the TVPA also makes trafficking a predicate

70. 18 U.S.C. § 1589(a)(1)-(4) (2006 & Supp. II 2008).

71. Kappelhoff, *supra* note 2, at 14.

72. 18 U.S.C. § 1591(a)(1)-(2) (2006 & Supp. II 2008).

73. *See* 18 U.S.C. § 1589 (2006 & Supp. II 2008); Kappelhoff, *supra* note 2, at 13.

74. *See* Kappelhoff, *supra* note 2, at 12 (“Prior to the enactment of the TVPA, the Department’s ability to prosecute traffickers was limited by the scope of statutes passed in the post-civil war era, sometimes referred to as involuntary servitude and slavery crimes. These statutes were limited in their effectiveness because, as interpreted by the Supreme Court, they addressed only the most forceful and overt forms of coercion, and failed to reach many of the subtle forms of coercion commonly used by traffickers to control and exploit their victims.”).

75. *See* 18 U.S.C. § 1594(a) (2006 & Supp. II 2008) (making an attempted violation of the Act punishable to the same extent as a completed violation).

76. 18 U.S.C. § 1592(a) (2006 & Supp. II 2008).

77. 22 U.S.C. § 7109(b) (2006).

78. 18 U.S.C. § 1581(a) (2006) (“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.”).

79. 18 U.S.C. § 1591 (2006 & Supp. II 2008).

offense sufficient for conviction under the Racketeering Influenced and Corrupt Organization (RICO) Act.⁸⁰

2. Preventing Trafficking

Recognizing that the United States alone cannot prevent trafficking, the TVPA includes provisions to encourage countries of origin, transit, and destination of trafficking victims to adopt standards to prevent its continuation.⁸¹ Oftentimes, governmental corruption and government officials' complicity in trafficking schemes contribute to and facilitate trafficking in source countries.⁸² If foreign governments fail to assist in the prosecution of traffickers or to provide support to victims of trafficking, the President of the United States has the authority to withhold non-humanitarian or trade-related financial assistance.⁸³

To monitor compliance, the U.S. Department of State annually evaluates countries and issues a Trafficking in Persons (TIP) Report.⁸⁴ The TIP Report ranks countries based on a three-tier scale ranging from fully compliant with the requirements of the TVPA ("Tier 1"), to non-compliant with the TVPA but making significant efforts to obtain compliance ("Tier 2"), to non-compliant with the TVPA and failing to make efforts to obtain compliance ("Tier 3").⁸⁵ In 2012, 33 out of the 186 countries in the TIP Report were Tier 1 countries,⁸⁶ and 17 countries were Tier 3 countries.⁸⁷

80. 18 U.S.C. §§ 1591, 1961(1)(A) (2006).

81. 22 U.S.C. § 7101(a)-(b) (2006). The TVPA also contains provisions to sanction countries who fail to make strides to eradicate trafficking. See U.S. DEP'T OF STATE, TRAFFICKING IN PERSON (TIP) REPORT 14 (2011), available at <http://www.state.gov/j/tip/rls/tiprpt/2011/> [hereinafter 2011 TIP REPORT] ("Pursuant to the TVPA, governments of countries on Tier 3 may be subject to certain sanctions, whereby the U.S. government may withhold or withdraw nonhumanitarian, non-trade-related foreign assistance. In addition, countries on Tier 3 may not receive funding for government employees' participation in educational and cultural exchange programs.").

82. See Ryf, *supra* note 7, at 61 (discussing how government corruption contributes in large part to the trafficking industry); Susan Tiefenbrun, *The Sage of Susannah: A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 UTAH L. REV. 107, 135 (2002) (explaining that sex trafficking has proliferated due in part to the complicity of law enforcement and government officials in source countries).

83. Barone, *supra* note 25, at 584.

84. Wooditch et al., *supra* note 3, at 243.

85. 2012 TIP REPORT, *supra* note 27, at 51.

86. *Id.* at 52. In 2012, Tier 1 countries included Australia, Austria, Belgium, Canada, Colombia, Croatia, Czech Republic, Denmark, Finland, France, Georgia, Germany, Iceland, Ireland, Israel, Italy, South Korea, Lithuania, Luxembourg, Macedonia, Mauritius, Netherlands, New Zealand, Nicaragua, Norway, Poland, Slovak Republic, Slovenia, Spain, Sweden, Taiwan, United Kingdom, and the United States. Bosnia & Herzegovina, Nigeria, and Portugal dropped from Tier 1 countries in 2011 to

In addition, the drafters of the TVPA recognized that, to fully address trafficking, origin countries must prevent the conditions—including poverty, violence, and gender degradation—which create and perpetuate the supply of individuals for this trade.⁸⁸ To that end, the TVPA provides assistance to foreign governments in addressing factors such as poverty, social conflict, and lack of employment opportunities that may push people into a life of trafficking.⁸⁹ As of 2009, the United States had invested more than \$100 million in international support for programming to end trafficking.⁹⁰

3. Providing Restorative Services to Victims

Prior to the passage of the TVPA, trafficking investigations often punished victims as severely as perpetrators, mistaking victims for criminals, prosecuting victims for prostitution, and deporting victims as illegal immigrants.⁹¹ Even in cases where victimization was apparent, the government rarely provided individuals with the host of relief and rehabilitative services they required as a result of their vulnerability.⁹² Victims of trafficking, for example, are frequently emotionally unstable, incapable of trusting others, and unable to develop meaningful relationships.⁹³ They commonly suffer from a variety of physical ailments and psychological conditions such as post-traumatic stress disorder.⁹⁴ Prior to the TVPA’s stated focus on victims’ rights, law enforcement commonly exacerbated rather than aided these conditions,

Tier 2 countries in 2012. The Czech Republic, Iceland, Israel, and Nicaragua moved from Tier 2 countries in 2011 to Tier 1 countries in 2012.

87. *Id.* In 2012, Tier 3 countries included Algeria, Central African Republic, Congo (DRC), Cuba, Equatorial Guinea, Eritrea, Iran, North Korea, Kuwait, Libya, Madagascar, Papua New Guinea, Saudi Arabia, Sudan, Syria, Yemen, and Zimbabwe. Burma, Lebanon, Mauritania, Micronesia, Turkmenistan, and Venezuela were Tier 3 countries in 2011 but moved to Tier 2 countries in 2012. Syria was a Tier 2 country in 2011 but fell to a Tier 3 country in 2012.

88. *See* Wooditch et al., *supra* note 3, at 238 (discussing how, since the enactment of the TVPA, the United States has devoted more than \$100 million to international anti-trafficking initiatives that target factors such as poverty, social conflict, and employment opportunities that may contribute to trafficking).

89. *See* Wooditch et al., *supra* note 3, at 238.

90. *See id.* (citing U.S. AGENCY FOR INT’L DEV. (USAID), *TRAFFICKING IN PERSONS: USAID’S RESPONSE* (2004)).

91. *See* Rieger, *supra* note 33, at 243; *see also* Kara, *supra* note 9, at 662 (explaining the difficulty in distinguishing trafficking victims from undocumented workers).

92. *See* Rieger, *supra* note 33, at 244-48.

93. *See* KEVIN BALES, *DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY* 252-58 (1999) (discussing the myriad psychological problems experienced by many trafficking victims).

94. Sadruddin et al., *supra* note 38, at 405.

failing to provide services necessary to redress victims' many physical and emotional needs.⁹⁵

Recognizing these problems and acknowledging that the majority of trafficking victims are present in the country illegally, thereby lacking the ability to access government aid in the form of food stamps, housing, and other government assistance, Congress made providing restorative services to victims one of the TVPA's three priorities.⁹⁶ To fulfill this mission and to aid with victims' participation in trafficking prosecutions, the TVPA provides for social service benefits,⁹⁷ special immigration status,⁹⁸ and a private cause of action for trafficking survivors.⁹⁹

First, the TVPA provides for the provision of social service benefits, making food, shelter, clothing, education, mental and physical health services, job training, and other federally funded social service programs available to trafficking victims.¹⁰⁰ The TVPA also provides for immigration benefits. These include short-term "continuing presence" non-immigrant status for individuals whose presence is "necessary to effectuate prosecution";¹⁰¹ a T-Visa, which provides for up to four years of non-immigrant status;¹⁰² and lawful permanent residency "green card" status for individuals with T-Visa status who remain in "good moral

95. Rieger, *supra* note 33, at 244 ("Prior to the passage of the TVPA, there was little, if any, relief for trafficking victims in the United States. If discovered, these women were labeled as criminals for participating in prostitution and illegal immigration.") (citing Dalrymple, *supra* note 16, at 454).

96. *Id.* at 233.

97. 22 U.S.C. § 7105(b)(1)(A) (2006 & Supp. II 2008) ("[A]n alien who is a victim of a severe form of trafficking in persons, or an alien classified as a nonimmigrant under section 1101(a)(15)(T)(ii) of title 8, shall be eligible for benefits and services under any Federal or State program or activity funded or administered by any official or agency described in subparagraph (B) to the same extent as an alien who is admitted to the United States as a refugee under section 1157 of title 8.")

98. 8 U.S.C. § 1101(a)(15)(T) (2006 & Supp. II. 2008); 8 U.S.C. § 1255(1) (2006 & Supp. II 2008).

99. 18 U.S.C. § 1595(a) (2006 & Supp. II 2008) ("An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.")

100. 22 U.S.C. § 7105(b)(1) (2006 & Supp. II 2008).

101. *See* 22 U.S.C. § 7105(b)(1)(E)(ii) (2006 & Supp. II 2008).

102. *See* 22 U.S.C. § 7105(b) (2006); 8 U.S.C. §§ 1101(a)(15)(T), 1184(o) (2006 & Supp. II 2008); 8 C.F.R. § 214.11(p)(1) (2012). T-visas are granted only if four requirements are met: (1) the individual must have experienced "severe" forms of trafficking; (2) the victim must be physically present in the United States "on account of such trafficking"; (3) the victim must cooperate with the investigation and prosecution of her trafficker; and (4) the victim must prove that she would suffer "extreme hardship involving unusual and severe harm" if she were forced to leave the United States. 8 C.F.R. § 214.11(b)(1)-(4) (2012).

character” for three years.¹⁰³ Additionally, the TVPA provides victims with a private right of action to bring civil actions in federal court against traffickers to recover money damages and attorneys’ fees.¹⁰⁴

To qualify for any of these benefits, the Department of Health and Human Services must certify an individual¹⁰⁵ in one of three categories: (1) she¹⁰⁶ must prove that she is a victim of “severe trafficking” and is under the age of 18;¹⁰⁷ (2) she has received “Continued Presence” status from the U.S. Department of Homeland Security stating that her continued presence is necessary to prosecute traffickers; or (3) she is a victim of “severe trafficking,” is willing to assist in the investigation and prosecution of her traffickers, and has made a bona fide application for a T-Visa.¹⁰⁸ In addition, T-Visas are available only to individuals who comply with the requests of law enforcement, are physically present in the United States as a result of trafficking, and would suffer extreme hardship if deported.¹⁰⁹ The TVPA authorizes the government to issue up to 5,000 T-Visas per year.¹¹⁰

II. CRITICISMS OF THE TVPA

Since the enactment of the TVPA over ten years ago, the conversation regarding it has centered around three main criticisms: lack of federal prosecutions, insufficient state and local involvement in anti-trafficking efforts, and inadequate victims’ services.¹¹¹ These criticisms

103. 8 U.S.C. § 1255(1) (2006 & Supp. IV 2008) (noting that, after three years, a recipient of a T-Visa may be eligible for permanent residence status if she can show that (1) she is a person of good moral character; (2) she has complied with any reasonable request for assistance in the investigation during the three-year period; and (3) she will suffer extreme hardship if she is removed from the United States).

104. 18 U.S.C. § 1595 (2006 & Supp. II 2008).

105. “‘Certification’ involves the process whereby a law enforcement official can provide a document attesting to the ‘cooperation with law enforcement.’ Law enforcement can also ‘precertify’ a victim, allowing a potential victim to be provided with temporary benefits such as shelter, lodging and medical assistance, while the government decides whether to use the information the victim is providing.” 22 U.S.C. § 7105(b)(1)(E) (2006 & Supp. II 2008); Haynes, *supra* note 16, at 340 n.7.

106. As noted above, despite my use of the gendered pronoun “she,” this statute applies to both men and women.

107. “Severe trafficking” is defined, as discussed above, as one forced to perform sexual or labor services through “force, fraud, or coercion.” 22 U.S.C. § 7102(8)(A)-(B) (2006).

108. 22 U.S.C. § 7105(E) (2006 & Supp. II 2008); OFFICE OF REFUGEE RESETTLEMENT, U.S. DEP’T OF HEALTH & HUM. SERVS., FACT SHEET: VICTIM ASSISTANCE (2012), available at <http://www.acf.hhs.gov/programs/orr/resource/fact-sheet-human-trafficking>.

109. 22 U.S.C. § 7105 (2006 & Supp. II 2008); 8 U.S.C. § 1101(a)(15)(T) (2006 & Supp. II 2008).

110. 8 U.S.C. § 1184(o)(2)-(3) (2006 & Supp. II 2008).

111. See *infra* Part II.A-C.

track the three goals of the legislation.¹¹² An absence of federal prosecutions and state and local involvement hinders apprehension and punishment of traffickers. Insufficient attention to victims' rights and services impedes successful victim protection and rehabilitation. A lack of all three combines to produce inadequate anti-trafficking outcomes, undermining the United States' position as an international leader in the campaign to end trafficking throughout the world.¹¹³

A. *Lack of Federal Prosecutions*

The first main criticism of the TVPA is that crimes of trafficking under the TVPA are significantly under-prosecuted, evidencing the law's limitations and the country's limited investment in punishing traffickers and protecting trafficking victims.¹¹⁴ From 2001 to 2005, for example, the DOJ prosecuted only 91 trafficking cases, and convicted only 140 of 248 defendants.¹¹⁵ Although there are many reasons prosecutions may be difficult—trafficking cases are often time and resource-intensive and require prosecutors to meet high standards of proof in showing “severe trafficking”—insignificant prosecutorial numbers send a message to traffickers, victims, and policymakers that combating trafficking is not one of the government's top priorities.¹¹⁶

Critics also argue that prosecutions typically focus on finding and rescuing “innocent victims,” meaning those individuals engaged in the kind of forced labor “not tainted by public fears and prejudices towards certain types of work or workers,”¹¹⁷ such as labor performed by illegal immigrants or others who appear to voluntarily “choose” their work. Critics and victim service providers argue that this narrow definition of

112. 22 U.S.C. § 7101(a) (2006) (“The purposes of this chapter are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”).

113. *But see* Moira Heiges, Note, *From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad*, 94 MINN. L. REV. 428, 430 (2009) (arguing that the United States' “dominant prostitution enforcement paradigm obstructs anti-trafficking policies” in a way that hinders the United States from achieving significant success in reducing sex trafficking abroad).

114. *See, e.g.*, Kevin Hsu, Note, *Masters and Servants in America: The Ineffectiveness of Current United States Anti-Trafficking Policy in Protecting Victims of Trafficking for the Purposes of Domestic Servitude*, 14 GEO. J. ON POVERTY L. & POL'Y 489, 501 (2007).

115. *Id.*

116. *Id.*

117. *Id.* at 502.

“deserving” victims results in high prosecution rates for sex trafficking and virtually no enforcement of labor trafficking.¹¹⁸

Prosecutorial numbers reflect this reality. Between 2001 and 2005, the DOJ filed twice as many sex trafficking cases as labor cases and prosecuted three times as many sex trafficking defendants,¹¹⁹ even though the International Labour Organization estimates that forced labor occurs nine times more frequently than sex trafficking.¹²⁰ In making moral judgments about which crimes are worthy of investigation and prosecution and which are not, critics maintain that law enforcement and prosecutors play into public stereotypes, prejudices, and fears that reinforce anti-immigration tendencies and policies.¹²¹

B. Insufficient State Involvement in Anti-Trafficking Efforts

While federal law enforcement has made strides in apprehending traffickers, critics argue that the TVPA is “top-heavy,”¹²² lacking informed and trained implementers at the local level where traffickers most commonly operate and are apprehended.¹²³ Many have recognized the critical role of local law enforcement in identifying trafficking cases

118. *Id.* (citing Letter from Jennie Pasquarella, Staff Att’y, ACLU of S. Cal., to Equal Justice Works (2006) (on file with author)); Srkikantiah, *supra* note 22, at 197 (“Focus on iconic victims who are completely helpless victims of sex trafficking leaves little room for victims of trafficking for forced labor. The iconic victim concept also does not contemplate victims of sex work who are not completely passive, but instead exercise agency in a variety of ways even while enslaved.”).

119. Hsu, *supra* note 114, at 502 (“Between 2001 and 2005, the Justice Department filed only twenty-three labor-related trafficking cases charging fifty-nine defendants, and only eleven in the five-year period prior charging forty-six defendants. In comparison, there were sixty-eight sex trafficking cases filed from 2001 to 2005 involving 189 defendants, a dramatic rise from seven filed cases involving thirty-four defendants in the prior five-year period.”) (citing CIVIL RIGHTS DIV., U.S. DEP’T OF JUST., REPORT ON ACTIVITIES TO COMBAT HUMAN TRAFFICKING: FISCAL YEARS 2001-2005, at 25, 27 (2006), available at <http://www.ansarilawfirm.com/docs/DOJ-Report-on-Activities-to-Combat-Human-Trafficking.pdf>).

120. 2010 TIP REPORT, *supra* note 23, at 8.

121. Hsu, *supra* note 114, at 502; see also Britta S. Loftus, *Coordinating U.S. Law on Immigration and Human Trafficking: Lifting the Lamp to Victims*, 43 COLUM. HUM. RTS. L. REV. 143, 144 (2011) (arguing that, despite measures to protect trafficking victims, laws often conflict with the United States’ immigration policy); Chacón, *supra* note 18, at 3022-23 (arguing that the TVPA’s “unwillingness to extend protections to ‘illegal workers’ absent a showing of their ‘innocence’ embeds into the TVPA the same immigration and labor law policies that have created a haven for trafficking and migrant exploitation”). It is also important to note that sex trafficking may be easier to identify than labor trafficking, thereby making it easier to prosecute.

122. Mariconda, *supra* note 31, at 175.

123. Brown, *supra* note 28, at 29; Mariconda, *supra* note 31, at 175; Kara, *supra* note 9, at 667.

and victims.¹²⁴ In fact, senior federal law enforcement officers hypothesize that local law enforcement officers—those most commonly involved in routine investigations that bring them into contact with the community—may be in the best position to first identify trafficking.¹²⁵ Between 2007 and 2008, for example, local law enforcement arrested 68 percent of individuals eventually charged with trafficking.¹²⁶ A review of federal prosecutions also suggests that actions taken by local law enforcement at the initial stages of trafficking investigations can significantly impact the success of later prosecutorial efforts.¹²⁷

Trafficking is difficult to recognize without proper training.¹²⁸ For example, when police approach victims of trafficking, victims rarely indicate their trafficked status for fear of retaliation by their traffickers.¹²⁹ Because local law enforcement officers are more familiar with their jurisdiction and are more likely to have personal connections within the community, they are more likely than federal law enforcement to be approached by witnesses of trafficking or to come in first-hand contact with trafficking victims.¹³⁰ As such, local officials may be best situated to first identify and uncover trafficking.¹³¹ Unfortunately, because the TVPA targets federal and not local law enforcement, federal officials are more likely than local officials to have training in trafficking recognition and apprehension.¹³²

124. LAW ENFORCEMENT RESPONSE TO TRAFFICKING, *supra* note 8, at 1 (citing L. De Baca & A. Tisi, *Working Together to Stop Modern-Day Slavery*, 69 THE POLICE CHIEF 78 (2002)).

125. *Id.*

126. Brown, *supra* note 28, at 29 (citing TRACEY KYCKELHAHN ET AL., U.S. DEP'T OF JUST., CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2007-08, at 10 (2009)).

127. K. Bales & S. Lize, *Investigating Human Trafficking Challenges, Lessons Learned and Best Practices*, 76 FBI LAW ENFORCEMENT BULLETIN 26 (2007).

128. Kara, *supra* note 9, at 668.

129. *Id.* (discussing trafficked workers who were “employed” by the John Pickle plant). When one of the workers was apprehended by the local police who questioned him about his identification documents, instead of reporting the trafficking, the worker told the officer that the John Pickle plant was holding these documents. *Id.* The local police officer did not inquire into the situation further. *Id.*

130. Gallagher & Holmes, *supra* note 15, at 326; Micah N. Bump & Julianne Duncan, *Conference on Identifying and Serving Child Victims of Trafficking*, 41 INT'L MIGRATION 201, 209 (2003).

131. Kara, *supra* note 9, at 667.

132. *See, e.g.*, Gallagher & Holmes, *supra* note 15, at 326 (“[Ofentimes] suspected cases of trafficking will be brought to the attention of frontline officials and not their specialist colleagues.”); Rieger, *supra* note 33, at 246 (noting that there are few, if any, training programs at the state and local level comparable to the federal training programs); HIDDEN SLAVES, *supra* note 20, at 44 (“Local law enforcement agents could play a more active role in identifying and ending forced labor operations, but most lack training in the identification of forced labor operations and continue to view people in such situations as illegal immigrants and undocumented workers.”).

C. *Inadequate Victims’ Services*

One of the most significant and lingering critiques of the TVPA is its failure to adequately provide relief and protection for trafficking victims.¹³³ This critique is relevant throughout all stages of the victim recovery process, including discovery, apprehension, and release. The first criticism of the TVPA in this regard is its narrow definition of victimization.¹³⁴ Under the TVPA, only individuals who are victims of a “severe form of trafficking,” defined as a person induced by “force, fraud, or coercion,”¹³⁵ are eligible to receive benefits including social services and legal immigration status.¹³⁶ While force, fraud, and coercion are integral elements to the definition of trafficking, defining, identifying, and proving such terms is often difficult.¹³⁷ Accordingly, many trafficked individuals find themselves ineligible for benefits.

The “severe trafficking” restriction has the potential to most significantly impact individuals who come to the United States and work in the sex industry voluntarily, yet still find themselves living in slave-like conditions.¹³⁸ Limiting relief only to those who are innocently coerced into prostitution¹³⁹ perpetuates the discourse of “innocent victims” and noble “saviors,”¹⁴⁰ while ignoring the experience of many victims of modern day slavery who may be viewed by governmental officials as complicit or guilty.¹⁴¹ Still, while these individuals may have “voluntarily” agreed to commercial sex, they likely did not agree to be subjected to slave-like working conditions.¹⁴² By constructing victimhood in this limited way and by focusing the discussion on victims rather than the abuse itself, the TVPA neglects many of those whom it

133. See Mariconda, *supra* note 31, at 175; Kara, *supra* note 9, at 672-73.

134. Wooditch et al., *supra* note 3, at 245.

135. 22 U.S.C. § 7102(8) (2006).

136. 22 U.S.C. § 7105(b)(1)(a) (2006 & Supp. II 2008).

137. 22 U.S.C. § 7101(b)(20) (2006 & Supp. II 2008) (“[V]ictims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.”); Rosy Kandathil, *Global Sex Trafficking and the Trafficking Victims Protection Act of 2000: Legislative Responses to the Problem of Modern Slavery*, 12 MICH. J. GENDER & L. 87, 102 (2006) (“The line between consent freely given versus consent forcibly obtained through psychological abuse is hardly bright-line. To complicate the picture, some women freely and voluntarily consent, absent force or fraud, to being trafficked for sexual exploitation; they are not confined against their wishes, but choose to participate in commercial sexual acts for profit.”).

138. Rieger, *supra* note 33, at 249.

139. Here, I contrast those who are innocently coerced into prostitution with those who choose sex work yet still find themselves subject to inhumane treatment.

140. See generally Makua Matua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT’L L.J. 201 (2001).

141. Rieger, *supra* note 33, at 249 (discussing the TVPA’s dichotomy of women into good victims and bad victims based on whether sex work is chosen or forced).

142. *Id.*

purports to help. Additionally, the line distinguishing force, fraud, and coercion from voluntariness is vague;¹⁴³ thus, interpretation of the TVPA is often subject to the interpretation of the law enforcement officials who may have their own preconceived notions about the rightness or wrongness of certain acts.¹⁴⁴

Even if individuals are victims of “severe trafficking,” the Department of Health and Human Services must certify their eligibility for benefits.¹⁴⁵ This process is difficult to navigate, often taking weeks or months, and, at times, it is stymied by officials who are reluctant to grant what they believe may be “excessive” certifications.¹⁴⁶ During this process, however, trafficking victims need services including food, housing, and counseling.¹⁴⁷ Despite the DOJ’s institution of a 2004 policy to streamline the certification process,¹⁴⁸ it still certified only 304 individuals in 2010, an increase from 136 in 2004.¹⁴⁹ While these 304

143. Marisa Silenzi Cianciarulo, *Modern-Day Slavery and Cultural Bias: Proposals for Reforming the U.S. Visa System for Victims of International Human Trafficking*, 7 NEV. L.J. 826, 834 (2007) (discussing force and fraud as culturally relative terms); Rieger, *supra* note 33, at 250.

144. Haynes, *supra* note 16, at 375 (“The laws of the U.S. government and the (mis)application of the TVPA support these perceptions in only allowing a victim of human trafficking to claim that status and any rights and benefits that might attach, when she fits a particular victim profile.”); *see also* Srkikantiah, *supra* note 22, at 158 (discussing a trafficking victim whom law enforcement does not believe is a true trafficking victim because of his status as an illegal worker); Kevin Bales et al., *Hidden Slaves: Forced Labor in the United States*, 23 BERKELEY J. INT’L L. 47, 49 (2005) (“NGO advocates also report that federal officials often refuse to issue endorsements of T visa applications. One service provider attributed this reluctance to the mistaken belief among law enforcement that the benefits are too generous and that ‘they are giving away a green card’ by providing certification.”).

145. Rieger, *supra* note 33, at 245.

146. Kara, *supra* note 9, at 672 (relaying the case of two trafficking victims who went months without a victim “certification” because no federal official could formally identify them as trafficking survivors even though multiple officials informally agreed that they were); Rieger, *supra* note 33, at 247 (discussing the possibility that some law enforcement officials may be reluctant to grant certifications because of a belief that they are “giving away a green card”).

147. It is important to note that, while certification is a barrier to accessing funds, in 2003, the Department of Health and Human Services provided over \$3.5 million in grants to organizations providing temporary housing, education, living skills, and transportation to trafficking victims in addition to providing \$9.5 million to NGOs for emergency services for trafficking victims as soon as they are discovered. Chacón, *supra* note 18, at 3018 (citing U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT (2004), available at <http://www.state.gov/documents/organization/34158.pdf>).

148. Rieger, *supra* note 33, at 247.

149. ALISON SISKIN & LIANA S. WYLER, CONG. RESEARCH SERV., RL 34317, TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS (2010), available at <http://www.fas.org/sgp/crs/misc/RL34317.pdf>. Between fiscal year 2002 and June 2010, there were 2,968 applications for T-1 status (trafficking victims’ T-visas), and 1,862 of these applications were approved, representing 63% approval of applications. *Id.* at 27. Still, while more than half of the victims who applied for certification during this time

victims accounted for 84 percent of the individuals who applied for certification during 2010,¹⁵⁰ they represent certification of less than 1.5 percent of the United States' estimated 20,000 trafficking victims overall.¹⁵¹

In addition, the TVPA contains a rigid eligibility requirement stating that only victims who cooperate with law enforcement in prosecuting trafficking cases are eligible to receive services.¹⁵² This is one of the most criticized and problematic requirements of the TVPA.¹⁵³ In no other domestic context are victims required to cooperate with prosecutors in order to receive basic human rights such as safe housing or medical services.¹⁵⁴ In addition, the protections afforded by the TVPA are often illegal immigrants' only source of rights.¹⁵⁵ If the victims fail to comply with requests of law enforcement in prosecuting their traffickers, they can be left with no basis under which to assert access to this basic assistance.¹⁵⁶ Thus, the prosecution requirement is often criticized as creating an unfair dichotomy between victims of trafficking who are legally present in the country and those who are not, giving one a choice concerning prosecutorial involvement and denying choice to the other.¹⁵⁷

Despite the requirement of prosecutorial participation, there are many reasons victims may be hesitant to cooperate with law enforcement or may be unaware of the requirement to do so. One NGO estimated that half of its clients did not participate in the prosecution of their traffickers for one reason or another.¹⁵⁸ For example, many victims fear retaliation against themselves or their family.¹⁵⁹ This is a particularly well-founded fear given that traffickers often have deep ties to victims' home communities or to organized crime rings within them.¹⁶⁰ And even though the TVPA provides for a witness protection program for victims who testify against their traffickers and are fearful of retaliation, this

obtained it, only 304 individuals of the estimated 20,000 trafficking victims in the United States were certified. *Id.* at 22-27.

150. *Id.* at 27 (noting that 345 victims applied for T-1 status in 2010, and 87 were denied certification).

151. *See* Kara, *supra* note 9 and accompanying text.

152. Wooditch et al., *supra* note 3, at 237-38.

153. Rieger, *supra* note 33, at 250.

154. *Id.*

155. Dalrymple, *supra* note 16, at 455-56 (discussing why it is difficult for illegal immigrants to come forward to report trafficking when they have few protections outside of qualifying as a victim of "severe trafficking").

156. Rieger, *supra* note 33, at 250.

157. *Id.*

158. Bales et al., *supra* note 144, at 83.

159. Rieger, *supra* note 33, at 251.

160. *Id.*

does not protect victims' family members who may remain in imminent danger.¹⁶¹

In addition, because many traffickers are not apprehended or successfully prosecuted, it is common for victims to see their traffickers, or those involved with them, after they escape.¹⁶² One woman, for instance, reported that while she was trafficked, prison guards who frequented the brothel at which she worked regularly raped her.¹⁶³ After law enforcement "rescued"¹⁶⁴ her, she still did not feel safe because she continued to see her rapists in the community either because they were not prosecuted or had already been released from prison.¹⁶⁵ Worse yet, these individuals were law-enforcing members of society who should have acted as sources of protection.

Victims' reluctance to aid law enforcement may also stem from a general distrust of law enforcement.¹⁶⁶ As part of their psychological coercion and oppression, traffickers convince trafficking victims that law enforcement officers are dangerous and seek either to harm or to deport them.¹⁶⁷ Because many trafficking victims are present in the United States illegally, this is a salient concern.¹⁶⁸ Furthermore, the trafficking industry worldwide is rampant with corruption among law enforcement officials, and many trafficked victims originate from countries with widespread police malfeasance.¹⁶⁹ Thus, trafficked victims may be more

161. Dalrymple, *supra* note 16, at 466 ("U.S. law enforcement typically lacks the power to prevent traffickers from retaliating against family members in other countries, especially when police in those countries are unresponsive, underfunded, or corrupt."); Ryf, *supra* note 7, at 66.

162. Rieger, *supra* note 33, at 251.

163. *Id.*

164. I use the term "rescued" here with the recognition that, oftentimes, trafficked women discovered by law enforcement also feel victimized by their "rescue." See Haynes, *supra* note 16, at 338-39 (discussing how victims discovered by law enforcement are often deported or detained by the Department of Homeland Security for months and sometimes years).

165. Rieger, *supra* note 33, at 251 (citing Sean Gardiner & Geoffrey Mohan, *Smuggled for Sex: The Sex Slaves from Mexico*, NEWSDAY, Mar. 12, 2001, at A5).

166. Marina Tzvetkova, *NGO Responses to Trafficking in Women*, 10 GENDER & DEV. 60, 61 (2002) ("Many trafficked persons fear and distrust state-based organisations as they frequently enter destination countries illegally, or have had their documentation removed on arrival. Concerns over their immigration status, fear of deportation, and fear of the traffickers, torture, death, and being pressurised to testify translate into mistrust and reluctance to approach statutory agencies for support. Corrupt officials and the involvement of the police and other law enforcement officials can increase distrust."); see also Dalrymple, *supra* note 16, at 466 (discussing victims' mistrust of law enforcement).

167. Ryf, *supra* note 7, at 51.

168. Tzvetkova, *supra* note 166, at 61.

169. Dalrymple, *supra* note 16, at 470 n.129 ("This distrust of law enforcement can stem from their experience of corrupt law enforcement in their country of origin, the lack of protection they have received, or the myths that traffickers tell them."); Osita Agbu, *Corruption and Human Trafficking: The Nigerian Case*, 4 W. AFRICA REV. 1, 1-2 (2003).

likely to distrust authority figures and question their protective function.¹⁷⁰

Other victims may be incapable of assisting with the prosecution of their traffickers because they are unable to confront or relive the horrors of their experience.¹⁷¹ For many, particularly those who have been repeatedly and brutally raped, testifying against their traffickers results in re-victimization with significant emotional and psychological costs.¹⁷² Requiring victims to choose either to participate in prosecution and face these costs or be deported effectively renders their choice meaningless, further reinforcing their lack of empowerment and subordination. Many victims may be so traumatized by their experiences that they are unable to accurately and comprehensively recall or recount their experiences, failing to comply with the TVPA's cooperation requirement in the way prosecutors demand.¹⁷³ Others may wish to discuss their trafficking in a non-confrontational, victim-centered environment rather than in the adversarial criminal justice system.¹⁷⁴

Even full cooperation with law enforcement does not ensure that trafficking victims will receive promised benefits, such as a T-Visa.¹⁷⁵ In addition to being a victim of "severe trafficking," individuals who apply for T-Visas must be able to demonstrate that they would suffer "extreme hardship involving unusual and severe harm upon removal."¹⁷⁶ Proving

170. Theodore R. Sangalis, *Elusive Empowerment: Compensating the Sex Trafficked Person Under the Trafficking Victims Protection Act*, 80 *FORDHAM L. REV.* 403, 416-17 (2011) ("This threat, compounded by corruption in foreign law enforcement, creates a general distrust of law enforcement officials among victims of human trafficking.").

171. Sadruddin et al., *supra* note 38, at 395 ("Congress failed to recognize that many of the most traumatized victims might be physically or psychologically incapable of providing cooperation with law enforcement. . . ."); *see also infra* notes 172-174.

172. CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 180-81 (1989); Sadruddin et al., *supra* note 38, at 413 ("Even a healthy person finding herself in a room full of interrogators might be intimidated, notwithstanding the good intentions of the interviewers. Imagine the response of a trafficking victim, who was perhaps recently raped or tortured and just pulled out of her situation, and we can see the problem inherent in this process.").

173. Rieger, *supra* note 33, at 251; Sadruddin et al., *supra* note 38, at 395 ("Medical research shows that victims who are suffering from severe trauma will often be incapable of certain types of analytical thinking or remembering facts. Retelling their stories may cause additional trauma.").

174. *See, e.g.*, Jo Goodey, *Sex Trafficking in Women from Central and East European Countries: Promoting a "Victim-Centred" and "Woman-Centred" Approach to Criminal Justice Intervention*, 76 *FEMINIST REV.* 26, 28 (2004) ("Coming from countries where the police and the judiciary are generally not trusted to respect victims and to respond adequately to their needs, and with the prospect of being questioned about intimate details by male police officers and investigators, it is understandable that trafficked women are less than enthusiastic to cooperate with the authorities."); Tzvetkova, *supra* note 166, at 61.

175. Brown, *supra* note 28, at 26.

176. 8 U.S.C. § 1101(a)(15)(T) (2006 & Supp. II 2008).

this requirement can be extremely difficult, and many victims are unable to meet the standards which regulations dictate as higher than those used for “extreme hardship” in asylum applications.¹⁷⁷ The Clinton Administration itself, before signing the TVPA into law, expressed concerns that the requirements for the T-Visa were too stringent.¹⁷⁸ This fear was not unfounded. In 2008, for example, the Department of Homeland Security received applications for 394 T-Visas and granted only 247.¹⁷⁹ Other evidence indicates that the government denies 50 percent of T-Visa applications for one reason or another.¹⁸⁰

Even when victims are eligible to receive T-Visas, certification is not necessarily immediate.¹⁸¹ Although the Department of Health and Human Services (HHS) states that the “certification process typically takes only a few days after HHS is notified that a person has made a bona fide T-Visa application or has been granted continued presence status,”¹⁸² it takes a significant amount of time for an individual to amass the proper documentation to support a “bona fide” T-Visa application in the first instance.¹⁸³ Moreover, in some cases, initial T-Visa applications take up to nine months to process.¹⁸⁴ In addition, the Immigration and Customs Enforcement agency is authorized to issue only 5,000 visas each year, and victims are not eligible to receive services if they have any history of prostitution—unconnected with the current trafficking charge—within ten years preceding the application.¹⁸⁵

Thus, while trafficking victims can receive protection and asylum in theory, many are denied this opportunity in practice.¹⁸⁶ This is

177. See 8 C.F.R. § 240.64 (2012).

178. Sadruddin et al., *supra* note 38, at n.249.

179. Brown, *supra* note 28, at 26.

180. SIDDHARTH KARA, *SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY* 156 (2009).

181. HEATHER J. CLAWSON & NICOLE DUTCH, U.S. DEP’T OF HEALTH & HUM. SERVS., *ADDRESSING THE NEEDS OF VICTIMS OF HUMAN TRAFFICKING: CHALLENGES, BARRIERS, AND PROMISING PRACTICES* 7-8 (2007), available at <http://aspe.hhs.gov/hsp/07/humantrafficking/Needs/ib.pdf> (discussing the lengths of time for certification).

182. OFFICE OF REFUGEE RESETTLEMENT, U.S. DEP’T OF HEALTH & HUM. SERVS., *FACT SHEET: CERTIFICATION FOR ADULT VICTIMS OF TRAFFICKING* (2012), available at <http://www.acf.hhs.gov/programs/orr/resource/fact-sheet-certification-for-adult-victims-of-trafficking>.

183. Rieger, *supra* note 33, at 252-53 (discussing the “overly strict” requirements for qualifying for a T-visa).

184. KARA, *supra* note 180, at 156.

185. Tala Hartsough, *Asylum for Trafficked Women: Escape Strategies Beyond the T Visa*, 13 *HASTINGS WOMEN’S L.J.* 77, 99 (2002). The initial Senate bill had no T-Visa limit. However, the House, concerned that people would try to obtain immigration status by falsely claiming victim status, advocated for the 5,000 limit.

186. See generally Cianciarulo, *supra* note 143, at 835 (“The cultural barriers present in the T visa system have led to erratic, inadequate implementation of the T visa, which

detrimental to both trafficking victims and law enforcement.¹⁸⁷ Deporting victims often forces them back into conditions of poverty and oppression that made them susceptible to victimization in the first place.¹⁸⁸ Immediate deportation also significantly restricts law enforcement’s ability to develop a successful case against traffickers.¹⁸⁹

Finally, critics often note that, despite the significant amount of money dedicated to anti-trafficking efforts, prevention campaigns and victims’ services receive relatively little money in comparison to prosecution.¹⁹⁰ As of 2005, money spent on trafficking investigation was seven times that of money spent developing victims’ services.¹⁹¹ Furthermore, the United States itself notes that, while there has been a 210 percent increase in certifications of foreign-born victims between 2004 and 2009, there was no corresponding increase in funding for victims’ services during that time.¹⁹² In fact, funding for victims’ services decreased between fiscal years 2010 and 2011.¹⁹³

III. PROGRESS MADE IN PREVENTING TRAFFICKING

Since the TVPA was first enacted in 2000, Congress has issued three reauthorizations that strengthen the original provisions, provide more support for state and federal law enforcement, and allocate additional funding to victims’ services organizations.¹⁹⁴ While the United States still has significant progress to make in strengthening its approach to trafficking, the following section highlights some of the legal and practical responses to prior criticisms of the TVPA. Though these advancements represent progress to date, they do not negate the numerous criticisms of the TVPA, nor do they suggest that further improvements are unnecessary.

in turn has had several negative repercussions for international human trafficking victims and anti-trafficking efforts.”)

187. Cianciarulo, *supra* note 143, at 835 (discussing the negative consequences of erratic T-visa implementation).

188. Barone, *supra* note 25, at 593.

189. Ryf, *supra* note 7, at 65.

190. Wooditch et al., *supra* note 3, at 245.

191. *Id.* (citing Trafficking Victims Protection Reauthorization Act of 2005, H.R. 972, 109th Cong. (2005)); *see also* 2010 TIP REPORT, *supra* note 23, at 340-41 (noting that, while many victims’ services were funded by the federal government, money allocated to legal service providers was significantly limited).

192. 2010 TIP REPORT, *supra* note 23, at 341.

193. 2012 TIP REPORT, *supra* note 27, at 362.

194. The Trafficking Victims Protection Act (TVPA) of 2000 (P.L. 106-386) was reauthorized in 2003, 2005, and 2008 by the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 (P.L. 108-193), the TVPRA of 2005 (P.L. 109-164), and the William Wilberforce Trafficking Victims Reauthorization Act of 2008 (P.L. 110-457).

A. *Federal Prosecutions*

While many argue that the TVPA in its current form is insufficient,¹⁹⁵ U.S. Attorneys' offices across the country have utilized it in hundreds of cases and a variety of situations to successfully prosecute traffickers. An article by Mark Kappelhoff, Chief of the Criminal Section of the Civil Rights Division ("the Division") of the DOJ, provides some evidence of this success.¹⁹⁶ From 2001 to 2008, U.S. Attorneys' offices, in conjunction with the Division, prosecuted 531 defendants.¹⁹⁷ This statistic represents a 455 percent increase from the prior eight years during which the federal government prosecuted only 95 defendants.¹⁹⁸ In the same period, the government increased convictions by 581 percent (from 76 to 519)¹⁹⁹ and increased new investigations by 628 percent (from 138 to 1,005).²⁰⁰

In 2010, the United States pursued 103 trafficking cases, bringing 181 charges of trafficking and obtaining 141 federal trafficking convictions.²⁰¹ In 2011, the DOJ obtained 151 convictions—the highest number in any year—in 125 human trafficking cases.²⁰² During that time, the United States also had 337 pending human trafficking investigations.²⁰³ While these numbers represent a significant increase from the years prior to the enactment of the TVPA, they still represent protection of only a small fraction of the DOJ's estimated number of victims trafficked into the United States each year.

Additionally, while prosecutions have prioritized certain types of trafficking over others, prosecuting sex trafficking more frequently than non-sex labor trafficking,²⁰⁴ the prosecutions to date have covered the spectrum, including at least one domestic servitude, agricultural labor, and service labor case.²⁰⁵

195. *See supra* Part II.

196. *See generally* Kappelhoff, *supra* note 2.

197. *Id.* at 17.

198. *Id.*

199. *Id.*

200. *Id.*

201. 2011 TIP REPORT, *supra* note 81, at 373.

202. 2012 TIP REPORT, *supra* note 27, at 361.

203. 2012 TIP REPORT, *supra* note 27, at 361. As of 2010, 5,606 traffickers had been prosecuted worldwide, and 4,166 convictions had been attained. 2010 TIP REPORT, *supra* note 23, at 45.

204. *See supra* Part II.A.

205. Critics may be correct in arguing that TVPA prosecutions have preferenced sex trafficking over labor trafficking. I note that prosecutions have included a variety of situations only to point out that such prosecutions are possible under the TVPA, even though they may be uncommon.

Courts have also leniently interpreted TVPA definitions, construing many terms broadly to encompass a variety of illegal activity. For example, courts have understood the term “commercial sex act” to include pornography.²⁰⁶ Courts also have read the TVPA’s forced labor provisions expansively, finding that the meaning of “serious harm” could include “threats of any consequences, whether physical or non-physical, that are sufficient under all the surrounding circumstances to compel or coerce a reasonable person in the same situation to provide or to continue providing labor or services.”²⁰⁷ Similarly, courts have held that a threat of deportation can constitute a sufficient threat of an abuse of the legal process.²⁰⁸

In other prosecutorial successes, courts have found that, although conviction under the TVPA requires a showing of force, fraud, or coercion, these elements need not be proven separately.²⁰⁹ Rather, all elements are “alternate means” of proving a single idea.²¹⁰ In addition, courts have held that coercion can exist in situations where the trafficking victim had an opportunity to escape if the individual was afraid to leave for fear of physical retaliation.²¹¹ Thus, while the quantity of trafficking prosecutions and convictions are important, the utilization of multiple methods to prove trafficking is also an important indicator of gradual progress in trafficking prosecutions.

Finally, the 2003, 2005, and 2008 TVPA reauthorizations evidence Congress’s continued efforts to address the deficiencies in the TVPA in prosecuting traffickers.²¹² Responding to a need for more prosecutorial tools, the 2008 reauthorization included the following: creation of a trafficking-specific conspiracy offense punishable to the same extent as

206. See *United States v. Marcus*, 487 F. Supp. 2d 289, 304, 308 (E.D.N.Y. 2007).

207. *United States v. Bradley*, 390 F.3d 145, 150 (1st Cir. 2004).

208. See *Catalan v. Vermillion Ranch Ltd. P’ship*, No. 06-cv-01043-WYD-MJW, 2007 WL 38135, at *8 (D. Colo. Jan. 4, 2007); see also *United States v. Veerapol*, 312 F.3d 1128, 1132 (9th Cir. 2007) (holding that threats of deportation are sufficient to constitute legal coercion even if this would not be sufficient to coerce an adult of normal intelligence into involuntary servitude).

209. See, e.g., *Marcus*, 487 F. Supp. 2d at 308 (describing “force, fraud, or coercion” as a single element of 18 U.S.C. § 1591 (2008)); *United States v. Powell*, No. 04 CR 885, 2006 WL 1155947, at *1 (N.D. Ill. Apr. 28, 2006) (holding that “fraud, force, or coercion” are not distinct elements of trafficking but rather are means of accomplishing it).

210. *United States v. Paris*, No. 03:06-CR-64(CFD), 2007 WL 3124724, at *12 (D. Conn. Oct. 24, 2007).

211. *United States v. Warren*, 772 F.2d 827, 834 (11th Cir. 1985).

212. See *supra* text accompanying note 194; see also Trafficking Victims Protection Reauthorization Act of 2011, H.R. 2830, 112th Cong. (2011), available at <http://www.govtrack.us/congress/bills/112/hr2830> (introduced August 30, 2011, and, as of October 2012, awaiting passage by the House and Senate, and approval by the President); S. 1301, 112th Cong. (2011) (similar Senate bill).

the completed crime; a broader prohibition of sex traffickers who act “in reckless disregard of” the use of force, fraud, or coercion; criminalization of obstructing a trafficking investigation;²¹³ prohibition of financially benefitting from knowingly participating in a trafficking venture;²¹⁴ reinforcement and clarification of the breadth of the TVPA’s prohibition against non-violent forms of coercion; and a stricter prohibition of sex trafficking of minors through removal of the requirement that traffickers are aware of the minor’s age.²¹⁵ Despite these limited successes, further action is necessary.

B. State and Local Involvement

States have also been increasingly proactive about implementing anti-trafficking efforts. In 2003, no state had anti-trafficking legislation.²¹⁶ As of June 2012, every state but Wyoming had enacted anti-human trafficking laws,²¹⁷ and 21 states had statewide anti-trafficking task forces.²¹⁸ Between 2000 and 2006, the number of state and local law enforcement trafficking investigations increased from 175 to 750, the number of state and local law enforcement agencies investigating trafficking cases increased from 54 to 97, and the number of arrests made by state and local law enforcement increased from 113 to 338.²¹⁹ In addition, local agencies more than doubled the average number of trafficking cases they investigated during that time.²²⁰ This dramatic increase reflects a growing awareness of trafficking at the state and local levels and a commitment to its eradication.²²¹ In addition to criminalizing trafficking, some state legislation also provides services to trafficking victims.²²²

213. Pub. L. No. 110-457, 122 Stat. 5044 (2008).

214. Kappelhoff, *supra* note 2, at 11.

215. Here, the defendant had to have a reasonable opportunity to observe the minor.

216. Ellen L. Buckwater et al., *Modern Day Slavery in Our Own Backyard*, 12 WM. & MARY J. WOMEN & L. 403, 416 (2006).

217. See 2012 TIP REPORT, *supra* note 86, at 361 (showing an increase from February 2011, when only 43 states had anti-trafficking legislation); *US Policy Advocating Combat Trafficking (US PACT)*, CTR. FOR WOMEN POL’Y STUD., <http://www.centerwomenpolicy.org/programs/trafficking/facts/default.asp> (last visited Oct. 30, 2012) [hereinafter *Combat Trafficking*].

218. CTR. FOR WOMEN POL’Y STUD., FACT SHEET ON STATE ANTI-TRAFFICKING LAWS 2 (2012), available at http://www.centerwomenpolicy.org/programs/trafficking/facts/documents/11.CWPS_FactSheetonStateAntiTraffickingLawsMarch2012000.pdf [hereinafter FACT SHEET].

219. See *Combat Trafficking*, *supra* note 217.

220. LAW ENFORCEMENT RESPONSE TO TRAFFICKING, *supra* note 8, at 65.

221. See generally *id.*

222. This increased awareness and legislation may also reflect states’ understanding that they are uniquely positioned to combat trafficking problems within their communities. See, e.g., CAL. WEL. & INST. CODE §§ 18945, 13282 (providing victims

Still, there is far to go in states’ involvement in preventing trafficking efforts. As of 2008, seven states reported having no state law enforcement agencies to investigate human trafficking.²²³ As of March 2012, only 15 states had laws providing victims of trafficking with a civil right of action against their traffickers.²²⁴ Only 17 states required mandatory restitution for trafficking victims,²²⁵ and only 19 states allowed for asset forfeiture.²²⁶ Additionally, localities continue to report that state prosecution is prohibitive because of the significant cost associated with investigating trafficking and proving the elements of force or coercion.²²⁷

C. *Victims’ Services*

The United States has made the least progress in the area of victims’ services, which includes access to medical services, food, shelter, psychological counseling, and immigration information. Although the DOJ notes that it takes a “victim-centered approach” to fighting trafficking and that it is the “mission of government . . . to remove victims from abusive settings, place them in safe programs of restorative care, and hold perpetrators accountable” for their actions, prosecution is still the United States’ number one priority, and victims’ services are secondary.²²⁸

One area in which the United States has made strides in addressing victims’ rights is providing a civil remedy to victims of trafficking.

with access to social services); CAL. CIV. CODE § 52.5 (giving victims a private right of action); *see also* Brown, *supra* note 28, at 29 n.237 (noting that California, Connecticut, Florida, Idaho, Illinois, Indiana, Iowa, Minnesota, Missouri, New Jersey, and Washington had enacted laws to provide victims with assistance and protection).

223. LAW ENFORCEMENT RESPONSE TO TRAFFICKING, *supra* note 8, at 49 (citing Delaware, Hawaii, North Dakota, South Carolina, West Virginia, and Montana as states that did not report having any law enforcement agencies who investigated human trafficking).

224. FACT SHEET, *supra* note 218, at 3, 4, 6, 7, 9, 11, 13-15, 17, 20, 22-24 (citing Alabama, California, Connecticut, Florida, Illinois, Kentucky, Maine, Massachusetts, Missouri, Nevada, Oklahoma, Oregon, Texas, Vermont, Washington, and Wisconsin as states granting civil rights of action).

225. *Id.* at 3, 4, 6, 9, 10, 14-20 (citing Alabama, Arizona, California, Delaware, Hawaii, Illinois, Indiana, Missouri, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Tennessee, and Texas as states requiring mandatory restitution). *But see id.* at 9, 11, 13, 17, 22, 24 (citing eight states—Idaho, Maine, Massachusetts, Michigan, Ohio, Oregon, Vermont, and Wisconsin—that allow, but do not mandate, courts to award restitution).

226. *Id.* at 3, 5, 8, 9, 10, 11, 13, 15, 17, 20, 22 (citing Alabama, California, Georgia, Hawaii, Illinois, Kansas, Louisiana, Maine, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, and Vermont as states that allow asset forfeiture).

227. Brown, *supra* note 28, at 30.

228. 2003 TIP REPORT, *supra* note 8, at 12.

Although the legal emphasis is on punishing perpetrators of trafficking at the initial stage of criminal prosecution, the TVPA's 2003 reauthorization provides a civil remedy for victims of trafficking to recover damages and reasonable attorneys' fees.²²⁹ Moreover, the Ninth Circuit recently held that the term "damages" applies to punitive, as well as compensatory damages.²³⁰

This is important for all victims of trafficking—including those who qualify for government-provided services under the TVPA such as food, shelter, or medical assistance—because these services are only temporary.²³¹ Dealing with the repercussions of trafficking, however, takes much longer than the time during which the government provides this assistance.²³² Civil remedies provide survivors with compensation to rebuild their lives and empower them to direct the course of prosecution in a manner unavailable to them during the criminal process.²³³ In some instances these awards can be significant; while some traffickers oversee small trafficking operations and are themselves low-income immigrants, many are involved in lucrative trafficking rings with significant profits.²³⁴

Another way in which the United States has made progress in providing services to trafficking victims is through the creation of task

229. 18 U.S.C. § 1595 (2006 & Supp. II 2008) ("An individual who is a victim of a violation may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees."). This section first became effective on December 19, 2003.

230. *Ditullio v. Boehm*, 662 F.3d 1091, 1098 (9th Cir. 2011) ("Punitive damages are generally appropriate under the TVPA civil remedy provision because it creates a cause of action for tortious conduct that is ordinarily intentional and outrageous.").

231. *Rieger*, *supra* note 33, at 253.

232. See Virgil Wiebe & Sarah Brenes, *Mental Health Professionals and Affirmative Applications for Immigration Benefits: A Critical Review of Administrative Appeals Office Cases Involving Extreme Hardship and Mental Harm*, 11-04 IMMIGR. BRIEFINGS 1 (2011) ("We recognize that the physical, psychological and emotional effects of trafficking may endure for years or even a lifetime after a victim has escaped his or her traffickers."); Carina Patriitti, *Restoring Human Trafficking Victims Through Victim-Offender Dialogue*, 12 CARDOZO J. CONFLICT RESOL. 217, 224 (2010) ("[V]ictims carry with them many painful memories, experience trauma, and have developed psychological problems, such as post-traumatic stress disorder."); Kathleen K. Hogan, *Slavery in the 21st Century and in New York: What Has the State's Legislature Done?*, 71 ALB. L. REV. 647, 665 (2008) (discussing the "profound long-term, if not life-long, psychological effects on trafficking victims").

233. See Kathleen Kim & Kusia Hreshchyshyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States*, 16 HASTINGS WOMEN'S L.J. 1, 4 (2004).

234. See Ryf, *supra* note 7, at 53 (discussing a group of traffickers who made \$8 million in six years from trafficking individuals for work in sex shops and another group who made \$1.5 million in one year from enslaved women).

forces to unite the efforts of law enforcement and victim service providers.²³⁵ Although further action is necessary to ensure that these task forces provide proper protection and rehabilitation to trafficking victims, the development of these task forces is an important step in furthering the TVPA's third and arguably most important goal.

IV. PARTNERSHIP: COLLABORATION PROMOTES TVPA GOALS

To date, the United States has made progress in establishing laws to address trafficking, providing funding to enforce these laws, and responding to criticisms of their ineffectiveness.²³⁶ Still, current efforts are insufficient to meet the TVPA's three goals of punishing traffickers, deterring trafficking, and providing protective and rehabilitative services to victims. While scholars and policymakers have devoted much attention to evaluating and modifying the TVPA to account for these concerns, they have placed less emphasis on how progress can be made under the existing law.²³⁷ What is conspicuously absent from current evaluations of the TVPA, and what can be accomplished without a legislative reauthorization, is cooperation among individuals and organizations working to combat trafficking.

To respond to the criticisms of current trafficking initiatives and to effectively end the practice, greater collaboration is needed between state and federal law enforcement and local non-profit organizations.²³⁸ Trafficking schemes across the United States are diverse.²³⁹ While some traffickers belong to large-scale, well-organized crime rings, other traffickers work independently.²⁴⁰ Because trafficking manifests in many forms, approaches to attacking it must do the same. All levels of government and NGOs must coherently organize their efforts and integrate services to combat the problem most effectively.

Part IV addresses the theoretical and practical benefits of partnership between individuals working to prosecute trafficking cases and NGOs working to rehabilitate trafficked victims. In this Part, I argue

235. See *infra* Part IV.

236. See *supra* Part III.

237. See, e.g., Loftus, *supra* note 121; Hsu, *supra* note 114.

238. See, e.g., Brown, *supra* note 28, at 1.

239. See *infra* note 240.

240. Padam Simkhada, *Life Histories and Survival Strategies Amongst Sexually Trafficked Girls in Nepal*, 22 CHILD. & SOC'Y 235 (2008); Rieger, *supra* note 33, at 236; David Feingold, *Human Trafficking*, 150 FOREIGN POL'Y 26, 28 (2005) ("Trafficking is big business, but in many regions of the world, such as Southeast Asia, trafficking involves mostly 'disorganized crime': individuals or small groups linked on an ad hoc basis."); Carolina Johansson Wennerholm, *Crossing Borders and Building Bridges: The Baltic Region Networking Project*, in GENDER, TRAFFICKING, & SLAVERY 10, 14 (Rachel Masika ed., 2002).

that, under the law's current framework, the goals of the TVPA can best be accomplished together, with NGOs collaborating with state and federal law enforcement in their prosecutorial efforts.

For instance, one of the primary goals of the TVPA is to provide rehabilitative services to victims.²⁴¹ In comparison to other anti-trafficking legislation worldwide, the law is comprehensive and contains numerous provisions for victims' services.²⁴² Still, the legislation is principally prosecutorial, designed primarily to apprehend and punish traffickers.²⁴³ While many argue that the focus of the legislation should shift from this prosecutorial model to a victim-centered approach to trafficking,²⁴⁴ I advocate integrating a victim-centered approach into the prosecutorial model already in place.

To take this victim-centered approach and to ensure that meaningful victim input is not lost, the United States must more broadly address the problem of trafficking by involving NGOs in the front-line process of investigating and prosecuting trafficking and prioritizing victims' services among law enforcement. In addition, law enforcement must be informed as to how a victim-centered approach furthers its mission of prosecuting traffickers and protecting future victims.²⁴⁵

There are certainly additional strategies—including immigration reform and legislative modification²⁴⁶—that could enhance the status of trafficking victims in the United States. Similarly, there are changes that

241. 22 U.S.C. § 7101 (2006) (“The purposes of this chapter are . . . to protect [] victims.”).

242. Dina Francesca Haynes, *Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers*, 26 HUM. RTS. Q. 221, 241-42 (2004) (discussing temporary visas for victims and the possibility of permanent residence).

243. See, e.g., Wooditch et al., *supra* note 3, at 238 (“In spite of the TVPA’s intent to focus on the protection of victims, the needs of trafficking victims are clearly secondary to furtherance of criminal prosecution.”); Charles Song & Suzy Lee, *Between a Sharp Rock and a Very Hard Place: The Trafficking Victims Protection Act and the Unintended Consequences of the Law Enforcement Cooperation Requirement*, 1 INTERCULTURAL HUM. RTS. L. REV. 133, 137 (2006) (arguing that the TVPA is drafted too narrowly with regard to victims’ services out of the “precautionary fear” that services, such as visas, will be abused); Sadruddin et al., *supra* note 38, at 394 (“The TVPA is designed primarily as a prosecutorial tool. . . .”); Haynes, *supra* note 242, at 238, 241 (noting that “some countries and international institutions, such as the United States and the European Union, promote anti-trafficking programs that emphasize the prosecution of traffickers” and referring to the TVPA as a “prosecution-oriented piece of anti-trafficking legislation”).

244. See Sadruddin et al., *supra* note 38.

245. This Article is premised on the general idea that law enforcement’s primary focus is on prosecution of traffickers and that NGOs’ primary focus is on victims’ services. This Article is not, however, intended to suggest that *all* law enforcement officers fail to take a victim-centered approach to trafficking or that *all* NGOs adopt a victims’ services approach.

246. See *supra* Part II.C.

the government could implement, including enhanced penalties, increased training, and additional funding to further its prosecutorial goals.²⁴⁷ However, in the absence of a legislative reauthorization or a complete ideological shift in the United States’ approach to combating trafficking, I argue that NGO/law enforcement partnerships are the best available solution to increasing prosecutions, providing services to trafficked victims, and further deterring commission of this crime.

Thus, this Part is intended neither to undermine the importance of a largely victim-centered approach to trafficking, nor to suggest that there are not important modifications that could be made to the TVPA to address concerns from victims’ advocates. Rather, Part IV is intended to address the problem of trafficking in the United States in the context of the current legal status and to further develop logical and evidence-based ways to address it.

A. *The Theoretical Basis for Partnership*

The first step in promoting meaningful partnerships between individuals and organizations working to end trafficking is establishing a theoretical basis for the connection between the three goals of the TVPA.²⁴⁸ Informing advocates as to how each of the three TVPA goals is best accomplished through progress made toward the others will incentivize them to partner with each other to achieve progress in all three arenas. Rather than merely hoping that victim service providers will want to aid with prosecutions, or that law enforcement will care about victims’ services, or that either will be invested in prevention efforts, each group must be aware of how investment in the other will aid its primary goals.

Upon initial inquiry, one may wonder whether it is possible to support all three of the TVPA goals at once. I argue that it is. Two of the goals of the TVPA are perpetrator prosecution and victim protection. These goals are easily wedded. Sufficiently protecting victims is integral

247. Note that each of the reauthorizations of the TVPA provided enhanced criminal penalties for traffickers and additional funding for trafficking prevention. For example, in 2003, “the Trafficking Victims Protection Reauthorization Act (TVPRA) strengthened provisions of the TVPA and reauthorized over \$70 million to continue the fight against human trafficking.” Sadruddin et al., *supra* note 94, at 390.

248. Scholars have written about how the goals of these partners may be in conflict, however, little scholarship has addressed how these goals can compliment one another. *See, e.g.*, Goodey, *supra* note 174, at 43 (“At present, the goals and reaction of different agencies may be at odds with each other; with immigration officers/border police wanting to secure deportation, police officers wanting to pursue witness testimonies, and NGOs wanting to offer protection and shelter.”).

to successful prosecutions.²⁴⁹ In fact, according to the U.S. Attorney General's office, successful prosecutions rely on protecting victims.²⁵⁰ Uncooperative or deported victims are significantly less helpful in securing a successful prosecution than present and cooperative victims.²⁵¹ Cooperative victims, for instance, can supply law enforcement with information about trafficking schemes or rings, thus providing law enforcement with additional evidence for further prosecutions. Cooperative victims can also connect law enforcement to other victims with whom they may have come into contact.

Partnership with victim service providers can also assist law enforcement in detecting trafficking. Trafficking NGOs report receiving trafficking tips from individuals within the community whom they have already served in one capacity or another.²⁵² These individuals are often well integrated in the local community and, unlike law enforcement, are usually focused solely on studying and eradicating trafficking.²⁵³ Additionally, because trafficking NGOs have intimate knowledge of characteristics of victimization, they may better be able to classify individuals as victims or perpetrators.²⁵⁴ Thus, victim service providers may be valuable sources of information for law enforcement in exposing and investigating trafficking. Moreover, they may be able to do so in ways that are less intrusive and more likely to protect victims' rights.²⁵⁵

Promoting collaboration between NGOs and law enforcement in the prosecution of traffickers will also serve the mission of NGOs in

249. See Haynes, *supra* note 242, at 246 ("Weak protection hurts trafficked persons, adding further insecurity to their future prospects, but it also hinders the prosecution of traffickers.").

250. U.S. DEP'T OF STATE., ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS (FISCAL YEAR 2008), at 38 (2009), available at <http://m.state.gov/md125631.htm> [hereinafter 2009 ATT'Y GEN. REP.] ("Trafficking cases are extremely resource intensive and often rely on the testimony of frightened and abused victims.").

251. See Haynes, *supra* note 242, at 265 ("Legal residence would also enable victims to access legal assistance, not only helping to ensure that their rights are protected, but also serving the states' interests in prosecuting the traffickers.").

252. See Tzvetkova, *supra* note 166, at 62 (discussing NGOs' well-established system of formal and informal referral systems).

253. *Id.* at 64 (discussing NGOs' role in the community, talking directly to women on the streets, and convincing them that they are not affiliated with immigration services or the police).

254. See Frank Laczko & Marco A. Gramegna, *Developing Better Indicators of Human Trafficking*, X BROWN J. OF WORLD AFF. 179, 183-85 (2003) (discussing how governments are less equipped than NGOs to identify trafficking and noting that NGOs have "valuable information that does not always reach government actors").

255. See Goodey, *supra* note 174, at 43 (noting that there is much that "criminal justice authorities can learn from specialist NGOs working with trafficked women with respect to the appropriate and sensitive treatment of victims and accompanying measures to empower them alongside their experiences of victimisation").

rehabilitating victims by empowering victims and providing them with a voice in the justice process.²⁵⁶ Under the current law, trafficking victims are required to participate in the prosecution of their traffickers in order to receive benefits under the TVPA.²⁵⁷ Oftentimes, however, there can be serious and lasting consequences to effectively forcing victims to testify in the prosecution of their traffickers.²⁵⁸ Thus, during this process, the interest in successful prosecutions can displace any interest in a trafficking victim's well-being. However, victim participation in prosecution need not necessarily be a negative experience. With cooperation between NGOs and law enforcement, victim service providers can promote victim participation in prosecution in a way that serves the interests of justice but also helps rehabilitate the trafficked victim.

Most obviously, NGOs can counsel victims through the challenging task of testifying against a trafficker, providing them with additional emotional support during trials and serving as a source of trustworthy information regarding their obligations under the TVPA. This additional support might make the difference between a victim believing that she was forced to testify against her trafficker and a victim feeling that she made the decision of her own accord.

Even absent direct testimony, however, NGOs may enable victims to participate in criminal prosecutions in alternative ways that serve as important means of rehabilitation and empowerment. NGOs, for example, may be better positioned to support victims in truthfully conveying difficult and traumatic narratives to law enforcement.²⁵⁹ They may also be able to connect victims with other individuals who have undergone similar experiences and have benefitted from telling their stories. As marginalized members of society, victims who have a voice in the justice process have increased autonomy, allowing them to assert and advocate for human rights through their own means. Although prosecution will never be controlled by the victims themselves,²⁶⁰ allowing victims to play an active and voluntary role in criminal prosecutions, rather than forcing or coercing their participation, may be an important and, as of yet, overlooked part of the victim rehabilitation process that cannot be accomplished through other social services.

256. See Haynes, *supra* note 242, at 246.

257. See Wooditch et al., *supra* note 3, at 243.

258. See *supra* note 172 and accompanying text.

259. See Tzvetkova, *supra* note 166, at 62 (discussing NGOs' provision of counseling in a non-judgmental and supportive environment).

260. See generally David Ford, *Prosecution as a Victim Power Resource: A Note on Empowering Women in Violent Conjugal Relationships*, 25 L. & SOC'Y REV. 313 (1991) (discussing how women victims of domestic violence cannot fully control the course of prosecution and must instead rely on others to seek justice for them).

Furthermore, successful prosecutions combined with victim empowerment and rehabilitation will deter traffickers, decrease the supply of potential victims, and thereby prevent further trafficking.²⁶¹ Effective prosecutions, with serious penalties at both the state and federal levels, will discourage the demand for trafficking. Likewise, individuals who are rehabilitated, enabled to achieve adequate sources of livelihood and independent living skills, or allowed to remain safely in the country will be less likely to return to the conditions of poverty that first led them to trafficking, thus decreasing the supply of potential trafficking victims.²⁶² Appropriate victims' services will also create a network of information and advocacy for others who may be potential trafficking victims. Overall, successful prosecution of traffickers and provision of services to trafficking victims will help prevent trafficking in the United States.

Finally, the United States' success in combating trafficking and providing restorative services to victims will enhance its position in advocating deterrence efforts throughout the world. Trafficking is a cycle, with modern-day slavery affecting us all. As foreign travel becomes more common, technological advancements facilitate anonymous and inexpensive communication with people in other countries, poverty and oppressive regimes proliferate, and worldwide trade treaties increasingly globalize the world economy, it becomes abundantly clear how trafficking in one country significantly affects trafficking everywhere. In an increasingly globalized world where the economies, politics, and cultures of one country often influence another, the United States has an integral role in developing measures to address this egregious human rights violation.²⁶³ Addressing trafficking in the United States will stem the supply and demand for trafficking elsewhere.²⁶⁴ In addition, documented evidence of success will better

261. Haynes, *supra* note 242, at 246.

262. See, e.g., Ryf, *supra* note 7, at 59 (discussing how trafficking can be eliminated only by employing legal and non-legal means, such as increasing economic opportunity); *id.* at 62 (noting that "poverty makes trafficking an appealing option, traffickers prey on women in regions where economic and employment prospects are bleak and females maintain a subordinate role in society" and, therefore, "[p]rograms targeted at enhancing economic opportunities of women and girls are essential to the elimination of trafficking").

263. Ryf, *supra* note 7, at 60 ("Human trafficking touches almost all nations of the world. As a result, this serious human rights problem can only be eliminated through international cooperation. Because trafficking presents social, health, economic, and crime problems for every nation, each nation of origin, transit and destination has an incentive to work with the United States to control trafficking.").

264. See generally MARIANA SPILCA, UNIV. OF MINN. HUBERT HUMPHREY SCH. OF PUB. AFF. & MEN AGAINST THE TRAFFICKING OF OTHERS, DECREASING THE SUPPLY AND DEMAND OF SEX TRAFFICKING IN THE EU: TRAFFICKING ROUTES THAT FLOW FROM EAST

position the United States to advocate for preventative measures in other countries.²⁶⁵

B. The Practical Implications of Partnership

Establishing a theoretical basis for the importance of simultaneously pursuing each of the three TVPA goals is not sufficient. Practitioners working in each of these areas must also be made aware of the benefits of collaboration in context.²⁶⁶ Although each one of the three TVPA goals can, in theory, be furthered through progress made in the other two, federal and state law enforcement and NGOs must be informed about what this collaboration would look like in practice.

Many of the current criticisms of the TVPA are interrelated. Victim service providers, for example, criticize federal officials' delay in certifying trafficking victims for social services and T-Visas. Federal law enforcement officers, without the help of state officials and victim cooperation, struggle to apprehend and charge traffickers because of time and resource constraints. Similarly, state officers struggle to effectively prosecute or charge under inadequate state trafficking laws. Collaboration between local and federal law enforcement officials and victim service providers could alleviate these problems. By combining efforts, state law enforcement could aid federal investigations, NGOs could support victims in assisting with prosecutions, and individuals who are most familiar with trafficking could help victims obtain certification for benefits.

Collaboration between federal and local law enforcement and NGOs can have significant benefits for trafficking investigations. NGOs and local law enforcement are frequently more familiar with the community than federal law enforcement officials.²⁶⁷ Thus, NGOs and local law enforcement are better positioned to identify coercive and

TO WEST (2011), available at <http://academos.ro/sites/default/files/biblio-docs/314/mattoo20eu20anti-trafficking20in20persons20research20by20mariana20spilca.pdf>.

265. See, e.g., Susan W. Tiefenbrun, *Updating the Domestic and International Impact of the U.S. Victims of Trafficking Protection Act of 2000: Does Law Deter Crime?*, 38 CASE W. RES. J. INT'L L. 249, 251 (2007) (suggesting that, if the TVPA is enforced, it will have a domestic and international impact on deterring trafficking).

266. Kandathil, *supra* note 137, at 118 (“Changes in present enforcement strategies will require concerted, cooperative action from all levels of society—from law enforcement, to service organizations, to legislators, to the general public.”).

267. See Kara, *supra* note 9, at 667 (citing U.S. DEP'T OF JUST., REPORT TO CONGRESS FROM ATTORNEY GENERAL ALBERTO R. GONZALES ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS IN FISCAL YEAR 2004, at 17 (2004) (“[State] officers are often most familiar with the locations, victims, and perpetrators of these crimes in their jurisdiction and provide critical facts and observations that can lead to larger interstate or international investigations.”)).

oppressive situations that may involve trafficking violations.²⁶⁸ In addition, NGOs that have a positive working relationship with law enforcement will be more likely to bring potential victims to the attention of officers rather than hiding them from law enforcement for fear that they will be exploited or immediately deported. NGOs can also assist law enforcement in conducting raids and trafficking “rescues,” offering insight into how to best identify trafficking victims and providing immediate psychological counseling to survivors after the rescue is complete.²⁶⁹

Local law enforcement can also aid federal law enforcement in trafficking investigations. Trafficking is most often discovered through investigations into other crimes.²⁷⁰ Thus, state and local law enforcement are more likely than federal officials to discover trafficking through routine investigations.²⁷¹ They are also most knowledgeable about their communities and are therefore most likely to recognize suspicious behavior or activity.

Still, because the focus of anti-trafficking efforts has been at the federal level, state and local law enforcement officers who are most likely to discover trafficking are in fact least likely to be trained to recognize it.²⁷² In addition, state and local officials are more likely to view prosecution of trafficking cases as a federal issue.²⁷³ Collaboration with federal law enforcement and NGOs who are trained in these areas could improve local law enforcement’s ability to recognize and investigate trafficking operations. At the same time, beneficial collaborations with federal law enforcement could provide local officials an active role in assisting with prosecutions under federal law rather than requiring them to transfer their investigations to others.

Successfully prosecuting trafficking cases also involves close collaboration between local and federal law enforcement and NGOs. Involving victims in prosecutions “requires an intensive commitment to earning and maintaining the trust of traumatized victims.”²⁷⁴ Establishing this level of trust, particularly with a victimized population inherently distrustful of law enforcement, however, is especially difficult.²⁷⁵ For example, law enforcement officers commonly conduct

268. *See id.* at 667 (noting that witnesses are more likely to call or approach local police to report trafficking).

269. 2010 TIP REPORT, *supra* note 23, at 40.

270. LAW ENFORCEMENT RESPONSE TO TRAFFICKING, *supra* note 8, at 7.

271. *Id.* at 4.

272. *See supra* note 132 and accompanying text.

273. *See generally* Loftus, *supra* note 121.

274. Kappelhoff, *supra* note 2, at 19.

275. 2009 ATT’Y GEN. REP., *supra* note 250, at 38 (“It takes time for victims to feel comfortable enough with the U.S. criminal justice system to tell their stories. ICE human

raids to detect traffickers.²⁷⁶ These raids, however, are often intrusive and frightening for trafficking victims.²⁷⁷ In fact, raids are “all too frequently accompanied by violations of the human rights of trafficked persons and sex workers alike, and can therefore be counterproductive to the underlying goals of anti-trafficking initiatives.”²⁷⁸ Moreover, raids regularly lead to arrests of trafficked victims for crimes such as prostitution or illegal immigration status.²⁷⁹ This can be particularly true during local raids, where law enforcement may be more concerned with offender apprehension than with providing services to victims.²⁸⁰

To counteract this inherent and pervasive distrust, victims need to know that law enforcement understands and is acting in their best interests. This can be accomplished through many avenues, most obviously by law enforcement assisting victims in accessing social and rehabilitative services that will help them get back on their feet. In turn, victims will be healthier—both physically and emotionally—and will be more valuable and accurate witnesses.

However, convincing trafficked victims that law enforcement is concerned about their overall well-being is easier said than done. Victim service providers can play an integral role in this process. Generally, trafficking victims are distrustful of anyone with whom they come into contact, most significantly law enforcement.²⁸¹ Individuals who are trained in survivor services, can converse fluently with victims, and can take the time to build a relationship with them are most likely to be successful in allaying these concerns.²⁸² Law enforcement agencies do not have the training or capacity to build and invest in these relationships. NGOs who work with trafficking survivors do. NGOs are also more likely to operate in a non-confrontational, non-legal environment where trafficking victims may be more open and honest in revealing their stories.²⁸³

trafficking investigations are closely linked to victim assistance services.”); Kara, *supra* note 9, at 676; Haynes, *supra* note 242, at 246.

276. MELISSA DITMORE, URBAN JUST. CTR., THE USE OF RAIDS TO FIGHT TRAFFICKING IN PERSONS 7 (2009), available at <http://www.sexworkersproject.org/downloads/swp-2009-raids-and-trafficking-report.pdf>.

277. *Id.*

278. *Id.*

279. *Id.* at 7-9.

280. *Id.* at 8.

281. 2010 TIP REPORT, *supra* note 23, at 40.

282. Sara Elizabeth Dill, *A Decade's Track Record, Plus Techniques for Prosecutors and Police Moving Forward*, 26 CRIM. JUST. 18, 22 (2011) (discussing how “victims of sexual abuse, rape, and torture are often, if not always, reluctant to talk about their experiences” and noting that frequently victims will be more willing to talk to an advocate from an NGO than to a law enforcement agent).

283. *Id.*

NGOs can also provide trafficking victims with an advocate during prosecution, assisting them to be more engaged, informed, and assistive witnesses. Thus, NGOs serve an important role in building the bridge between trafficking survivors and law enforcement in an effort first to aid victims in their own rehabilitation and, second, to help law enforcement officers achieve their prosecutorial goals. In return, victim collaboration with law enforcement allows victims to more easily access services, including T-Visas that may be contingent upon such participation.

Establishing a level of trust between victims and law enforcement is also important for victims' well-being. In theory, active and voluntary victim participation in prosecution can be an important step in victim rehabilitation and empowerment.²⁸⁴ Practically, involvement can ensure that victims receive the host of benefits and services that are available only to those who cooperate with prosecution. NGOs and state law enforcement can be integral in this process, informing uneducated victims of their entitlements under the TVPA²⁸⁵ and assisting them in accessing these services.

For example, state law enforcement officers, who often have more contact with victims than federal officials have, can play an important role in facilitating victim certification. Although the Department of Health and Human Services is the only federal agency authorized to certify adult foreign victims of human trafficking,²⁸⁶ the 2003 reauthorization of the TVPA allows federal law enforcement to consider state and local law enforcement statements in certification decisions.²⁸⁷ Thus, victims who develop relationships with local law enforcement may have better opportunities to be certified for important rehabilitative benefits.

Victim service providers may also be influential in helping victims obtain certification for rehabilitative services, even though they have no official persuasive authority in making such decisions. As the law is written, the Secretary of Health and Human Services, after consultation

284. See, e.g., Barbara J. Hart, *Battered Women and the Criminal Justice System*, 36 AM. BEHAV. SCIENTIST 624, 633 (1993) (discussing empowerment through victim participation in prosecution). But note that for women to incur these benefits such participation must be voluntary. See generally Thomas L. Kirsch, *Problems in Domestic Violence: Should Victims be Forced to Participate in the Prosecution of Their Abusers?*, 7 WM. & MARY J. WOMEN & L. 383, 413-18 (2001) (discussing the problems associated with forced victim participation in the prosecution of their abusers).

285. Cf. Haynes, *supra* note 16, at 356-57 (discussing how traffickers exploit women because of their lack of knowledge about their rights).

286. *About Human Trafficking*, OFFICE OF REFUGEE RESETTLEMENT, U.S. DEP'T OF HEALTH & HUM. SERVS., <http://www.acf.hhs.gov/programs/orr/resource/about-human-trafficking> (last visited Oct. 30, 2012).

287. 22 U.S.C. § 7105(b)(1)(E)(iv) (2006 & Supp. II 2008).

with the Secretary of Homeland Security, is the ultimate decision-maker for trafficking victim certification.²⁸⁸ Currently, victims who are discovered and “rescued” by federal law enforcement are far more likely to be pre-certified for services and, therefore, to receive immediate access to shelter and other protective services than are victims who escape from an abusive situation and then attempt to access services.²⁸⁹ Similarly, individuals who cooperate with law enforcement are more likely to be certified for survivor services.²⁹⁰

In practice, however, most victims are not “rescued” by anyone but rather escape from abusive situations on their own.²⁹¹ Furthermore, victims are often hesitant to assist law enforcement for the many reasons discussed above. Thus, victims’ certification depends on the legitimacy that law enforcement ascribes to them: victims “rescued” by law enforcement and victims who cooperate with law enforcement are legitimate; victims who seek assistance on their own or victims who are more reticent to cooperate are not.

NGOs can play a role in “legitimizing” victims in the eyes of law enforcement. First, NGOs are well attuned to the community and, through their other work, are likely to encounter trafficking victims. Therefore, NGOs can assist law enforcement in discovering and “rescuing” additional victims.²⁹² Also, as partners with law enforcement, NGOs can play a crucial role in building relationships between law enforcement and victims by helping victims understand the importance of cooperation and become comfortable with assisting in prosecution. Finally, as NGOs develop a close and trusting working relationship with law enforcement, federal officials may be more likely to respect and consider the opinions or recommendations of NGOs that may advocate certification of victims even in the absence of law enforcement discovery. Thus, while there is a legitimate concern with tying victim protection to prosecutorial outcomes, NGO participation may alleviate some of the current burdens with the requirement that victims assist in prosecuting traffickers.

Over the past ten years, local, state, and federal law enforcement and NGOs have made strides in combating trafficking by prosecuting perpetrators and providing rehabilitation and social services to survivors. Their efforts, however, have often proceeded in isolation, at times

288. 22 U.S.C. § 7105(b)(1)(E)(i) (2006 Supp. II 2008).

289. Haynes, *supra* note 16, at 350.

290. *Id.*

291. *Id.*

292. It should be noted that NGOs should not participate in the actual “rescue” mission. Rather, they can assist law enforcement in uncovering situations where trafficked victims may be hidden.

duplicating endeavors and more frequently failing to address prosecutorial, preventative, and protective goals of the TVPA. Yet, with formal collaboration, successful prosecutions, prevention, and prioritization of victims' needs are possible within the current framework of the TVPA.

C. The Partnership: DOJ Task Forces Provide Models for Formal Collaboration

1. Background

“Combating human trafficking requires the expertise, resources, and efforts of many individuals and entities. It is a complex, multi-faceted issue requiring a comprehensive response of government and nongovernment entities.”²⁹³ DOJ-sponsored task forces, collaborations between the Bureau of Justice Assistance (BJA) and the Office for Victims of Crime (OVC),²⁹⁴ provide a practical model for combining the resources of state and federal law enforcement and non-profit organizations in addressing many of the current problems with TVPA implementation.²⁹⁵ Since 2004, the DOJ, BJA, and OVC have used over \$150 million in TVPA funds to implement multi-disciplinary anti-trafficking task forces to identify, rescue, and restore victims, prosecute trafficking crimes, and build awareness about trafficking.²⁹⁶ From 2010 to the beginning of 2011, the BJA and OVC sponsored 39 human trafficking task forces across the country.²⁹⁷ By the end of 2011, as funding for many of the collaborations expired, that number decreased to 29.²⁹⁸

These task forces unite law enforcement at the local, state, and federal level with NGOs including victim service providers, mental health professionals, and labor regulators/inspectors to provide interdisciplinary, integrated, and comprehensive solutions to combating

293. 2010 TIP REPORT, *supra* note 23, at 15.

294. See Press Release, Bureau of Just. Assistance & Office for Victims of Crime, Enhanced Collaborative Model to Combat Human Trafficking FY 2011 Competitive Grant Announcement 1, 1 (2010), available at <https://www.bja.gov/Default.aspx> [hereinafter 2010 Announcement].

295. The statutory authority for these task forces is 22 U.S.C. § 7105(b)(2)(A) (2006 & Supp. II 2008) (“Subject to the availability of appropriations, the Attorney General may make grants to States, Indian tribes, units of local government, and nonprofit, nongovernmental victims’ service organizations to develop, expand, or strengthen victim service programs for victims of trafficking.”).

296. 2010 Announcement, *supra* note 294; McGaha & Evans, *supra* note 6, at 240.

297. 2011 TIP REPORT, *supra* note 81, at 373.

298. 2012 TIP REPORT, *supra* note 27, at 361.

trafficking.²⁹⁹ The goals of the task force are to conduct proactive investigations into trafficking, to identify victims of all forms of trafficking, to offer a comprehensive array of restorative services to meet each victim’s individualized needs, to support the prosecution of trafficking at state and federal levels, and to enhance community capacity to identify and report trafficking crimes.³⁰⁰ Task forces meet regularly and engage in trainings, awareness-raising, and community outreach.³⁰¹ Most task forces also have subcommittees of law enforcement and victim service providers that meet more frequently to share information and best practices.³⁰²

Becoming a DOJ-sponsored task force involves an intensive application process that requires a submission from both the law enforcement agency and the lead victim service applicant.³⁰³ While each organization must submit its own application, they must use identical abstracts, program narratives, timelines, and letters of intent to ensure that both partner applicants are invested in the process independently, yet have closely collaborated in the design of the task force and its activities.³⁰⁴ The law enforcement and victim service applicants must also demonstrate a history of solid partnership and collaboration.³⁰⁵

Once the DOJ approves task force partnerships and grants monetary awards, the government monitors task force compliance and evaluates each task force for progress and improvement.³⁰⁶ The OVC oversees the compliance of the victim service providers, and the BJA oversees the compliance of the law enforcement agencies.³⁰⁷ These organizations also review the continued improvement of the task force model generally.³⁰⁸ In February and March of 2010, the BJA hosted focus groups with members of currently funded task forces to discuss recommendations for improving the model and better meeting the goals of the TVPA.³⁰⁹

299. Kara, *supra* note 9, at 678.

300. 2010 Announcement, *supra* note 294, at 6.

301. LAW ENFORCEMENT RESPONSE TO TRAFFICKING, *supra* note 8, at 96 (noting that, as of 2008, 36% of task forces met on a quarterly basis, 23% met every other month, and 21% met monthly).

302. *Id.*

303. *See* 2010 Announcement, *supra* note 294, at 4.

304. *Id.* at 5, 17.

305. *Id.* at 7.

306. *Id.* at 5, 6, 13.

307. *Id.* at 5, 11-12, 34.

308. *Id.* at 13.

309. 2010 Announcement, *supra* note 294, at 5.

2. Successes

In theory, task forces aid law enforcement and victim service providers in meeting the three goals of the TVPA. In practice, however, the success of task forces is difficult to measure. An in-depth study by researchers at Northeastern University's Institute on Race and Justice, commissioned by the DOJ, provides the first major attempt at this endeavor.³¹⁰ Focusing on the perceptions, preparedness, and responses of law enforcement to human trafficking, the study provides solid evidence that task forces meet the goals of the TVPA in increasing federal prosecutions, improving state involvement in trafficking investigations and convictions, and providing rehabilitative and social services to victims.³¹¹

a. Perceptive, Investigative, and Prosecutorial Successes

The Northeastern study finds that law enforcement agencies that participate in human trafficking task forces are more invested and are more likely to identify and target trafficking in their communities. Specifically, the study finds that DOJ task force law enforcement members are more likely to: (1) perceive human trafficking as a problem in the community; (2) have training, protocols, and specialized units devoted to trafficking; (3) identify and investigate trafficking cases;³¹² (4) make more arrests for trafficking;³¹³ and (5) have cases result in formal charges following arrests, particularly federal charges.³¹⁴

The first notable difference between task force law enforcement agencies and non-task force agencies is their respective perceptions of the trafficking problem. Critics of the United States' trafficking efforts

310. McGaha & Evans, *supra* note 6, at 257 ("The Human Trafficking Reporting System (HTRS) is designed to provide systematic information on cases of human trafficking that have come to the attention of law enforcement and to establish a sustainable data collection and reporting mechanism specific to the problem of human trafficking."); *see also* LAW ENFORCEMENT RESPONSE TO TRAFFICKING, *supra* note 8, at 2 ("The National Law Enforcement Human Trafficking Survey . . . was distributed to a national random sample of approximately 3,000 state, county and municipal law enforcement agencies in the U.S. to measure the current perceptions of local law enforcement about human trafficking and measure the frequency in which they investigate such cases.").

311. *See infra* Part IV.C.2.i.

312. LAW ENFORCEMENT RESPONSE TO TRAFFICKING, *supra* note 8, at 8 (noting that task force agencies identify and investigate an average of 36 trafficking cases compared with 15 on average for non-task force agencies).

313. *Id.* (noting that task force agencies make an average of 12 arrests for trafficking as compared to non-task force agencies that make an average of 8 trafficking arrests).

314. *Id.* at 8-9 ("Cases investigated by task force agencies were twice as likely to result in federal charges as cases investigated by non-task force agencies.").

often cite concerns that law enforcement is incapable of fully combating trafficking because officers are unaware of the severity of the problem.³¹⁵

The Northeastern study confirms these concerns: 77 percent of law enforcement agents perceive human trafficking as rare or non-existent in their communities.³¹⁶ One police department commander in Pismo Beach, California, for example, told an interviewer that none of the prostitutes with whom he had contact was forced to work; in his opinion, each had chosen to be a prostitute.³¹⁷

Law enforcement agencies participating in trafficking task forces, however, are more likely to perceive trafficking as a severe problem. Task force agencies, for example, perceive labor trafficking to be two to three times more prevalent and sex trafficking to be three to four times more prevalent than respondents from the random sample.³¹⁸ No agencies participating in a task force reported that human trafficking was non-existent in their community.³¹⁹

Due to the perceptions and attitudes regarding trafficking, many law enforcement agencies are also uninformed and unprepared to identify or investigate human trafficking.³²⁰ Task force agencies, however, are more likely than non-task force agencies to have training, protocols, and specialized units to conduct trafficking investigations. For example, only 18 percent of non-task force law enforcement agencies had human trafficking training, only 9 percent had a human trafficking policy or protocol, and only 4 percent had a specialized unit or personnel to investigate trafficking cases.³²¹ In contrast, 91 percent of task force agencies had human trafficking training, 100 percent had a human trafficking policy or protocol, and 77 percent had a specialized unit to investigate trafficking cases.³²²

As is expected, agencies with specialized trafficking units, training, and protocols were also more likely to investigate cases of human trafficking than were agencies without these programs.³²³ Training, for example, more than doubled an agency's odds of identifying and

315. See, e.g., Mohamed Mattar & Shanna Van Slyke, *Improving our Approach to Human Trafficking*, 9 CRIMINOLOGY & PUB. POL'Y 197, 197 (2010) (discussing the problem with law enforcement not recognizing victims or perceiving the severity of the trafficking problem).

316. LAW ENFORCEMENT RESPONSE TO TRAFFICKING, *supra* note 8, at 3.

317. Paige K. Wopschall, *Human Trafficking in San Luis Obispo County: Assessing the Local Law Enforcement's Mechanisms for Prevention* (2011) (unpublished thesis, California Polytechnic State University) (on file with author).

318. LAW ENFORCEMENT RESPONSE TO TRAFFICKING, *supra* note 8, at 37.

319. *Id.* at 36.

320. *Id.* at 4.

321. *Id.*

322. *Id.* at 39.

323. *Id.* at 52.

investigating a case,³²⁴ having a protocol more than tripled the odds.³²⁵ Of all the characteristics of law enforcement agencies, having a specialized trafficking unit had the strongest correlation to successfully identifying and investigating trafficking cases.³²⁶ This finding is consistent with growing evidence about the relationship between specialized personnel and successful human trafficking identification.³²⁷ Because trafficking operations are highly complex and often involve a wide range of criminal activities, successful prevention most frequently entails multiple investigative methods and specialized units.³²⁸

Task force agencies are also better equipped at understanding and noticing indicators of trafficking activity than non-task force agencies. Local law enforcement officers are often best positioned to identify victims who are imbedded within communities and to appropriately respond to trafficking operations.³²⁹ This response cannot occur, however, if law enforcement agents are not attuned to legitimate trafficking indicators. Here, task force and non-task force agencies differ significantly. Non-task force agencies, for example, perceive all of the following as more useful indicators of trafficking than task force agencies: calls for service, tips from the community, tips from co-conspirators, media reports, missing persons reports, and regulatory referrals.³³⁰ Task force agencies, in contrast, perceive the most useful indicators of trafficking to be alerts from victim service providers and investigations into other matters.³³¹

This difference alone gives no indication as to which group of agencies is more accurate in its perceptions of trafficking indicators. However, additional survey data show that law enforcement officers most often learn about cases of trafficking during the course of other investigations.³³² Thus, it appears that task force agencies are more aware of which indicators are important and which are not. It also shows that task force agencies are more attuned to the voices of victim service providers.

324. LAW ENFORCEMENT RESPONSE TO TRAFFICKING, *supra* note 8, at 59.

325. *Id.*

326. *Id.* (“Those agencies with specialized units or personnel are approximately 5 times more likely to identify and investigate a case than those agencies without such personnel.”)

327. *Id.* at 53 (citing INTERPOL, TRAFFICKING IN HUMAN BEINGS—BEST PRACTICES GUIDE MANUAL FOR INVESTIGATORS (2007)).

328. *Id.*

329. *Id.* at 1.

330. LAW ENFORCEMENT RESPONSE TO TRAFFICKING, *supra* note 8, at 43.

331. *Id.* at 45.

332. *Id.* at 4.

Finally, task force agencies are more likely than non-task force agencies to make arrests and file federal charges. Since 2000, more than half of state law enforcement agencies that investigated human trafficking brought formal charges against the alleged perpetrators.³³³ Only 32 percent of these agencies filed federal charges.³³⁴ Task force agencies, however, were twice as likely as non-task force agencies to file federal charges.³³⁵

b. Victim Support Successes

Although the focus of the Northeastern study was on law enforcement—no victim service providers were questioned regarding their beliefs as to the efficacy of task forces—the results reveal some evidence that task forces are beneficial in enhancing victims’ services. For example, the study reports that the majority of task force agencies view the provision of victim support services as an integral part of the investigative and prosecutorial process.³³⁶ Eighty-two percent of task force agencies, for instance, as opposed to 49 percent of non-task force agencies, reported that providing victim support services was frequently or occasionally used to build a trafficking case.³³⁷ In fact, task force agencies reported that providing victim support services was the third most common strategy to build cases, ahead of both undercover operations and raids.³³⁸

The results of the Northeastern study also reinforce the need for collaboration between law enforcement and victim service providers. For example, lack of victim cooperation was the most frequently cited challenge by law enforcement agencies that investigated a trafficking case.³³⁹ Language barriers and lack of adequate translators, both issues addressed by NGOs serving trafficking victims, were the second and third most common problems.³⁴⁰

This research alone cannot prove that task forces are the cause of better perceptions, identification, investigation, or prosecution of trafficking or that they are the solution to the trafficking problem. Perhaps task forces are more likely to perceive trafficking as a problem because they are located in areas where trafficking is more prevalent. Perhaps they are better at identifying trafficking cases because they were

333. *Id.* at 79.

334. *Id.*

335. *Id.*

336. LAW ENFORCEMENT RESPONSE TO TRAFFICKING, *supra* note 8, at 87.

337. *Id.*

338. *Id.*

339. *Id.* at 8.

340. *Id.* at 83.

more attuned to the problems of trafficking within their communities before becoming task forces. But perhaps agencies participating in task forces are also more sensitized to human trafficking in ways that other law enforcement agencies are not. Perhaps they are more likely to understand the complexities of trafficking cases and to realize the importance of victim participation in them. And perhaps they are better equipped to investigate and prosecute trafficking cases.

Whatever the reasons, task force partnerships do augment the efforts of all parties, drawing on diverse experiences and leveraging resources in a way that no single entity could do alone. In doing so, the task forces use the TVPA to connect the law to the people affected by it. Overall, they provide a more holistic approach—using legal and non-legal methods—to addressing all aspects of trafficking including meaningful justice for victims, prosecutorial assistance for law enforcement, and progress toward eradicating the supply and demand for future trafficking schemes.

D. Potential Challenges Facing Task Forces

1. General Challenges

Although task forces have many positive attributes, some potential problems could delay or impede their effectiveness in successfully combating human trafficking. First, there are common difficulties that plague all task forces. Multi-agency task forces are generally temporary, involving specific goals and a set timeline.³⁴¹ Accordingly, task force members may struggle to view themselves as members of a collaborative team.³⁴² More likely, allegiances will be to the host agency and not to the temporary task force.³⁴³ The temporary nature of their operations may also make it difficult for task forces to establish group norms and culture, to facilitate effective communication between members, and to merge protocols and working styles.³⁴⁴ Task forces combining state and local law enforcement can also create tension with regard to the expansion of federal jurisdiction, the subsuming of state duties by federal officers, and the conflict of multiple enforcement schemes operating within the same sphere.³⁴⁵

Aside from these general struggles, human trafficking task forces have the potential to face their own unique difficulties. First, although

341. LAW ENFORCEMENT RESPONSE TO TRAFFICKING, *supra* note 8, at 91.

342. *Id.* (noting that members of temporary organizations may be more linked to their host agency and not to their temporary task force).

343. *Id.*

344. *Id.*

345. *Id.*

the goal of task forces is to bring together law enforcement and victim service providers to work collaboratively to fight trafficking, power is not always divided equally in the relationship. Most task forces have protocols that establish clear boundaries with regard to what information can be shared and to whom it can be given.³⁴⁶ These protocols help guide communication, preempt misunderstanding, and anticipate potential conflicts.³⁴⁷ Still, tensions can develop between law enforcement and NGOs as to what the focus of the task force should be.³⁴⁸

For example, a conflict arose between a small group of labor-trafficking NGOs on the Boston task force when law enforcement task force members began to concentrate investigations and prosecutions exclusively on victims of sex trafficking, while failing to substantiate the NGOs’ reported labor trafficking claims.³⁴⁹ As a result, some of the original task force NGOs left the task force.³⁵⁰ A similar problem developed on the Phoenix task force when several NGOs became concerned about law enforcement officers’ primary emphasis on juvenile prostitution and their lack of attention to incidents of domestic servitude in farming and agricultural settings.³⁵¹

These tensions raise serious considerations about the role of each task force agency and the effect each can have on the others. On one hand, it is the role of law enforcement and not NGOs to make determinations about which types of crimes to investigate. Similarly, it is the role of prosecutors to determine which crimes to charge. On the other hand, if an NGO has no role in determining the course of investigation and prosecution, law enforcement undermines the NGO’s role on the task force and diminishes the benefits the NGO brings to it. If these tensions are not resolved, NGOs are effectively forced either to abandon their mission of providing protective services for all victims of trafficking or to leave the task force, straining their relationship with law enforcement and jeopardizing the rights of future clients.

On the other hand, if NGOs are given a prominent position in determining which cases to investigate and prosecute, there is a risk that the NGOs’ special interests—and possibly the interests of their donors or funders—will guide enforcement of the law. These conflicts raise serious concerns regarding who makes decisions, how they are made,

346. *Id.* at 96.

347. LAW ENFORCEMENT RESPONSE TO TRAFFICKING, *supra* note 8, at 91.

348. *Id.* (discussing the tensions between federal and local law enforcement partnerships).

349. *Id.* at 98.

350. *Id.*

351. *Id.* at 99.

and how both NGOs and law enforcement retain their independence and neutrality as members of the task force.

Blurring the lines between the duties of law enforcement and victims' advocates can also become problematic when law enforcement takes a larger role in victim advocacy than is perhaps appropriate. Although law enforcement officers have a duty to protect the public, and one of the goals of task forces is enhanced law enforcement investment in victim rehabilitation, the primary role of law enforcement is not that of victim advocate. When officers begin to advocate for victims' rights,³⁵² they risk losing their own neutrality or at least the perception of it. While law enforcement officers can often be criticized for failing to identify with or be sympathetic to victims,³⁵³ they must be careful in addressing these shortcomings, lest they jeopardize their role as objective and just enforcers of the law.

2. Specific Challenges for DOJ Task Forces

DOJ task forces, in particular, must address trafficking-specific challenges before their efficacy can be fully realized. First, reports suggest that law enforcement participation on some task forces is low.³⁵⁴ On one Florida task force, for example, only one law enforcement officer, a detective whose position is funded entirely from the DOJ grant, attends task force meetings and does so infrequently.³⁵⁵ According to this individual, his reluctance to participate stems from his perception and experience that the trafficking problem in his community is exaggerated.³⁵⁶ In his county, for example, during three years of DOJ funding for the task force, law enforcement did not confirm or certify one trafficking case.³⁵⁷

Reports from other law enforcement officers on DOJ task forces suggest that this may be common and that law enforcement officers, even on task forces, may be skeptical about the extent of human trafficking

352. See John Vanek, *Human Trafficking Blog: Training and Commentary on the Fight against Slavery* (May 21, 2011, 11:21 AM), <http://jvanek.wordpress.com/> (expressing opinions of John Vanek, Manager of the San Jose Police Department's Human Trafficking Task Force, on trafficking investigation, prosecution, and prevention).

353. Daniel G. Saunders & Patricia B. Size, *Attitudes About Woman Abuse Among Police Officers, Victims, and Victims Advocates*, 1 J. INTERPERSONAL VIOLENCE 25 (1986).

354. McGaha & Evans, *supra* note 6, at 253-55 (discussing comments about participation and success from DOJ funded task forces around the country).

355. *Id.* at 255.

356. *Id.*

357. *Id.*

reported in their community.³⁵⁸ Such skepticism leads to a reluctance of law enforcement to expend time and resources in combating trafficking.³⁵⁹ Failure to locate victims further frustrates efforts to investigate trafficking schemes. However, as victims' advocates note, low victimization rates are not conclusive evidence that victimization has not or is not occurring. Rather, a lack of identified victims may be a result of difficulty in persuading victims to come forward.³⁶⁰

Another important criticism of DOJ task forces is that their funding is not contingent upon accountability or data reporting.³⁶¹ A related criticism is that the funds contain few restrictions on their use.³⁶² Thus, there are no mechanisms to ensure that task forces are performing their proscribed duties, and, even more troublesome, there are no means of evaluating whether task forces achieve their desired outcomes. In fact, before the Northeastern study, there was no concrete evidence regarding the effectiveness of task forces in combating trafficking, prosecuting traffickers, or providing services to victims. Given this lack of evidence, news media, academics, and policymakers continue to question the validity of spending millions of dollars on practices that have little to no empirical support.³⁶³ Thus, DOJ-funded task forces report facing pressure to justify their receipt of grant money, yet they lack formalized processes for doing so.³⁶⁴

V. GOALS FOR THE FUTURE

Scholars and policymakers have suggested many potential avenues to reform the TVPA to enhance apprehension and prosecution of traffickers. Still more have advocated for legislative changes to adopt a more victim-centered approach to trafficking and to provide greater support for victims' services. In doing so, advocates have urged for additional funds to be devoted to anti-trafficking efforts overall.³⁶⁵ In

358. *Id.* at 254-55.

359. *Id.* Media accounts also question whether the issue of trafficking in the United States is overrepresented.

360. McGaha & Evans, *supra* note 6, at 244 (discussing potential reasons for underreporting).

361. *Id.* at 247-48.

362. *Id.*

363. *See, e.g.*, Jerry Markon, *Human Trafficking Evokes Outrage; Little Evidence*, WASH. POST, Sept. 23, 2007, at A01.

364. *Id.*

365. Jaclyn Brandt, *The Smiths Go To Washington To Fight Human Trafficking*, ENTERTAINMENT (July 17, 2012, 6:21 PM), <http://www.sheknows.com/entertainment/articles/966397/will-and-jada-pinkett-smith-go-to-washington-to-fight-human-trafficking>; Ellen Tordesillas, *More Funds Needed In Fight vs Human Traffickers*, ELLEN TORDESILLAS BLOG (June 29, 2012, 2:02 PM), <http://www.ellentordesillas.com/2012/06/29/more-funds-needed-in-fight-vs-human-traffickers/>.

2009 alone, the government allocated \$103.5 million to trafficking efforts.³⁶⁶

Fewer have emphasized the importance of collaboration in achieving the goals of the TVPA.³⁶⁷ In fact, amidst the rather detailed provisions of the TVPA as first enacted, there was no mention of partnership or collaboration and little understanding of how the three goals of the legislation interact.³⁶⁸ Yet, the overall intent of the legislation supports the idea of partnership in combating trafficking, and the legislation's reauthorizations have explicitly addressed partnership through collaborations between various entities.³⁶⁹ Moreover, recent discussions, including the United States' yearly Trafficking in Persons reports, frequently laud the importance of law enforcement and NGO partnership.³⁷⁰ Despite the obligatory recognition of its importance, however, academics and policymakers have devoted no attention to evaluating partnerships, assessing their outcomes, or examining how they can be improved.

Thus, rather than addressing perpetrator prosecution, victim rehabilitation, or prevention in isolation, the United States must address how it can achieve the three TVPA goals harmoniously, with the success of one bolstering the success of the others. Equally important is the measurement and assessment of the United States anti-trafficking partnership efforts. The United States cannot continue representing trafficking as a serious national problem without accurate knowledge of its extent and severity. Similarly, the United States cannot continue funding task forces that are under-utilized at best or ineffective at worst.

366. 2010 TIP Report, *supra* note 23, at Summary.

367. *But see* Loftus, *supra* note 121, at 144 (arguing for a “coordinated governmental approach to immigration enforcement and human trafficking laws”); Maudisa McSween, *Partnerships Against Human Trafficking*, 6 INTERCULTURAL HUM. RTS. L. REV. 283, 297-99 (2011); Rocio Garza, Note, *Addressing Human Trafficking Along the United States-Mexico Border: The Need for Bilateral Partnership*, 19 CARDOZO J. INT’L & COMP. L. 413 (2011) (advocating partnership between United States and Mexico in combating trafficking).

368. McSween, *supra* note 367, at 297-99.

369. *Id.* (“Though not explicitly stated, one key example supporting the notion of partnerships in the TVPA is clearly described in Section 106 of the Act. Sections 106(a)-(b) of the TVPA are expressly conditioned by the requirement in section 207(c) that the ‘[P]resident shall consult with appropriate nongovernmental organizations’ to establish: (1) economic alternatives to prevent and deter trafficking, and (2) public awareness and information.”); *see also* 2011 TIP REPORT, *supra* note 86 (“The interlocking ‘3P’ paradigm drives the imperative for a highly coordinated counter-trafficking response and collaboration among and within governments, local communities, and international bodies.”).

370. *See* 2011 TIP REPORT, *supra* note 81 (discussing how NGOs contribute to counter-trafficking efforts through services, referrals, feedback, and information).

A. *Information Gathering*

The first step is gathering information about the conditions of trafficking in the United States and the efficacy of task forces in combating it. While anti-trafficking rhetoric was prevalent throughout the country for the first few years prior and subsequent to the enactment of the TVPA, such fervor has begun to subside as individuals increasingly question the pervasiveness of the problem and the ability of current solutions to address it.³⁷¹ To continue shedding light on the issue, the United States cannot rely solely on anecdotal evidence of a few horrific situations. Rather, attracting awareness will involve promoting accurate data that captures the true nature and extent of the problem.

To promote accurate data, the DOJ must institute rigorous, standardized, ongoing data collection methods regarding the characteristics of traffickers and their victims and the effects of task forces in apprehending perpetrators and providing rehabilitation to victims.³⁷² In addition, to capture accurate and useful data, the DOJ must implement long-term data collection methods that consider similar input over time.³⁷³

Much of this data collection appears to already be in place. According to the DOJ’s grant application for task forces, grant recipients are required to provide data to measure the result of their work, including performance measures such as potential victims identified, confirmed victims located, types of services provided to victims, and groups trained in trafficking awareness.³⁷⁴ However, there is no indication that this data

371. Markon, *supra* note 363.

372. From its application materials, it appears that the Office for Victims of Crimes already provides a mechanism to collect this information. However, there is no indication that the information is systematically organized or evaluated. See Press Release, Bureau of Just. Assistance & Office for Victims of Crime, Enhanced Collaborative Model to Combat Human Trafficking FY 2012 Competitive Grant Announcement 1, 34 (2012), available at <https://www.bja.gov/Funding/12HumanTraffickingSol.pdf> [hereinafter 2012 Announcement] (“OVC has developed a Trafficking Information Management System (TIMS) database in Microsoft Access to assist grantees with collecting and organizing performance measure data, as well as meeting OVC reporting requirements. The TIMS database helps collect data related to the number of clients served, client demographics, number and types of services provided, referral sources, types of outreach activities, and number and disciplines of professionals trained. All successful applicants for victim service funding will receive access to TIMS and the TIMS Users Guide. At this time, grantees are not required to use TIMS; however, grantees must agree to collect and provide the same statistical data captured through TIMS to OVC and its Training and Technical Assistance Center (TTAC) every 6 months to coincide with the submission of semiannual progress reports.”).

373. The Northeastern study was conducted in 2008, and no similar study has been conducted since that time.

374. See 2012 Announcement, *supra* note 372, at 11-12 (“To assist in fulfilling the Department’s responsibilities under the Government Performance and Results Act

is compiled over multiple years, is coherently organized, or is easily accessible. There is also no indication that the data is actually utilized in evaluating the efficacy of task forces or determining if the money is expended effectively. If scholars are to evaluate the outcomes produced by task forces, such information must be compiled, preserved, organized, and made publicly available so that policymakers, scholars, and others may evaluate it.

Finally, there is scant data on how effective NGO task force members are in providing rehabilitative services to victims or how meaningfully victims contribute to traffickers' prosecutions. While the Northeastern study captures the benefits of task forces on enhanced apprehensions and prosecutions, the study provides no input from victim service providers on the ability of task forces to enhance their mission of victim rehabilitation. The purpose of the DOJ task forces should be to unite the goals of the TVPA in stopping perpetrators, rehabilitating victims, and preventing future trafficking. Thus, measures of success must be designed to gauge how well task forces are meeting these multiple goals. Such measurements, therefore, should take into account how many victims are provided with services, how NGOs view law enforcement's efforts to provide victims with rehabilitative services, how law enforcement views victim participation in the prosecutorial process, and how both law enforcement and NGOs believe they can better assist the other in combating trafficking.

B. Establishing Expectations and Evaluating Outcomes

Enacting effective solutions involves establishing expectations and evaluating the efficacy of current interventions.³⁷⁵ Thus, the next step involves tying funding to outcomes. In 2007, President George W. Bush dedicated \$150 million to DOJ task forces.³⁷⁶ However, there are currently no measures to determine whether this money is well-utilized.³⁷⁷ For example, while the task force application requires grantees to provide information regarding their performance measures, there are no set outcomes task forces must achieve, no formalized

(GPRA), Public Law 103-62, applicants that receive funding under this solicitation must provide data that measure the results of their work.”).

375. Haynes, *supra* note 242, at 241-42 (“[L]egislation focuses too much on funding annual reports criticizing [other] countries for failures to enact or adopt legislation, and too little on ensuring that anti-trafficking legislation and initiatives are actually implemented and that US-funded programs are held accountable for producing results at a grassroots level.”).

376. Markon, *supra* note 359; *see also* 2012 Announcement, *supra* note 372, at 4, 11-12 (noting that the BJA and OVC expect to award cooperative agreements of up to \$500,000).

377. *See* Haynes, *supra* note 16, at 346.

process for review and evaluation, and no indication that the DOJ will withdraw funding if efforts are not successful. Yet, the time and resources devoted to trafficking necessarily detracts from the resources available to address other crimes. Therefore, the DOJ must make a more constructive effort to use task force money wisely.

The solution is not necessarily enhanced funding³⁷⁸ or additional human resources.³⁷⁹ Rather, the United States must more efficiently use the resources and systems currently in place. This involves education surrounding the purpose and use of current funds and analysis of the outcomes it produces. If, for example, the DOJ-funded South Florida task force has not investigated a single substantiated instance of trafficking in two years, this is useful information to capture and learn from. Such information might show that trafficking is no longer a problem in this area and that money is better utilized for another purpose. On the other hand, such information might show that the task force efforts have raised awareness and serve as a deterrent to trafficking activity. Still another possibility is that the task force is underutilized, needing additional training, personnel, or funding to serve its purpose.³⁸⁰

Regardless, information is necessary to determine where money is spent and, more importantly, if it is well-spent. To accomplish this goal, money must be tied to expectations, and such expectations must be measurable and measured. As demonstrated by the example above, designated outcomes need not necessarily be apprehension of traffickers. Depending on the goals of each task force, outcomes could include preventative efforts such as trainings, deterrence efforts, or rehabilitative work with victims.

However, funding should also be tied to collaborative efforts separate and distinct from direct prosecutorial, preventative, or rehabilitative outcomes. With the understanding that concerted communication and collaboration between task force partners is the channel for achieving all other outcomes, funding must mandate partnership. Currently, while partners must submit a unified application for initial grant money, there is no indication that continued cooperation is necessary for continued funding. Thus, the DOJ should institute clear expectations specifying the amount of time partners must collaborate to address the problem and requiring periodic evaluations to ensure such collaboration occurs. Overall, funding can be an effective incentive to

378. Still, enhanced funding may be necessary as additional DOJ task forces lose their funding.

379. See Loftus, *supra* note 121, at 209 (advocating increased funding).

380. *Id.* (noting that one factor contributing to the lack of identification of traffickers is that they are able to hide within the system because so few trafficking victims have legal status in the United States).

ensure that the goals of prosecution, victim rehabilitation, and prevention are wedded, and tying funding to cooperation can do this in a way that does not prioritize one goal over the other.

C. Expanding Partnerships to Improve Current DOJ Task Forces

Even in the absence of organized, comprehensive data regarding DOJ task forces and their effect on trafficking, there are shortcomings in current task forces that, if remedied, can relatively easily begin to address some of the ongoing concerns with the TVPA, particularly as to the provision of victims' services.³⁸¹ For example, under the TVPA, victims of trafficking often lack immediate access to benefits prior to certification. In addition, restrictions, such as the requirement that victims aid in the prosecution of their traffickers, often delay receipt of services necessary for successful recovery and rehabilitation. Expansion of current partnerships could improve victims' access to many social services not already provided. Increased partnership could also promote trafficking awareness and engage a broader support base for addressing it.

For example, DOJ task forces could expand current partnerships to include other non-governmental organizations not necessarily focused primarily on human trafficking but who provide services to marginalized populations. Migrant workers and immigrants are populations highly susceptible to human trafficking.³⁸² Educating these groups about their rights before violations occur may be an important component of protecting individuals prior to victimization.³⁸³ In addition, developing relationships with vulnerable populations may lead to increased access to information regarding trafficking and therefore more successful prosecution.³⁸⁴

As task forces are composed now, the only organizations involved are those looking for or working with trafficking directly. Expanding

381. *See supra* Part IV.D.2.

382. *Cf.* Frank Laczko & Elzbieta Gozdiak, *Data and Research on Human Trafficking: A Global Survey*, in INTERNATIONAL ORGANIZATION FOR MIGRATION, 18, 26 (2005) (discussing areas where trafficking is known to take place, such as areas with prostitution, migrant workers, and illegal immigrants); Brian Gushulak & Douglas W. MacPherson, *Health Issues Associated with the Smuggling and Trafficking of Migrants*, J. OF IMM. HEALTH 67, 67-68 (2000) (discussing the large numbers of migrant workers who are trafficked each year).

383. Loftus, *supra* note 121, at 200 ("Informing potential trafficking victims about their rights before the violations occur has the potential to prevent human trafficking from occurring in the first place. Educating potential trafficking victims also helps to protect victims, because a migrant educated about her rights is better able to understand when those rights have been violated.")

384. *Id.* at 201.

involvement to include groups not specifically devoted to trafficking but rather tangentially connected to it would also enhance task forces' knowledge regarding trafficking and broaden the base of advocates working to combat it. Additionally, if law enforcement works with a variety of victim service providers, even those individuals who do not have immediate access to TVPA-mandated benefits might be able to access basic necessities and more specialized services, such as psychological counseling, that may better position them to aid in prosecutions and reenter society less vulnerable to future trafficking.

D. Making Informed Decisions for the Future

The final component to a more efficient and successful approach to combating trafficking is making informed and educated decisions about current anti-trafficking policies and continuing only those procedures that meaningfully impact prosecutorial, preventative, or rehabilitative outcomes. On the broadest level, the United States must not support anti-trafficking efforts merely for political or public opinion reasons. Additionally, the United States should not be satisfied with the status quo merely because some effort at combating human trafficking is better than no effort at all. However, policymakers must not let the fact that success has not been conclusively demonstrated deter them from continuing to dedicate time and resources to a certain course of action. Whatever decision is made and whatever approach is implemented must be undertaken on the basis of valid and accurate information.

With regard to partnerships, the Northeastern study proves that DOJ trafficking task forces influence law enforcement's perceptive and investigative processes with regard to trafficking cases.³⁸⁵ The United States must now further invest in evaluating these partnerships, gathering information from *both* law enforcement and NGOs as to the effectiveness of these collaborations in prosecuting traffickers and providing rehabilitative services to victims. While I argue that government and NGO partnership furthers the TVPA's goals in theory and in practice, only with full knowledge of task forces' efficacy can the United States make meaningful decisions about the future of partnership in the TVPA.

CONCLUSION

"Fighting trafficking is not a static exercise."³⁸⁶ Rather, it is an ever-evolving, comprehensive endeavor requiring the investment and coordination of time and resources between multiple groups. Currently,

385. See *supra* Part IV.C.2.

386. 2010 TIP REPORT, *supra* note 23, at 6.

the TVPA provides a solid foundation for success: The legislation provides broad, yet improvable,³⁸⁷ protection for victims of trafficking and harsh punishment for convicted traffickers; the legal precedent exists to prosecute cases under the TVPA; and the government has allocated significant funding to trafficking task forces. Effective implementation, however, including successful prosecution and provision of victims' services is now paramount. To achieve these goals and to provide a more comprehensive solution for addressing trafficking, the United States must focus on well-organized, purposeful collaboration between local and federal law enforcement and NGOs.

Many critics of the United States' anti-trafficking efforts advocate adopting a human rights or victim-centered approach to addressing the problem. Still, even within this approach, victims' advocates cannot discount the role of law enforcement agencies, which are often the first point of contact for victims of trafficking.³⁸⁸ Similarly, critics of enhanced funding for anti-trafficking efforts note the lack of current prosecutions and argue for an enhanced criminal justice-oriented approach to solving the problem.³⁸⁹ These critics, however, fail to account for how victims and victims' advocates can play a significant role in identifying trafficking and assisting with prosecutions. Furthermore, a purely prosecutorial approach neglects to account for how victims' services can provide individuals with skills and knowledge that empower them to remain free from future lives of servitude.

Thus, the anti-trafficking movement cannot adopt only one approach or the other. A purely victim-centered approach may fail to garner the political proponents necessary for continued legal and financial support. It may also fail to support the prosecutorial and preventative measures needed to fully eradicate the demand for trafficking in the United States. However, an exclusively prosecutorial approach also has its limits. While laws and governments may have been the most powerful force to end slavery in the past, this may no longer be the case.³⁹⁰ As the TVPA enters its second decade, it becomes increasingly clear that non-legal remedies, particularly with regard to

387. Sadruddin et al., *supra* note 38, at 381 (arguing that "the law as written, with tough eligibility requirements that include mandatory victim cooperation with authorities, makes victims' access to protection benefits extremely difficult").

388. McSween, *supra* note 367, at 310.

389. *See supra* Part II.A.

390. *See* McSween, *supra* note 367, at 309 (advocating anti-trafficking activist Kevin Bales's idea that the "conscious collective decision," which can be construed as partnerships, is the most effective means of combating trafficking in today's society) (citing KEVIN BALES, *ENDING SLAVERY: HOW WE FREE SLAVES TODAY* 82 (2007)).

victims’ services, are also necessary.³⁹¹ Without collaboration between law enforcement and victim service providers, the voices of trafficking victims—many times marginalized members of society who have already been silenced—will be lost. With this, the United States will also undermine its ability to successfully prosecute cases, its ability to explore the supply and demand of trafficking, and its understanding of how to effectively prevent future trafficking.

To achieve balance between the goals of the TVPA, and to make strides within the current system, I advocate uniting the goals of the TVPA and increasing collaboration between the agencies working to combat trafficking. As discussed throughout this Article, wedding the three goals of the TVPA by partnering those who are law-enforcement minded and those who are victim-oriented is the most effective way, within the current law, to attack the trafficking problem in practice and secure a broader base of support for the anti-trafficking movement. While local and federal law enforcement and NGOs may each have distinct motivations behind their investment in trafficking, these missions are not necessarily in conflict. Rather, with purposeful partnership, all groups can work together cohesively to achieve their individual goals and society’s broader goal of eradicating trafficking entirely.

391. See Anita Alvarez, *Doing Something About Human Trafficking*, CBA REC., Apr. 2010, at 12 (2010) (“Legislative remedies are essential but it is important to remember that prosecutors cannot solve this problem in isolation. As State’s Attorney, I intend to continue to work in partnership with social service providers as well [as] local, State and federal law enforcement.”).