Elusive Empowerment: Compensating the Sex Trafficked Person
Under the Trafficking Victims Protection Act

Theodore R. Sangalis

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COMMENT

ELUSIVE EMPOWERMENT: COMPENSATING THE SEX TRAFFICKED PERSON UNDER THE TRAFFICKING VICTIMS PROTECTION ACT

Theodore R. Sangalis*

Globally, hundreds of thousands—perhaps millions—are being forced or coerced into commercial sex acts. In the United States, this sex trafficking problem has become a lucrative illegal industry, and it is quickly growing. In response, Congress passed the Trafficking Victims Protection Act of 2000 (TVPA) to eradicate the industry by prosecuting the perpetrators, protecting the victims, and preventing the practice. Through several reauthorizations, one federal strategy that has emerged is compensating the victims through mandatory criminal restitution and civil remedies. Collection of restitution damages has been lacking, however, and no civil suit filed for sex trafficking survivors has reached the merits. This Comment argues that the lack of access to compensation is a result of lawmakers’ failure to understand the victim’s experience. Most sex trafficking survivors have a host of issues that the TVPA, as currently authorized, does not accommodate. This Comment recommends modest changes to the TVPA that would help victims gain access to compensatory remedies without compromising collateral efforts to eradicate sex trafficking. Taking cues from stated U.S. policy objectives in the TVPA and other federal legislation, this Comment proposes expanding immigration relief, sharpening prosecutorial efforts, and heightening government accountability—all toward the goal of compensating and empowering survivors of sex trafficking.

TABLE OF CONTENTS

INTRODUCTION .......................................................................................... 404
I. THE ISSUE OF SEX TRAFFICKING .......................................................... 406
   A. Definition and Facts ............................................................................. 407
   B. Factors Causing Sex Trafficking ......................................................... 410

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C. Victim Experience ................................................................. 413

II. THE TVPA: OBJECTIVES, PROVISIONS, AND PRACTICES .......... 417
   A. The Trafficking Victims Protection Act of 2000 .................... 417
      1. The T Visa ................................................................. 418
      2. Mandatory Restitution ............................................... 419
   B. The Trafficking Victims Protection Reauthorization Act of 2003 ................................................................ 420
   C. The Trafficking Victims Protection Reauthorization Act of 2005 ................................................................. 422
   D. The William Wilberforce Trafficking Victims Protection
      Reauthorization Act of 2008 ............................................. 422
   E. Commentary on the TVPA and Its Reauthorizations .......... 424
   F. Case Examples Under the TVPA ...................................... 428
      1. The Reddy Case .......................................................... 428
      2. Baoanan v. Baja ........................................................... 430
   G. Collaboration and Resources Needed to Obtain
      Compensation Under the TVPA ...................................... 431
   H. Another Immigration Option: The U Visa ....................... 434

III. IMPROVING THE SEX TRAFFICKED PERSON’S ACCESS
    TO COMPENSATION .................................................................. 435
   A. Modify the Requirements to Receive Benefits Under the
      TVPA ................................................................................. 435
   B. Include Civil Litigation in Collaborative Efforts to Combat
      Sex Trafficking ................................................................. 437
   C. Ensure Collection of Restitution Damages .......................... 438

CONCLUSION .......................................................... 439

INTRODUCTION

When Sonia, a teenager from El Salvador, arrived in the United States, traffickers forced her into prostitution.¹ When she was fifteen years old, federal law enforcement agents discovered her in a brothel.² Fearful of retaliation from the traffickers and distrusting agents from the Department of Homeland Security (DHS), Sonia did not disclose what happened to her during an interrogation of several hours.³ The officers immediately placed her in deportation proceedings.⁴ While Sonia was in custody, representatives from a nongovernmental organization (NGO) met her and developed a rapport with her before they learned of her actual situation.⁵

² Id.
³ Id.
⁴ Id.
⁵ Id. at 19.
With the prompting of the NGO, the Department of Health and Human Services (HHS) tried to identify Sonia as a victim of trafficking.\(^6\) To do so, HHS had to coordinate with the Department of Justice (DOJ) and the DHS, each of which had differing interests in her story and well-being.\(^7\) Senator Richard J. Durbin of Illinois succinctly stated the situation: “[A] frightened 15-year-old who has been enslaved in a brothel, finally comes forward to try to find some justice, and runs smack dab into three different [f]ederal agencies . . . .”\(^8\)

The United States fails to adequately support survivors of sex trafficking.\(^9\) In 2000, after years of fact-finding and drafting, Congress enacted the Trafficking Victims Protection Act of 2000\(^10\) (TVPA) to prevent human trafficking, protect its victims, and bring its perpetrators to justice. Striking a balance between these objectives has proven harder in practice than in theory. Congress has reauthorized the bill three times in the past ten years in attempts to walk the fine line between prosecuting the criminals and protecting and assisting the victims.\(^11\) These modifications have included adding and expanding a civil remedy provision\(^12\) and expanding a restitution provision.\(^13\) These compensatory remedies serve the dual purpose of reimbursing the victims for their exploitation and deterring the criminals from engaging in further sex trafficking by seizing their assets gained through trafficking.\(^14\) Unfortunately, the goals of criminal prosecution can clash with those of victim protection and compensation; thus, the former has come at the expense of the latter.\(^15\)

Since Congress allowed for a civil remedy in 2003, not a single suit filed in federal court by sex trafficking survivors under the TVPA has reached the merits.\(^16\) Restitution in connection with the criminal case—the only

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6. Id. Identification as a victim of severe trafficking is required if the individual is to receive benefits and protections. See infra notes 30, 125–28 and accompanying text.
7. HHS viewed her as a minor in need of social services, DOJ viewed her as a potential witness for the prosecution, and DHS viewed her as an undocumented immigrant. Legal Options, supra note 1, at 19.
8. Id.
9. This Comment uses “sex trafficking” to refer to trafficking cases involving commercial sex acts and uses “labor trafficking” to refer to trafficking cases involving all forced labor other than commercial sex acts. It uses “human trafficking” to refer to both labor trafficking and sex trafficking cases.
11. See infra Part II.B–D; notes 218–29 and accompanying text (describing the potentially divergent goals of prosecuting criminals and assisting victims).
13. See id. § 1593.
14. See Kathleen Kim, The Trafficked Worker as Private Attorney General: A Model for Enforcing the Civil Rights of Undocumented Workers, 2009 U. Chi. Legal F. 247, 253 (noting these and many other advantages of allowing victims to sue their oppressors).
15. See infra notes 218–19 and accompanying text.
16. See Kim, supra note 14, at 310 n.337 (noting that, as of 2009, approximately thirty civil suits have been brought under § 1595 and none of them alleged sex trafficking). To date, only one suit alleging sex trafficking has been filed. See Complaint, Plaintiff A v. Schair, No. 2:11-CV-145 (N.D. Ga. filed June 14, 2011). As of the writing of this Comment,
other statutory means of compensating these survivors—either has not been ordered, not been collected, or been woefully inadequate.\textsuperscript{17} In light of these problems, this Comment examines the issue of sex trafficking, assesses the adequacy of the provisions in the TVPA for compensating sex trafficking survivors, and recommends ways to enhance the likelihood that they receive compensation without compromising the prosecution of the traffickers.\textsuperscript{18}

Part I of this Comment looks at the history of sex trafficking in the United States. It then attempts to identify the experience of the typical victim. Their experiences are not universal, but there are common circumstances, such as legal and socioeconomic statuses and physical and psychological problems, that victims are likely to share.

Part II analyzes the legislative history of the TVPA and its three reauthorizations to determine congressional intent behind creating and expanding victim compensation, and the concurrent interests and objectives affecting those purposes. This Comment focuses on the most recent reauthorization: the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.\textsuperscript{19} It also discusses commentary and criticisms of the TVPA by scholars and advocates. It then examines cases that have utilized the congressional scheme and the practical implications of fulfilling its stated objectives. It ends by analyzing the U visa\textsuperscript{20} as a model for immigration relief.

Part III proposes amendments to the TVPA. In particular, this Comment advocates modifying the requirements for receiving benefits under the TVPA, increasing collaborative efforts to bring civil actions, and ensuring that restitution is not just ordered, but collected. These modifications would give sex trafficking survivors access to the compensation that they deserve.

\section{I. The Issue of Sex Trafficking}

Part I surveys the landscape in which the TVPA operates. It first examines the definition of sex trafficking and the current scope of the problem. It then studies the factors that cause commercial sex trafficking from both the supply side and the demand side. Finally, it investigates the

\textsuperscript{17} See infra notes 232–35 and accompanying text.


common experiences of the victims in the United States, including typical interactions with federal authorities and tactics that traffickers utilize to assert and sustain their dominance.

A. Definition and Facts

Human trafficking—sometimes called modern day slavery—is an international problem. The definition of trafficking varies from nation to nation, however, and is “hotly contested.” One international definition describes trafficking as

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

The United States adopted a similar definition in the TVPA, defining trafficking as the “recruitment, harboring, transportation, provision, or obtaining of a person . . . through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” Some have argued that this language devotes too much consideration to the victim’s consent, instead of focusing on the ultimate exploitation as the international definition does. Generally speaking, however, human trafficking is any activity whereby “one person obtains or

22. See id.
25. 22 U.S.C. § 7102(8)(B) (2006 & Supp. 2009). It is important to recognize that, despite the name, a victim of trafficking need not be transported across borders to be defined as such. See U.S. DEP’T OF STATE, THE 2010 TRAFFICKING IN PERSONS REP. 8 [hereinafter 2010 TIP REP.], available at http://www.state.gov/documents/organization/142979.pdf (recognizing that victims can be exploited without being transported).
holds another person in compelled service,”27 and includes forced labor, sex trafficking, involuntary servitude, and debt bondage.28

The TVPA also provides benefits and protections for sex trafficking victims. Sex trafficking is specifically defined in the TVPA as the “recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”29 Victims are only entitled to benefits if they are subjected to “severe” trafficking.30 This requires a showing of “force, fraud, or coercion,”31 unless the victim is less than eighteen years old.32 Recently, the requirement of “force, fraud or coercion” has been expanded to include non-physical forms, such as psychological coercion.33 The extent of the coercion necessary to be identified as a victim of trafficking has been a point of conflict in the courts.34

Trafficking, especially for commercial sex acts, is often covert, making it difficult to accurately determine the extent to which it occurs.35 The most recent estimate places the total number of trafficked individuals at 12.3 million.36 Approximately 800,000 of these victims are trafficked across

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27. 2010 TIP REP., supra note 25, at 7.
28. Id. at 8–9. These forms of trafficking are continued relationships between the trafficker and victims. They are different from smuggling, which is the illegal act of sneaking someone into another country. See Kim & Hreshchyshyn, supra note 25, at 5. This Comment focuses specifically on sex trafficking.
29. 22 U.S.C. § 7102(9) (2006 & Supp. 2009). A “commercial sex act” is “any sex act on account of which anything of value is given to or received by any person.” Id. § 7102(3).
31. Id. § 7102(8)(A). This has proved to be a high standard in practice as federal authorities have “felt [that] allegations of abuse were not ‘severe enough’” to warrant social services under the TVPA. Free the Slaves & The Human Rights Ctr. of the Univ. of Cal., Berkeley, Hidden Slaves: Forced Labor in the United States, 23 BERKELEY J. INT’L L. 47, 74 (2005) [hereinafter Hidden Slaves] (quoting an anonymous trafficking expert).
32. 22 U.S.C. § 7102(8)(A) (identifying minors as per se victims of severe sex trafficking).
33. See 18 U.S.C. § 1591(c)(2)(A) (2006 & Supp. 2009); Kim, supra note 14, at 278 (“Examples of psychological coercion include a victim’s cultural isolation, financial or emotional dependency on the trafficker, and threats to harm a victim’s family members.”).
34. See United States v. Kozminski, 487 U.S. 931, 952 (1988) (deciding, under the predecessor statutes to the TVPA, that coercion is limited to actual or threatened use of physical harm). But see United States v. Bradley, 390 F.3d 145, 150 (1st Cir. 2004) (finding that the TVPA provisions were intended to overturn Kozminski). See generally Kathleen Kim, The Coercion of Trafficked Workers, 96 IOWA L. REV. 409 (2011) (promoting a more progressive analysis of coercion that considers the nuanced situations that can render a person vulnerable to exploitation).
35. Hidden Slaves, supra note 31, at 51–52 (asserting that most trafficking crimes are hidden).
borders, meaning that about 93 percent of trafficking victims are exploited within their own country. It is also estimated that 80 percent of trafficking victims are female, and 70 percent of those females are trafficked for commercial sex acts. Most sex trafficking victims come from Southeast Asia, Latin America, Eastern Europe, and former Soviet states. The United States is one of the major destination countries for these victims.

Human trafficking is the fastest growing criminal industry, and is now tied with weapon trafficking as the second largest illegal enterprise in the United States behind drug trafficking. The United States Department of State notes that money generated for human trafficking may be “as high as $32 billion, if both the sale of individuals and the value of their exploited labor or services are taken into account.” Sex trafficking alone generates an estimated $7 billion per year, though some have said it is closer to $19 billion. Because of these exorbitant profits, the United Nations anticipates that human trafficking will surpass drug and weapon trafficking to become the world’s largest illegal business.

The Department of State asserts that, in the United States, 14,500 to 17,500 people are trafficked every year. American citizens are predominately victims of sex trafficking while foreign citizens in the United

(estimating 27 million trafficked people worldwide). The variation in these numbers is likely due to differences in political perspectives and inherent difficulties in obtaining information about an underground crime. See Kim, supra note 14, at 277.


38. In the United States, however, trafficking mostly affects immigrants. See Kim, supra note 14, at 251.

39. U.S. Dep’t of State, The 2004 Trafficking in Persons Rep. 23 [hereinafter 2004 TIP Rep.], available at http://www.state.gov/documents/organization/34158.pdf. This Comment will mostly discuss women and girls as the victims of sex trafficking, even though men and boys also can be exploited, because females are the “primary targets” of trafficking. See Hyland, supra note 21, at 29.


42. See Rieger, supra note 26, at 233.


44. 2008 TIP Rep., supra note 37, at 34.

45. Id.

46. The profits are high because they are derived from reusable commodities—the victims’ bodies. See infra note 78 and accompanying text.

47. See Kim, supra note 14, at 277–78; see also Rieger, supra note 26, at 240 (noting that some crime rings are encouraged to facilitate human trafficking because it is “extremely profitable and low risk”).

48. 2004 TIP Rep., supra note 39, at 23. This statistic is criticized because there is a lack of transparency with regard to its methodology. See Hidden Slaves, supra note 31, at 58 & n.12. During the original proposals of the TVPA, estimates suggested the number was closer to 50,000. See H.R. Rep. No. 106-487, pt. 2, at 2 (2000).
States are more often trafficked for labor.\(^49\) Within the United States, trafficking occurs mostly in large metropolitan areas with significant immigrant populations—especially in cities in California, Florida, New York, and Texas.\(^50\) Perpetrators of trafficking often share similar nationalities or ethnicities to those that they traffic—most often they are of Chinese, Mexican or Vietnamese origin.\(^51\) Victims therefore face ostracism and retribution from the traffickers in their communities.\(^52\) For those victims who are deported back to their country of origin, at least one study reports that almost 50 percent are re-trafficked.\(^53\)

### B. Factors Causing Sex Trafficking

Because of the rise and prevalence of trafficking in recent years, it is important to examine situations that may perpetuate this illegal activity. Scholars have cited the following causes of human trafficking: poverty,\(^54\) illiteracy,\(^55\) armed conflicts,\(^56\) economic crises,\(^57\) globalization,\(^58\) gender inequalities\(^59\) and discrimination,\(^60\) low social status of women,\(^61\) lack of educational opportunities,\(^62\) restrictive immigration policies,\(^63\) lack of anti-
trafficking laws (or lack of enforcement), and the demand of male sex buyers. Perhaps the most pervasive of these causes is global poverty, which disproportionately affects women and girls.77 Trafficking has risen particularly quickly in the current era of globalization and industrialization. In a globalized market, it is often citizens of developing countries that provide the cheap supply of commercial sex acts to citizens of developed countries. Communities formerly built on subsistence agriculture now flock to outsourced industrial factories to produce goods for the world market. This has increased, rather than decreased, the inequalities between men and women. The rapid change has led to decreased food subsidies and rising prices for those remaining in subsistence agriculture, exacerbating the divide between rich and poor. Impoverished people in subsistence agriculture, then, are forced to seek work in unfamiliar industries away from their homes, making them vulnerable to human trafficking. The people in these vulnerable positions in impoverished countries usually seek opportunities in richer countries. The increase in world population has exacerbated these issues, as people have overwhelmed available resources.

In addition, because traffickers often come from the same community and circumstances as their victims, they too are often seeking economic

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64. See Amiel, supra note 54, at 8; Dalrymple, supra note 26, at 458; Tiefenbrun, supra note 18, at 132.
66. See Tiefenbrun, supra note 54, at 7; Tiefenbrun, supra note 18, at 132; Adelman, supra note 65, at 405–06.
67. See Tiefenbrun, supra note 18, at 132–34 (asserting that the low status of women keeps them dependent on men and makes impoverished conditions more dire for them); Lindsay Strauss, Note, Adult Domestic Trafficking and the William Wilberforce Trafficking Victims Protection Reauthorization Act, 19 CORNELL J.L. & PUB. POL’Y 495, 507–08 (2010) (asserting that societal norms of wage disparities between men and women in the U.S. and abroad lead to fewer economic alternatives for women).
69. See Tiefenbrun, supra note 18, at 132 (adding that the commercial sex trade is “an economic system which is sorely lacking in moral values”).
70. See Joshi, supra note 68, at 33–34; see also Dalrymple, supra note 26, at 458 (noting that millions of peasants have moved to cities).
71. See Joshi, supra note 68, at 34 (using gender-based allocation of work and the wage-gap between men and women as examples).
72. See id. at 36.
73. See id. at 36–38 (adding that “[w]omen are generally the ones affected the most profoundly in transition economies”).
74. See Amiel, supra note 54, at 8 (“The flow of trafficking tends to be directed from the poorer countries of the East toward the richer countries of the West . . . .”); Rieger, supra note 26, at 232 (remarking that sex traffickers often move women, under force or deception, from poor countries to richer countries).
75. Dalrymple, supra note 26, at 458.
opportunities.76 The commercial sex trade is a quick way to earn money, as it involves the repeated sale of the same product as a service,77 unlike drugs or weapons, which can only be sold once.78 Because of this financial incentive, poverty plays a critical role in inducing someone to enter the business of trafficking.79 Even if traffickers are caught, prosecuted, and forced to provide restitution to their victims, most traffickers are likely earning far more than the amount they must pay back—in some cases only having to pay a few months’ worth of wages for many years of exploitation.80

Sex trafficking has also risen due to the demand for cheap sex.81 Where women have no rights, men are permitted to take advantage of them in ways that would not otherwise be tolerated.82 A culture of devaluing females can cause family members to sell wives and daughters for money.83 This insidious view also promotes a sense of male entitlement to do with women as they will, which can increase the demand for buying sex.84

Another reason for the proliferation of the sex trafficking industry is the lack of enforcement of laws criminalizing or otherwise condemning the activity. The Department of State’s annual Trafficking in Persons Report85 (TIP Report) places countries in four different tiers that indicate whether

76. See Kim & Hreshchyshyn, supra note 23, at 6 (noting the multiple connections traffickers often have to the local community of their victims); Rieger, supra note 26, at 251 (noting the close ties traffickers often have to their victims’ home country or hometown).


78. See International Trafficking, supra note 77, at 19; see also Hyland, supra note 39, at 38; Kim & Hreshchyshyn, supra note 23, at 8. Sex trafficking easily comports with these other illegal trades conducted by organized crime networks, however. See Hidden Slaves, supra note 31, at 61; see also Kim & Hreshchyshyn, supra note 23, at 6 (“Trafficking nearly always involves some sort of network, some organized and others not, including recruiters, document forgers, transporters, and purchasers.”).

79. See supra note 76 and accompanying text.

80. See, e.g., United States v. Kozminski, 487 U.S. 931, 934–35 (1988). Kozminski involved defendants who forced two mentally retarded men to work seventeen-hour days, at little to no pay, for a total of about fifteen years for one man and about ten for the other. Id. Upon remand, the defendants pled guilty and were ordered to jointly pay $34,000 to the victims, compensating the men at a rate of about forty to eighty-five cents per hour. See Suzanne H. Jackson, To Honor and Obey: Trafficking in “Mail-Order Brides,” 70 GEO. WASH. L. REV. 475, 527–28 (2002).


83. See id. at 116–18.

84. See VICTOR MALAREK, THE JOHNS 122–24 (2010) (detailing the views of certain buyers of sex that they are “treated better” by women in developing countries than by American women).

each country’s laws and enforcement practices meet sufficient standards to combat trafficking. The TIP Report also details prosecutorial efforts in each country to gauge the effectiveness of law enforcement. Scholars believe that if anti-trafficking laws are actually enforced, and traffickers are imprisoned, fined, or both, the illicit trade in humans will dwindle. As it stands, however, trafficker arrests, prosecutions, and convictions fall well short of the total number of traffickers involved in the sexual exploitation of women and children.

Some scholars say that, in the United States, this gap comes from a lack of will by law enforcement to “expend the effort necessary to inquire into trafficking cases.” As a result, traffickers conduct highly profitable illicit businesses, with few consequences for their activities. Moreover, although U.S. law contains a provision that arguably allows prosecution of the purchaser, the federal government has not prosecuted any buyer of sex. Nor has there been any federal effort to decrease the demand through public awareness campaigns. At least one scholar asserts that if the United States continues to ignore the demand for illegal sex, then sex trafficking will continue to thrive.

C. Victim Experience

While each individual’s experience as a victim of sex trafficking differs, there are common themes, which can help determine appropriate remedies. Congress summarized this “human calamity” as one where “women and girls are sold [and] forced to commit commercial sex acts day after day for little or no pay, and are subject to coercion and violence.” Victims tend to endure physical and psychological trauma from their ordeal.

87. See id. at 30–39 (reporting the general methodology and findings of investigations into each country’s attempts to prosecute trafficking crimes).
89. See generally 2011 TIP Rep., supra note 49, at 30 (revealing that worldwide, there were only 6,017 trafficking prosecutions and 3,619 convictions in 2010).
90. Lee & Lewis, supra note 26, at 183.
91. See Kim & Hreshchyshyn, supra note 23, at 7 (noting the attractiveness of a high return-to-risk ratio).
94. See Adelman, supra note 65, at 398.
95. See id. at 391.
usually recruit the victims through misleading employment offers. Some abduct or kidnap the victims, promise marriage, or even buy the victims from their family members. Often, the recruiting trafficker is a family friend of the victim or a well-respected member of the same community. Victims may know that the employment offers are risky, but are often not aware of—and would not agree to—the level of exploitation once at the destination. When transporting the victims across borders, traffickers often require payment for the costs of smuggling. Once traffickers bring the victims to the destination, they force the women to perform sex acts with numerous buyers. For victims that resist, the traffickers deploy a range of physical and psychological techniques to force or coerce them into exploitative acts. Forms of physical coercion can include assault, burning, or rape. Because victims often come from impoverished areas, which lack adequate health care, many have untreated prior afflictions and become increasingly dependent on the trafficker for basic health needs. Traffickers seize this opportunity to break their will by forcing them to work in dangerous environments and depriving them of necessary medical care. Traffickers may even force their victims to take drugs, otherwise brutalized”); see also 2010 TIP Rep., supra note 25, at 12 (noting that victims suffer “long-lasting physical and psychological trauma” and may also encounter “disease (including HIV/AIDS), drug addiction, unwanted pregnancy, malnutrition, social ostracism, and possible death”); 2004 TIP Rep., supra note 39, at 15–16 (detailing the health risks suffered by trafficked children); Hidden Slaves, supra note 31, at 49–50 (noting that sex trafficking victims are “especially at risk of contracting HIV or other sexually transmitted diseases”).

98. See Amiel, supra note 54, at 9; Kim & Hreshchyshyn, supra note 23, at 6 (adding that the offers are often made “through a network of acquaintances or [by] advertis[ing] in the media”); Rieger, supra note 26, at 236–37 (noting that traffickers use fake contracts and contacts in the United States, and are increasingly utilizing the internet to “prey on economically vulnerable women”).

99. See Amiel, supra note 54, at 9; Kim & Hreshchyshyn, supra note 23, at 6; Rieger, supra note 26, at 235–36. Multiple international law resolutions have recently focused on exposing trafficking for the purposes of various types of forced marriage. See Mattar, supra note 29, at 143.

100. Kim & Hreshchyshyn, supra note 23, at 6.

101. Id. at 6–7. Traffickers also reuse the same scams because families and friends of the victims are usually unaware of this exploitation. See Rieger, supra note 26, at 237.

102. See Amiel, supra note 54, at 10. Expenses are incurred gaining entry to the United States, which often occurs by obtaining short-term visas and then overstaying the allotted time, or by falsifying documentation to obtain long-term visas. See Rieger, supra note 26, at 238 (describing the various means of trafficking victims into the United States).

103. See id. at 241 (noting that twenty-five buyers per day is not uncommon).

104. See Sadruddin et al., supra note 97, at 383 (stating that coercive techniques of human traffickers are “[s]imilar to [those of] torturers”).

105. Id.; see also Hidden Slaves, supra note 31, at 91–92 (noting that traffickers may force victims to have unsafe abortions, resulting in gynecological complications); Rieger, supra note 26, at 241–42 (adding that traffickers will usually not rape a victim until they have sold her virginity at a high price).

106. See Hidden Slaves, supra note 31, at 86–87 (describing the link between poverty and physical health).

107. See id. at 87 (noting that trafficked people are “exposed to grave risks of injury or death” during transit to the United States).

108. Id. at 49–50.
causing the victims to become dependent on the traffickers to support their addiction.\textsuperscript{109} In general, victims of sex trafficking are often malnourished and hungry.\textsuperscript{110}

To psychologically coerce their victims, traffickers take the victims’ personal documents, threaten harm to their families, and threaten to report the victims to authorities for prostitution or undocumented presence.\textsuperscript{111} The threat to kill their families is particularly potent because United States law enforcement lacks the power to protect the families.\textsuperscript{112} Because traffickers usually operate in some sort of organized crime network\textsuperscript{113} and are often part of the same ethnic group as the victim,\textsuperscript{114} their threats to family members are credible.\textsuperscript{115}

Sex trafficking victims are also unfamiliar with the language and culture of the United States\textsuperscript{116}—especially when traffickers constantly move them within a nationwide network of brothels to keep them isolated and disoriented.\textsuperscript{117} These immigrant victims are usually working off some form of debt for having gained access to the United States, exposing them to forceful collection of the cost of the trip.\textsuperscript{118} Having been cut off from the outside world, victims often lose their sense of worth and control as they increasingly rely on their trafficker for survival.\textsuperscript{119} During this time, victims often feel isolated, ashamed, and betrayed by those they trusted.\textsuperscript{120}

Many victims may develop “learned helplessness” and become attached to...
their oppressors. Thus, even after they escape, victims can suffer “depression, recurring nightmares, and panic attacks,” making post-traumatic stress disorder a common consequence.

Victims of sex trafficking are treated as criminals under prostitution or immigration laws. This is so despite the protections of the TVPA, because of the exceptionally slow process for identifying people as victims. Part of the identification problem comes from the confusion among law enforcement officials as to the definition of a trafficking victim. Identification is also complicated by the fact that many law enforcement authorities view prostitution as a victimless crime and de-prioritize it. In some cases, both internationally and domestically, these same authorities are complicit in the illegal trade through corruption and bribes.

Thus victims receive little assistance from the United States. The federal government has attempted to address this issue with the passage of the TVPA, but, as demonstrated above, reporting their experiences to law enforcement can be a difficult and intimidating prospect for many victims. As some social service providers note, immigrants “often lack legal permission to remain in the country [and] fear reprisals if they escape” their oppression. The threat of deportation is constant because federal agencies may abandon their investigation and deport the victim at any time. This threat, compounded by corruption in foreign law

122. Hidden Slaves, supra note 31, at 50.
124. Sadruddin et al., supra note 97, at 384; see also Dalrymple, supra note 26, at 466 (noting that traffickers use this to generate fear in victims).
125. Sadruddin et al., supra note 97, at 391; see also Rieger, supra note 26, at 247–48 (detailing the identification and certification process and advocating for a simpler process that poses fewer difficulties for victims).
126. See Rieger, supra note 26, at 245–46 (citing Richard Danzinger, Where Are the Victims of Trafficking?, 25 Forced Migration Rev. 10, 10 (2006)) (adding that money allocated to training federal authorities to recognize victims is underutilized).
127. See Hidden Slaves, supra note 31, at 79; see also Rieger, supra note 26, at 246 (clarifying that prostitutes may be viewed as accomplices instead of victims).
128. See Amiel, supra note 54, at 9 (revealing that government and law enforcement authorities can aid the crime networks by providing legal documents, destroying evidence, or failing to pursue punishment for the crime); Tiefenbrun, supra note 18, at 118 (asserting that there is documented complicity by law enforcement at each step of the trafficking process).
129. See, e.g., supra notes 1–8 and accompanying text.
130. See infra Part II.
131. Sadruddin et al., supra note 97, at 384; see also International Trafficking, supra note 115, at 37 (statement of Msgr. Franklyn M. Casale, President, St. Thomas University).
132. Sadruddin et al., supra note 97, at 384.
133. See id. at 396 (detailing the way in which the federal agencies coordinate efforts to explore alleged cases of trafficking).
enforcement, creates a general distrust of law enforcement officials among victims of human trafficking.\textsuperscript{134} Even without these complications, many trafficking victims are simply ill-equipped to testify.\textsuperscript{135} In some cases, victims may be too traumatized to recall the facts reliably, or if they can, recalling their experience leads to re-traumatization.\textsuperscript{136} In recounting events, they may lose track of time or forget significant portions of their days.\textsuperscript{137} Sometimes they have simply suppressed the memories of their abuse and need time and care to recount their story.\textsuperscript{138}

If and when survivors assist with criminal prosecutions of their traffickers, they are still left with few, if any, resources to rebuild their lives.\textsuperscript{139} It is therefore no surprise that most victims do not come forward out of their own volition, and instead require the assistance of others in the rescue and identification process.\textsuperscript{140}

\section*{II. THE TVPA: OBJECTIVES, PROVISIONS, AND PRACTICES}

Having recognized the prevalence of human trafficking in the United States, legislators worked to combat the illicit trade. Part II explores the federal legislation enacted to curb the problem. Part II.A–D examines the provisions and legislative history of the TVPA and its three subsequent reauthorizations. Part II.E recounts commentary by scholars and advocates on the legislation. Part II.F explores two cases implementing the provisions of the TVPA. Part II.G analyzes the collaborative efforts by federal authorities and local advocates to help sex trafficked people. Finally, Part II.H compares the immigration policies of the U visa with the T visa.

\subsection*{A. The Trafficking Victims Protection Act of 2000}

Congress first enacted the TVPA as part of an ambitious endeavor to combat human trafficking in the United States and abroad.\textsuperscript{141} At the time,

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\item \textsuperscript{134} See Dalrymple, supra note 26, at 466; Kim & Hreshchyshyn, supra note 23, at 15 (asserting the source of the distrust may be from “an absence of rule of law and government corruption in many victims’ countries of origin”); Shannon Lack, Civil Rights for Trafficked Persons: Recommendations for a More Effective Federal Civil Remedy, 26 J.L. & COM. 151, 160 (2006) (asserting that the distrust is compounded by “deep feelings of humiliation”); Lee & Lewis, supra note 26, at 183 (claiming that, due to the corruption of foreign law enforcement, “victims are unlikely to place trust in law enforcement agencies”); supra note 128 and accompanying text.
\item \textsuperscript{135} Chacón, supra note 121, at 3026.
\item \textsuperscript{136} See Sadruddin et al., supra note 97, at 405–06 (discussing various psychological responses of typical trafficking victims to “explain why so few trafficking victims come forward as witnesses”); Rieger, supra note 26, at 251 (calling testifying about rape “a revictimization”).
\item \textsuperscript{137} See Chacón, supra note 121, at 3026 (mentioning that “dissociation is a common response” and may make victims “seem emotionally numb”).
\item \textsuperscript{138} Dalrymple, supra note 26, at 469.
\item \textsuperscript{139} Hidden Slaves, supra note 31, at 85.
\item \textsuperscript{140} Dalrymple, supra note 26, at 466.
\item \textsuperscript{141} See H.R. REP. NO. 106-487, pt. 2, at 2 (2000). The originality of the provisions in the TVPA has been debated. Compare Hidden Slaves, supra note 31, at 69 (calling the
the most prominent statutes condemning the acts commonly committed by traffickers were those defining involuntary servitude, peonage, and slavery.\textsuperscript{142} With the passage of the TVPA, Congress classified the crime of trafficking as a separate violation, whether for forced labor or commercial sexual acts.\textsuperscript{143} It took a decidedly victim-centered approach to the legislation.\textsuperscript{144} Congress expressly treated all forms of prostitution as sexual oppression.\textsuperscript{145} By prosecuting the traffickers, protecting the victims, and preventing the practice, the theory was that federal authorities would be equipped to eliminate human trafficking in the United States if the statute were vigorously implemented.\textsuperscript{146} Congress also sought to prevent trafficking by requiring the State Department to publish the annual TIP Report.\textsuperscript{147} The TIP Report must include an account of the nature and scope of trafficking in each country, as well as an analysis of each country’s efforts to combat the problem.\textsuperscript{148} TIP Reports have recently started evaluating the United States’ own efforts to combat trafficking.\textsuperscript{149} The TIP Report has proven to be an effective method of raising awareness.\textsuperscript{150}

1. The T Visa

Congress also recognized that undocumented immigrants were the most prevalent victims of trafficking, and thus sought to protect them by providing “T visas”—permits that allow trafficking victims to stay and work in the United States for a short time.\textsuperscript{151} Congress conditioned issuance of a T visa on four requirements: first, recipients of T visas must


\textsuperscript{143} See id. §§ 1581–1596.

\textsuperscript{144} See \textit{Implementation of the Trafficking Victims Protection Act: Hearing Before the H. Comm. on Int’l Relations}, 107th Cong. 3 (2001) [hereinafter \textit{Implementation}] (statement of Hon. Henry J. Hyde, Chairman, H. Comm. on Int’l Relations) (characterizing prostitution as a human rights problem); see also infra Part II.E (noting that commentators have observed that the practical effect of the legislation has, despite this approach, often failed to protect the victim or their interests).

\textsuperscript{145} See \textit{Implementation}, supra note 144, at 3.

\textsuperscript{146} See id.


\textsuperscript{148} \textit{Id.} The TIP Report is now divided into three parts: prosecution, protection, and prevention. See 2011 TIP REP., supra note 49, at 16 (discussing the “3P” paradigm used to analyze a country’s compliance with international standards).

\textsuperscript{149} See 2010 TIP REP., supra note 25, at 7 (noting that the 2010 report was the first time the United States held itself accountable).

\textsuperscript{150} See supra notes 86–88 and accompanying text.

have experienced “severe” forms of trafficking;\textsuperscript{152} second, the victim must be physically present in the United States “on account of such trafficking”\textsuperscript{153}; third, the victim must cooperate with the investigation or prosecution of the trafficking, unless the victim is under fifteen years old when cooperation is requested;\textsuperscript{154} and finally, that “extreme hardship involving unusual and severe harm” would attend the victims’ removal from the United States.\textsuperscript{155} Congress set a limit of issuing 5,000 T visas every year\textsuperscript{156} to allay fears that the provision would open the floodgates at the borders and allow many otherwise illegal immigrants to gain access to the United States.\textsuperscript{157}

2. Mandatory Restitution

While the main focus of the TVPA was the criminalization of trafficking, Congress also added a mandatory restitution provision.\textsuperscript{158} The provision requires courts to order restitution to the victim for any criminal offense under Chapter 77 of Title 18 of the United States Code, which covers trafficking and slavery.\textsuperscript{159} The restitution is to be paid to the victim,\textsuperscript{160} and must be for the “full amount of the victim’s losses,”\textsuperscript{161} plus the greater of the value of the victim’s services or minimum wage under the Fair Labor Standards Act.\textsuperscript{162} A victim is expressly defined as anyone harmed by an act of sex trafficking, among other crimes.\textsuperscript{163} Although the restitution order is to follow the procedures set forth in 18 U.S.C. § 3664,\textsuperscript{164} several of those procedures allow for prosecutorial discretion in seeking restitution, whereas restitution is mandatory for trafficking crimes.\textsuperscript{165}

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\textsuperscript{152} 8 C.F.R. § 214.11(b)(1); see supra note 31 and accompanying text (defining severe forms of trafficking). Congress added this requirement because it did not want to provide blanket amnesty to anyone claiming to be working off a smuggling debt. H.R. REP. No. 106-487, pt. 2, at 17.

\textsuperscript{153} 8 C.F.R. § 214.11(b)(2).

\textsuperscript{154} Id. § 214.11(b)(3) (qualifying that the victim need only comply with “reasonable request[s]”).

\textsuperscript{155} Id. § 214.11(b)(4). This qualification is a “higher standard than that of extreme hardship,” which may be based on physical, mental, and civil detriments, but not economic or social hardships. Id. § 214.11(i)(1).

\textsuperscript{156} Id. § 214.11(m).


\textsuperscript{159} 18 U.S.C. § 1593(a). Chapter 77 crimes include, for example, involuntary servitude, peonage, slavery, forced labor, and sex trafficking. Id. §§ 1581–1596.

\textsuperscript{160} Id. § 1593(b)(1).

\textsuperscript{161} Id. § 1593(b)(3). This amount includes, among other things, medical services, lost income, and attorneys’ fees. Id. § 2259(b)(3).

\textsuperscript{162} Id. § 1593(b)(3); see 22 U.S.C. § 206(a) (2006).

\textsuperscript{163} Id. § 1593(c) (including other crimes from Chapter 77, such as involuntary servitude, peonage, and forced labor).

\textsuperscript{164} Id. § 1593(b)(2).

\textsuperscript{165} See Thirtieth Annual Review of Criminal Procedure: IV. Sentencing: Restitution, 30 GEO. L.J. ANN. REV. CRIM. PROC. 1731, 1732–33 (2001) (presenting several factors that the
Despite the broad range of these provisions, some questioned the adequacy of the compensation. Certain members of Congress, led by Representative John Conyers, Jr., advocated for a lower standard in certifying victims of trafficking. Their overriding concern was that those who needed the most protection—international victims of trafficking and their families—would have to meet the harshest requirements. The legislation required victims to show that they did not “voluntarily agree” to trafficking and that, if deported, they would have a “well founded fear of retribution” and would suffer “extreme hardship.” These members were not able to convince the requisite majority that the bill’s existing provisions would preclude many victims of trafficking from obtaining relief. Despite these alleged shortcomings, scholars generally praised the comprehensive criminalization scheme of the TVPA.

B. The Trafficking Victims Protection Reauthorization Act of 2003

Congress continued to monitor the effect of the bill in the early stages of its implementation and focused on two points: the punishment of the crime and the protection of the victims. After conducting several hearings to understand how the TVPA was used in practice, Congress decided to reauthorize and amend the bill. Its first change occurred in adjusting the TVPA’s stated purpose to what has been termed “the 3P paradigm”: prevention of trafficking, protection of victims, and prosecution of traffickers. Congress enhanced certain criminal provisions to allow for more effective prosecution of human trafficking. For example, the maximum sentence for sex trafficking was increased. Congress also amplified the appropriations allocated to criminal prosecution and crime prevention, although it allocated little to direct victim compensation in this

government may consider in bringing restitution, but noting that once restitution is imposed by the court, the prosecution must seek the full amount of the victim’s losses).

166. See infra note 233 and accompanying text.

167. H.R. REP. No. 106-487, pt. 2, at 40–45 (2000) (describing how the criteria that victims must meet to receive benefits under the bill does not consider their circumstances or U.S. policy, and may prevent relief).

168. See id. at 41 (asserting that the requirements imposed are too harsh and depart from the purpose of the legislation).

169. Id. at 42–43 (stressing that those terms could be interpreted to preclude protection of victims of trafficking).

170. See, e.g., Tiefenbrun, supra note 18, at 115 (praising the criminal aspects of the law as a possible “legislative example for other nations”).


new bill. It also included, over the objection of the DOJ, a civil remedies provision to afford a measure of protection for the victims without paying them outright. Specifically, it gave victims a civil cause of action against their traffickers to seek compensation for their injuries, including emotional damages, though it limited the availability of those actions to traffickers who had committed sex trafficking, labor trafficking, or forced labor. The civil remedy provision also included a comprehensive damages scheme, allowing for recovery of reasonable attorney’s fees in addition to actual and punitive damages. Congress stipulated that civil actions brought during criminal proceedings must be stayed until the criminal case comes to a final judgment at the trial level.

Congress also realized that the debate on limiting the amount of T visas was moot: despite allocating 15,000 visas over the three years since the TVPA’s enactment, only 172 victims had obtained the visa. Accordingly, Congress lowered the minimum requirements to receive T visas. It also expanded the definition of the victim from one who is “transported” to one who is “recruited, enticed, harbored, transported, provided, or obtained.” This gave prosecutors more leverage in convicting a trafficker, in addition to providing victims a greater opportunity to take advantage of the myriad social and administrative services afforded to them. Nevertheless, victims still had to cooperate with law enforcement to obtain the visa, as the original bill required. No changes were made to the mandatory restitution provisions.

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177. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 7, 117 Stat. 2875, 2884–86; see also 2010 TIP Rep., supra note 25, at 340–41 (noting various types of victim services funded by the federal government, but indicating that the allocations to legal service providers were severely limited).


183. 18 U.S.C. § 1595(b)(1) (2006 & Supp. 2009). This is not insignificant as most criminal proceedings in trafficking cases usually last eight months to three years. See Hidden Slaves, supra note 31, at 82.


185. See § 4(a)(3), 117 Stat. 2875, 2877–78 (broadening the requirement that victims assist law enforcement by allowing them to assist local or state law enforcement, as well as federal).


188. See Hidden Slaves, supra note 31, at 72, 79 (claiming that benefits are “impossible to obtain without assistance from law enforcement personnel” even though having to testify about their experience can dissuade sex trafficking victims from cooperating).

C. The Trafficking Victims Protection Reauthorization Act of 2005

Congress reauthorized the TVPA again only two years after modifying the bill in 2003.\footnote{190} The stated purpose of the amended provisions in this new bill was to enhance penalties against trafficking within the United States.\footnote{191} For the first time, the reauthorization focused on domestic trafficking,\footnote{192} requiring HHS to implement a program to address the demand for commercial sex acts.\footnote{193} It also established grants for the benefit of domestic victims of sexual exploitation.\footnote{194}

At one hearing conducted after this reauthorization, Msgr. Franklyn Casale of St. Thomas University addressed the legislation’s lack of attention to protecting the victims.\footnote{195} Concerned about the requirement that human trafficking victims cooperate with law enforcement and prosecutors, Casale noted that the overwhelming majority of victims “are scared to death to even ever think of challenging the perpetrator, let alone contacting the authorities.”\footnote{196} Another scholar agreed, and specifically lamented the lack of protection for international and underage victims.\footnote{197}


In 2008, Congress amended the TVPA again, this time with an honoring nod to William Wilberforce, the Member of Parliament credited with championing the British legislation that commenced the abolition of the

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\footnote{193} See § 201, 119 Stat. 3558, 3567-69 (recognizing demand as a domestic cause to international sex trafficking); see also Giampolo, supra note 191, at 209–10 (describing the process by which HHS is to implement the program).
\footnote{194} See § 202(a), 119 Stat. 3558, 3569 (giving grants that will help empower victims to rebuild their lives); see also Giampolo, supra note 191, at 210–13 (exploring the need for funding of services for victims of trafficking in the United States, and how the reauthorization addresses that need).
\footnote{195} See International Trafficking, supra note 195, at 34–45 (statement of Msgr. Franklyn Casale, President, St. Thomas University).
\footnote{196} Id. at 37. Casale argued that the victims live in such fear because most of the perpetrators know the victims and their families well, making their threats credible and their power comprehensive. See id. (“Fear for their life, fear for the life of their family, fear of being alone and illegal in a foreign country, fear of the shame and contempt, additional hardships, retribution, or alienation if sent back to their country paralyze them and stop them from coming out in the open even if they have a chance to do so.”); see also supra notes 111–15 and accompanying text.
\footnote{197} Giampolo, supra note 191, at 215–17.
global slave trade. 198  With this enactment, at least one member of Congress seemed more satisfied that the bill had comprehensively implemented, and struck the proper balance between, the prosecution of traffickers, the protection of victims, and the prevention of trafficking. 199 Notably, Congress recognized the subtle and myriad ways in which a person might be coerced into sex trafficking, 200 and sought to expand the scope of prosecution—namely, prosecutors now had the authority to indict a person who benefitted from trafficking. 201

Congress also amended the restitution provision to grant prosecutors broad authority to seize the property of human traffickers—similar to the authority they possess in drug trafficking cases. 202 It expanded the trademark “force, fraud, or coercion” clause—the standard of identifying “severe” forms of trafficking—to include “threats of force.” 203 It defined “coercion” expansively as “threats of serious harm,” 204 schemes that convince a person of the threat, or the “threatened abuse of law or the legal process.” 205 It added “maintain[ing]” a victim as one of the prohibited actions. 206 Finally, it added strict liability for trafficking minors, eliminating the need to show force, fraud, or coercion. 207 The number of T visas issued annually has increased somewhat since these modifications, 208 but is still far below the authorized cap of 5,000. 209 These provisions and expanded definitions, particularly the broadened category of indictable offenses, were meant to demonstrate Congress’s commitment to protecting victims and prosecuting traffickers. 210

Most pertinent to this Comment, Congress expanded the civil remedy provision in § 1595. 211 The provision now authorizes victims to sue those


201. 18 U.S.C. § 1591(a)(2) (requiring that the criminal intent of beneficiaries be, at least, a reckless disregard that they are benefitting from sex trafficking).


203. 18 U.S.C. § 1591(a); see also supra notes 29–30 and accompanying text (describing the significance of identifying “severe” forms of trafficking).

204. 18 U.S.C. § 1591(e)(2). The serious harm can be “physical or nonphysical,” including consideration of finances, reputation, and psychological state as means by which one might be coerced. Id. § 1591(e)(4).

205. Id. § 1591(e)(2).

206. Id. § 1591(a)(1).

207. Id. § 1591(a).

208. See 2011 TIP Rep., supra note 49, at 374 (reporting that 447 certifications were issued to victims in 2010, compared to 313 in 2009).


211. 18 U.S.C. § 1595.
who committed any of the criminal acts defined in Chapter 77, which include not only trafficking, but also various forms of slavery, peonage, and involuntary servitude.\(^{212}\) Even though these claims are based on violations of criminal statutes, no criminal proceeding is necessary to file a civil suit.\(^{213}\) In addition, victims may bring civil suits not only against the perpetrators of the crime, but also against anyone who “knowingly benefits” from trafficking, even if that knowledge is constructive.\(^{214}\) For immigrants, “continuation of presence” status\(^{215}\) was granted to those pursuing the civil remedies under § 1595.\(^{216}\) Congress also added a ten-year statute of limitations; the statute had not indicated one previously.\(^{217}\)

The TVPA as amended intends to combat human trafficking in strong and comprehensive measures. Congress made important policy decisions in seeking to prevent trafficking, prosecute traffickers, and protect victims. The legislative modifications have not significantly strayed from these choices and show a sustained commitment to the stated objectives.

E. Commentary on the TVPA and Its Reauthorizations

Despite the comprehensive criminal scheme that Congress established to combat trafficking, the TVPA has not been without its critics. The most pervasive critique of the legislation is its overemphasis on prosecution and underemphasis on protection.\(^{218}\) This disparity in emphasis is seen most clearly in conditioning the victims’ qualification for benefits on their participation in criminal prosecutions.\(^{219}\) Critics claim that linking the prosecution of the trafficker to the benefits provided to the victim is a

\(^{212}\) Id. § 1595(a). The statute expanded the provision by eliminating the enumerated crimes for which a plaintiff may recover, which at least one court has interpreted to provide a right of action for all violations of Chapter 77. See Hernandez v. Attisha, No. 09-CV-2257, 2010 WL 816160, at *2 (S.D. Cal. Mar. 5, 2010).

\(^{213}\) Kim, supra note 14, at 280; see also supra note 183 and accompanying text.

\(^{214}\) 18 U.S.C. § 1595(a) (holding liable those who benefit when they “knew or should have known” about the trafficking).

\(^{215}\) Continued presence is “a form of temporary immigration status to trafficked persons who pursue civil suits against their traffickers.” Kim, supra note 14, at 251.

\(^{216}\) 22 U.S.C. § 7105(c)(3) (2006 & Supp. 2009); see also Kim, supra note 14, at 252 (noting that continued presence allows immigrants to be “agents of enforcement of civil rights violations in the workplace”).

\(^{217}\) 18 U.S.C. § 1595(c); see also Hernandez, 2010 WL 816160, at *3 (holding that § 1595 explicitly provides for a ten-year statute of limitations).

\(^{218}\) See, e.g., Chacón, supra note 121, at 3024 (remarking that this disparity makes the TVPA “an ineffective tool in aiding trafficking victims”); Rieger, supra note 26, at 253 (“The legal focus on sex trafficking has been on criminal prosecutions rather than on civil remedies.”).

\(^{219}\) See Chacón, supra note 121, at 3024–25 (noting that federal authorities will deny the T visa application of any victim that refuses to assist in the investigation or prosecution of the traffickers); see also Rieger, supra note 26, at 250 (analogizing sex trafficking victims to rape victims and remarking that “[i]t would be unheard of for a rape victim to be denied assistance such as safe housing and medical treatment simply because she chose not to testify against her rapists”). A victim can still obtain a T visa without testifying, however, if their participation is never sought. See Chacón, supra note 121, at 3025.
mistake because the two goals can “clash.”

Given the physical and psychological effects that victims experience, requiring them to recount traumatic events shortly after they occurred in a courtroom—especially in criminal procedures outside of their control—could cause further trauma.

In fact, in the first nine years of the TVPA, there have only been 466 criminal convictions.

Conditioning social benefits on cooperation with the prosecution can be a substantial barrier to compensating the victims. The prosecutorial priority of obtaining a conviction may obscure a victim’s immediate need for housing or other services more immediately. One scholar summed up the critique by asserting that “the goal is no longer protection, but protection for the sake of prosecution.” According to one organization, only about half its clients wish to cooperate with the prosecution. Some scholars attribute this problem to the “criminal approach” of the TVPA, and instead recommend a human rights approach, which would primarily focus on serving the needs of the victims.

Scholars have encouraged the use of the civil remedy, in addition to or in lieu of the criminal prosecution, for several reasons. First, a civil action can provide more appropriate compensation for the victims than restitution. This is especially important because restitution under the

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220. *Hidden Slaves*, supra note 31, at 81; see also Amiel, supra note 54, at 27 (explaining that when the focus of anti-trafficking laws is on the prosecution, the interests of the victims are “sidelined” in favor of the dominant interests of the prosecutors); Kim & Hreshchyshyn, supra note 23, at 12 (asserting that the TVPA creates a “problematic tension between criminal prosecution and civil action as enforcement mechanisms for ending modern slavery”).

221. *See generally supra* Part I.C.

222. *Hidden Slaves*, supra note 31, at 96 (describing the potentially hostile experience of having to testify in a criminal proceeding); see also Kim, supra note 14, at 290 (arguing that allowing survivors to file civil suits as “private attorneys general” may help empower the victims).

223. 2009 ATT’Y GEN. ANN. REP., supra note 51, at 48.

224. Amiel, supra note 31, at 83 (quoting a director at the Coalition to Abolish Slavery and Trafficking); *see also supra Part I.C (explaining why victims might be hesitant to testify)*.

225. Amiel, supra note 54, at 27–28, 33 (noting that this approach is important, but does not serve the interests of the victim).

226. Amiel, supra note 54, at 27–28, 33 (noting that even good faith efforts of prosecutors can fall short of helping the victim’s rehabilitation); *see also Lack, supra note 134, at 160 (calling trafficked persons “instruments of law enforcement as opposed to victims deserving of protection and vindication of their individual human rights”); Leevan, supra note 26, at 796 (criticizing the focus on victims assisting prosecutions because they become “investigative tools rather than individuals deserving of human rights protections”).


228. *See id. at 38–42; Dallymple, supra note 26, at 461; Kim & Hreshchyshyn, supra note 23, at 36.

229. *See id. at 3, 16–17 (recognizing that civil suits offer non-economic damages for physical and psychological injuries as well as high punitive damages, and can hold third parties liable for damages)*.
TVPA, although mandatory, can be “easily forgotten,” whether because the prosecutor is focused on a conviction or the court fails to inform the defendant that restitution is an element of the sentencing.\(^{232}\) Even when restitution is demanded, its adequacy largely depends on the prosecutor’s aggressiveness.\(^{233}\) In sex trafficking cases, restitution may be especially inadequate because a victim cannot recover fees for illegal activities such as prostitution.\(^{234}\) Furthermore, obtaining an order for restitution does not ensure that it is always collected.\(^{235}\) Second, a civil remedy gives the trafficked person control over the legal process, whereas the prosecutor controls criminal proceedings.\(^{236}\) This is vital because prosecutors exercise discretion in bringing the case and could preclude victims from obtaining justice and social benefits by declining to prosecute the traffickers.\(^{237}\) Third, a civil action can advance the civil rights of the victim in a public forum.\(^{238}\) Fourth, a civil proceeding requires a lower burden of proof than a criminal one, increasing the likelihood of success.\(^{239}\) Finally, substantial parts—including large entities—liable for those damages; Rieger, supra note 26, at 253 (noting that “restitution awards do not allow recovery for physical or emotional damages”).

\(^{232}\) Kim & Hreshchyshyn, supra note 23, at 16; see also Elizabeth A. Plimpton & Danielle Walsh, Corporate Criminal Liability, 47 AM. CRIM. L. REV. 331, 349 (2010) (noting that mandatory restitution may also be foregone if “victims are unidentifiable or so numerous as to make compensation impracticable, or complication and delay of the sentencing process caused by mandatory restitution outweigh its value”); Leevan, supra note 26, at 782 (asserting that, despite the TVPA’s mandate, “victims often do not receive any restitution”).

\(^{233}\) See Kim & Hreshchyshyn, supra note 23, at 16–17 (adding that the interests of the state “may not be coterminous with those of the person who has been trafficked”); Lack, supra note 134, at 160 (asserting that the TVPA’s definition of restitution awards fails to account for the victims’ experiences); infra notes 272–75 and accompanying text (describing one case in which the victims felt the restitution order was inadequate).

\(^{234}\) At least one court was willing to order restitution that included profits made while in prostitution. United States v. Sanchez, No. CR-07-643 (E.D.N.Y. Mar. 25, 2010).

\(^{235}\) See Letter from Richard A. Hartling, Principal Deputy Assistant Att’y Gen., Dep’t of Justice, to Richard J. Durbin, Chairman, Subcomm. on Human Rights & the Law, Comm. on the Judiciary, U.S. Senate (June 7, 2007) (on file with the Fordham Law Review) (noting that the DOJ “does not maintain a formal system for tracking data on restitution awards”); see also 2009 ATT’Y GEN. ANN. REP., supra note 51, at 12 (recognizing that the tracking of financial restitution awards needs improvement). The Attorney General implemented a coordinated effort between several federal agencies “to ensure restitution on behalf of victims of trafficking,” but provided no further explanation, and did not report on the effectiveness of the coordination. Id.

\(^{236}\) Kim & Hreshchyshyn, supra note 23, at 2–3.

\(^{237}\) 22 U.S.C. § 7105(b)(1)(E) (2006 & Supp 2009); see also Kim & Werner, supra note 180, at 1 (noting that restitution is not available without a criminal proceeding, leaving a civil suit as the only means to compensate victims of trafficking); Chacón, supra note 121, at 3025 (recognizing that obtaining a formal endorsement of cooperation by law enforcement, even when participation is not sought, is often critical to the application); Rieger, supra note 26, at 248 (asserting that, even when a trafficking victim is identified, prosecutorial discretion causes victims to wait longer for benefits).

\(^{238}\) See Kim & Hreshchyshyn, supra note 23, at 16.

\(^{239}\) See id. at 17 (listing the lower burden of proof as one reason civil suits are likely to be successful); Rieger, supra note 26, at 253–54 (asserting the same).
civil awards not only compensate the victims, but may also prove to be an
effective deterrent to sex traffickers.240

Generally, scholars have applauded the TVPA’s civil remedy and have
seen few procedural or evidentiary problems with the provision.241 In fact,
advocates have brought many civil suits on behalf of victims of labor
trafficking under § 1595.242 For the most part, the cases that reach the
merits have received favorable judgments and brought victims “closer to a
holistic and fuller recovery.”243 Yet, in the eight years since the federal
civil remedy was enacted, there have been practically no suits brought by a
victim of sex trafficking.244 To be sure, there are alternative remedies
available to survivors of sex trafficking,245 but § 1595 codifies the most
straightforward and comprehensive compensation scheme.246 It has
“diminish[ed] some of the strategic complexities” involved in judicially
created causes of action and provides a “complete remedy, rather than the
piecemeal approach required by common law torts.”247

Despite the robust civil remedy, scholars continue to criticize the alleged
inability of the TVPA to protect its victims by empowering their recovery.
Some critics suggest that those who survive sex trafficking are first and
foremost in need of safe housing.248 Housing is not allocated or mentioned
anywhere in the language of the TVPA.249 Scholars and practitioners have

240. See Lack, supra note 134, at 161 (asserting that civil litigation “strengthens the
mandate of the federal government to combat human trafficking”); Rieger, supra note 26, at
254 (noting a lack of economic disincentives to trafficking women for commercial sex).
241. See, e.g., Kim & Werner, supra note 180, at 29–35 (describing the provisions of the
TVPA pertinent to civil litigation and finding several ways to file suit).
242. See, e.g., Jennifer S. Nam, Note, The Case of the Missing Case: Examining the Civil
(outlining the facts and details of cases brought in federal courts claiming damages under
§ 1595).
244. See Nam, supra note 242, at 1673–76 (concluding that, up until 2007, none of the
civil suits filed under § 1595 alleged sex trafficking violations); see also supra note 16.
245. For example, sex trafficking survivors may sue their oppressors under the Thirteenth
Amendment, Alien Torts Statute, Title VII, Fair Labor Standards Act, Racketeer Influenced
and Corrupt Organizations Act, and common law torts and contracts claims. See Kim &
Werner, supra note 180, at 35–73 (describing the mechanics of these and several other civil
causes of action for human trafficking victims); Rieger, supra note 26, at 254–55
(mentioning several of these causes and others).
246. See Kim & Werner, supra note 180, at 29–35 (describing the logistics of filing a
claim under § 1595 for a victim of trafficking); Kim & Hreshchyshyn, supra note 23, at 16
(calling the private right of action a “powerful tool for recovery”); Lack, supra note 134, at
163 (asserting that § 1595 provides “the most comprehensive means” of recovery).
247. Kim & Hreshchyshyn, supra note 23, at 34.
248. See Dalrymple, supra note 26, at 455 (suggesting that “most victims need immediate
secure shelter and access to legal resources”); Hidden Slaves, supra note 31, at 94 (“The
most immediate needs of those who survive forced labor are safety and housing.”); see also
Rieger, supra note 26, at 247 (adding that the immediate needs of safety and housing may
not be met for weeks or months due to a slow certification process).
249. See generally William Wilberforce Trafficking Victims Protection Reauthorization
amended in various sections of 18, 22, and 42 U.S.C.) (providing social benefits such as
continued presence, work visas, and civil remedies, but not housing); see also Hidden
Slaves, supra note 31, at 96 (“[T]he job of providing basic social and legal services to
also seriously questioned the ability of the TVPA to provide physical safety
to the victims and their families after federal authorities identify them.\textsuperscript{250} The requirement that a victim experience a “severe form” of trafficking to receive benefits has also been criticized as an “unreasonably high standard.”\textsuperscript{251} Because such a high standard makes it difficult to receive immediate benefits and protections, one scholar suggests that “victims should be presumed to qualify as a victim of severe forms of trafficking until a contrary determination is made.”\textsuperscript{252} Finally, critics have denounced immigration policies that prejudice undocumented individuals and expose them to exploitation.\textsuperscript{253}

\section*{F. Case Examples Under the TVPA}

As of the writing of this Comment, relatively few federal court cases have reached final judgments on the merits under the TVPA, and of those that have, nearly all have been criminal. This section will briefly review the facts of two cases—one for restitution in a criminal proceeding and one for damages in a civil suit—and analyze their implications. Both cases involve labor trafficking, but the principles apply to sex trafficking issues as well.

\subsection*{1. The Reddy Case}

Lakireddy Bali Reddy, a real estate investor and restaurateur in Berkeley, California, had a sexual affinity for young girls.\textsuperscript{254} He also had several businesses and needed laborers to work for him.\textsuperscript{255} In 1986, Reddy began to traffic teenage girls from India to his estate in California for sex and labor exploitation.\textsuperscript{256} Reddy had extensive influence in his hometown in India and thus his offers of employment in Berkeley appeared credible to the girls, who were usually very young and of low caste.\textsuperscript{257} To get the girls

\begin{footnotesize}
\begin{enumerate}
\item See, e.g., \textit{Hidden Slaves}, \textit{supra} note 31, at 100 (noting that criminal procedure rules allow alleged traffickers to review the information provided by survivors to investigators, putting them and their families “at a greater risk for retaliation”).
\item See \textit{Leevean}, \textit{supra} note 26, at 796 (citing 22 U.S.C. \textsection 7105 (2006 & Supp. 2009)); \textit{see also} \textit{Lee & Lewis}, \textit{supra} note 26, at 183 (asserting that the requirement of cooperating with law enforcement is not centered on the needs of the victims, but that of the federal authorities).
\item See \textit{Kim}, \textit{supra} note 14, at 248 (criticizing restrictive immigration policies as preventing exploited workers from deserved protection).
\item See hidden slaves, \textit{supra} note 31, at 90.
\item See \textit{Kim} \& \textit{Hreshchyshyn}, \textit{supra} note 23, at 22.
\item See Press Release, U.S. Dep’t of Justice, California Man Admits He Brought Indian Girls to U.S. for Sexual Exploitation, Pleads Guilty to Federal Charges (Mar. 7, 2001), http://www.justice.gov/opa/pr/2001/March/099ert.htm; \textit{see also} \textit{Kim} \& \textit{Hreshchyshyn}, \textit{supra} note 23, at 22–23 (noting that in this case “the line is blurred” between the two types of exploitation, and it shows that traffickers will oppress their victims through any means necessary).
\item See \textit{Hidden Slaves}, \textit{supra} note 31, at 90 (asserting that the girls had low social statuses and were “susceptible to the power and dominance of a higher caste male”); Kim &
\end{enumerate}
\end{footnotesize}
into the United States, Reddy had a brother and sister pretend to be a married couple and had the girls pose as their children. He also built his businesses by exploiting their labor. Over fifteen years, Reddy brought at least twenty-five Indians to the United States under false pretenses. Reddy cut the girls off from the outside world by keeping them out of school and prohibiting them from contacting anyone outside his network. He assured their cooperation by rewarding subservient girls with gifts and favorable treatment, and withdrawing the special treatment when they exhibited maturity. He often beat the girls and threatened to report them to authorities. In an extreme instance of coercion, one of the girls helped to hold down others so that Reddy could rape them. As a result of this coercion, Reddy’s victims experienced depression, nightmares, and panic attacks. Finally, in 1999, local law enforcement responded to a carbon monoxide emergency at one of Reddy’s apartment buildings, where they discovered two Indian girls poisoned by the gas. In March 2001, following an investigation, the DOJ charged Reddy with trafficking women for sexual servitude under the TVPA, to which Reddy pleaded guilty. As part of the plea agreement, Reddy consented to serve over eight years in prison and pay $2 million in restitution to the two victims affected by the carbon monoxide.

This case is a good example of the TVPA’s application of restitution as part of criminal sentencing. Despite the successful outcome in this case, however, some people—including several of Reddy’s victims—felt that the imprisonment of Reddy and the restitution were inadequate remedies. The restitution only went to two of the twenty-five victims, leaving the

Hreshchyshyn, supra note 23, at 22 (explaining that he applied his wealth toward building projects in India).

258. See Press Release, supra note 256.


260. See Kim & Hreshchyshyn, supra note 23, at 22.

261. See Press Release, supra note 256.

262. See Hidden Slaves, supra note 31, at 90.

263. See id.

264. See id.

265. See id. (noting that this confused investigators, who held the girl in jail for over a month because they considered her a perpetrator and did not realize that she was a victim).

266. See id. (noting this assessment in the court records).

267. See Press Release, supra note 256 (adding that one of them died later from carbon monoxide poisoning).

268. Fact Sheet, Worker Exploitation, U.S. Dep’t of Justice (Mar. 27, 2001), http://www.justice.gov/opa/pr/2001/March/126cr.htm; see also Press Release, supra note 256 (mentioning that the charges also included conspiracy to commit immigration fraud and subscribing to a false tax return).

269. See Press Release, supra note 256.

270. See Kim & Hreshchyshyn, supra note 23, at 23; see also Press Release, supra note 256.

271. See Kim & Hreshchyshyn, supra note 23, at 21 (noting that the case was a “landmark victory for the prosecution”).

272. See id. (asserting, with Reddy as an example, that imprisoning traffickers “falls far short of the level of deterrence needed to stop trafficking entirely”).
others with no economic compensation for their ordeal, and some involved in Reddy's trafficking network escaped punishment. His business, built partially on exploited labor, continues to thrive in Berkeley. Consequently, some victims and their family members filed a class action civil suit against Reddy and others in his network, seeking further damages. Because this suit was filed before the TVPA provided a private right of action, the court dismissed several of the victims’ claims. The civil suit was ultimately settled for an undisclosed amount, though the victims were reportedly pleased with the resolution.

2. Baoanan v. Baja

The Baoanan case, as with most of the § 1595 cases to date, ruled on procedural issues only and has not yet reached the merits. Marichu Suarez Baoanan, a citizen of the Philippines, had completed her nursing degree and sought employment in the United States as a nurse. Through an acquaintance, she met Norma Castro Baja, wife of Lauro Liboon Baja, Jr., a former Philippine diplomat in the United States. Mrs. Baja offered to help Baoanan travel to the United States through a travel agency that the Bajas owned, secure a work visa, and find employment. Baoanan paid half of the requested fee to the Bajas for this assistance, and in January 2006, she arrived in the United States. She was immediately driven from the airport to the Baja residence, where the Bajas took her passport and told her that she had to work six months to pay off the other half of her fee. Instead of finding Baoanan a nursing job, the Bajas forced her to perform all of their domestic work, including watching children and "monitor[ing] Mrs. Baja’s diabetes and blood pressure," for 126 hours per week without pay. After three months, Baoanan left her situation and subsequently brought a civil action for § 1595 claims. Because Mr. Baja was formerly

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273. See id. at 23.
274. See id.
275. See id. (asserting that limitations to the prosecutorial process allowed the business to survive).
277. See id. at *1, *14 (dismissing the implied causes of action claims brought under the Thirteenth Amendment and California state statutes).
280. See id. at 160, 171.
281. Id. at 158.
282. Id. at 157–58 (explaining that Baoanan sought this contact).
283. Id. at 158.
284. Id. (adding that Baoanan had to sign a contract—which she was not allowed to read—to go to the United States).
285. Id.
286. Id. at 158–59.
287. Id. at 159 (listing the fifteen causes of action that Baoanan raised under federal and state laws).
a foreign diplomat, the court, sua sponte, raised the issue of diplomatic immunity, which applies if the contested activity or violation was “in the exercise of his function as a member of the mission.” The court decided Baja had no residual immunity from the civil allegations of human trafficking because those violations were “entirely peripheral to [Baja’s] official duties as a diplomatic agent.”

The court’s sua sponte ruling is particularly noteworthy because it is well settled that diplomatic immunity exempts many foreign diplomats from domestic civil suits. Nevertheless, the court explicitly held that, under the TVPA, human trafficking is an actionable claim that survives at least the residual immunity of a former diplomat. While narrow, this decision created an exception to a significant obstacle to holding domestic traffickers accountable: immunities afforded to former diplomats. For victims of human trafficking who were oppressed by diplomats, § 1595 may provide an important means of compensation.

Two other recent district court cases considered other procedural obstacles to bringing § 1595 claims for labor trafficking, although no legal commentary has substantially focused on the implications of either case. In Hernandez v. Attisha, the court denied the defendants’ motion to dismiss the § 1595 claims and held that the amended language of the TVPA clearly creates an express private right of action. In another case, Adhikari v. Daoud & Partners, the court denied the defendants’ motion to dismiss the § 1595 claims because it decided that victims may bring such claims against corporations that knowingly benefit from labor trafficking.

G. Collaboration and Resources Needed to Obtain Compensation Under the TVPA

The human trafficking victim has a variety of needs that require a coordinated response across multiple disciplines. Often, the efforts of one agency or attorney are inadequate to handle all the civil needs of one
individual, particularly if she is a foreign citizen. Congress responded to this need with the creation of the Inter-Agency Task Force to Monitor and Combat Trafficking. Its mandate is to create and implement a comprehensive federal strategy to eradicate human trafficking. Prior to that, the DOJ and the Department of Labor formed the Worker Exploitation Task Force to effectively identify and prosecute traffickers through improved coordination. Still, obstacles such as interagency rivalries, divergent priorities, and the large number of agencies involved have hindered the progress of these task forces. Advocates generally support the efforts of federal agency collaboration, despite its apparent shortcomings.

In addition to federal collaborations, agencies and organizations have also developed regional task forces to serve the specific needs of trafficking survivors. These include housing, medical services, job and language training, and counseling. Because these needs are varied, collaboration is instrumental in meeting them. This is especially true in cases that are not selected for federal prosecution, because it is difficult for victims to obtain benefits under the TVPA when there is no opportunity to assist the prosecutors.

These task forces allow professionals in all areas to “share information and coordinate approaches” to specific cases. For example, one team consisting of a law firm, a legal clinic, and various human rights organizations is working to provide civil remedies to trafficked people in the United States by pooling its resources. Practitioners claim that these networks of advocates and service providers have become an effective way to meet the needs of trafficking survivors.

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300. See Hidden Slaves, supra note 31, at 47 ("Because forced labor is hidden, inhumane, widespread, and criminal, sustained and coordinated efforts by U.S. law enforcement, social service providers, and the general public are needed to expose and eradicate this illicit trade."); Lee & Lewis, supra note 26, at 193 ("It is next to impossible for a single advocate . . . to meet [the trafficked person’s] needs comprehensively.").
301. See 22 U.S.C. § 7103 (2006); see also Hidden Slaves, supra note 31, at 77–78 (outlining the federal members of the task force and asserting that it provides more protection for trafficking survivors).
303. See Hidden Slaves, supra note 31, at 77.
304. Id.; see also supra note 7 and accompanying text (describing how, in one case, three federal agencies had difficulty coordinating efforts due to different priorities).
305. See Hidden Slaves, supra note 31, at 78 (noting that advocates believe more coordination will lead to alternative forms of relief for victims).
306. See id.
307. See Lee & Lewis, supra note 26, at 193.
308. See id. at 194.
309. See Hidden Slaves, supra note 31, at 78–79 (noting the problem with identifying someone as a victim without bringing criminal charges).
310. Id. at 78.
to handle trafficking cases,\textsuperscript{312} and scholars assert that the task forces have been an “encouraging sign” in the advancement of the interests of trafficked people.\textsuperscript{313}

Federal agencies and authorities are beginning to recognize the importance of coordinating not only with different governmental agencies, but also regional NGOs.\textsuperscript{314} This is critical because the government requires the cooperation of trafficking victims to accomplish its objectives under the TVPA.\textsuperscript{315} For example, a local NGO may be able to help the government find an appropriate counseling resource for trafficking victims when they are reluctant to speak about their experience in court.\textsuperscript{316} Also, if a civil suit is commenced, coordination between the prosecutor and the civil attorney can lead to the use of evidence from the criminal case in the civil suit.\textsuperscript{317} Thus these task forces coordinate the efforts of government agencies and NGOs in a mutually beneficial way, allowing each to accomplish its goals more efficiently.\textsuperscript{318}

In addition to the collaborative efforts necessary to bring a civil action on behalf of victims of trafficking, allocating sufficient resources can be another challenge. The TVPA leaves nearly all of the responsibility for rendering social and legal services to NGOs.\textsuperscript{319} Yet Congress has done little to sponsor and develop programs that can partner with NGOs to provide these services.\textsuperscript{320} Carrying a civil case to completion often requires the pro bono assistance of law firms that generally have more resources.\textsuperscript{321}

\begin{footnotes}
\item[312] See Lee & Lewis, supra note 26, at 193.
\item[313] Hidden Slaves, supra note 31, at 78.
\item[314] See Lee & Lewis, supra note 26, at 194 (giving examples of the expertise the NGOs can offer governmental agencies tasked with handling the needs of trafficked persons).
\item[315] See id.; see also ICF INTERNATIONAL, PROSECUTING HUMAN TRAFFICKING CASES: LESSONS LEARNED AND PROMISING PRACTICES 20 (2008), available at http://www.ncjrs.gov/pdffiles1/nij/grants/223972.pdf (claiming that the prosecutor needs the cooperation and testimony of the trafficked person to obtain a conviction).
\item[316] Lee & Lewis, supra note 26, at 194.
\item[317] See KIM & WERNER, supra note 180, at 2--8 (describing the coordination needed between civil and criminal proceedings).
\item[318] See Lee & Lewis, supra note 26, at 194 (describing the interplay between agencies and how they can work to protect victims and accomplish federal objectives).
\item[319] See Susan Tiefenbrun, Sex Slavery in the United States and the Law Enacted to Stop It Here and Abroad, 11 WM. & MARY J. WOMEN & L. 317, 332--33 (2005) (revealing that law enforcement does not assist with petitions for T visas, but instead leaves it to victims); Rieger, supra note 26, at 248 (asserting that offering little or no assistance in the application process burdens the victims). Of course, if the government were to assist in T visa applications, a conflict of interest would arise. Because the government would assist the victim’s entry into the country with the intention of using the victim’s testimony to prosecute the traffickers, the victim’s story may be subject to impeachment during a civil proceeding because there is an incentive to fabricate a story to gain legal status in the United States.
\item[320] There is, however, a proposed amendment to the TVPA in the Senate that would allocate substantial funds to NGOs through state and local governmental agencies for the purpose of providing comprehensive care to trafficking survivors. See Trafficking Victims Protection Reauthorization Act of 2011, S. 1301, 112th Cong. (1st Sess. 2011).
\item[321] See, e.g., Robin Thompson, Help Wanted: Attorneys to Represent Victims of Human Trafficking, INT’L BAR NEWS, Sept. 2007, at 15, 18 (recommending that firms and bar associations offer pro bono services to human trafficking victims); Overview, supra note 311.
\end{footnotes}
Lawyers at those firms are inexperienced in this area, however, and must be trained in the nuances of representing trafficking clients and understanding the legal specifications of filing under § 1595 of the TVPA.\textsuperscript{322}

\textbf{H. Another Immigration Option: The U Visa}

As an alternative to the T visa, trafficking victims, have recently sought immigration relief under the U visa. The U visa was originally authorized in the Violence Against Women Act of 2000\textsuperscript{323} (VAWA), which was part of the same bill authorizing the T visa in the TVPA but was only recently implemented.\textsuperscript{324} The reason for the provision was similar to that of the T visa: stabilizing alien victims who lacked legal status so that those victims would help in the investigation of crimes.\textsuperscript{325}

There are four basic requirements for obtaining a U visa: first, the person must have suffered “substantial physical or mental abuse” resulting from an enumerated crime;\textsuperscript{326} second, the person needs to possess credible information regarding the crime;\textsuperscript{327} third, the person must be helpful in the investigation and prosecution of the crime;\textsuperscript{328} and finally, the United States must have jurisdiction over the crime.\textsuperscript{329} The U visa allows the victim to stay in the United States for up to four years.\textsuperscript{330} Congress affords recipients of U visas employment authorization\textsuperscript{331} and derivative benefits for their immediate family members.\textsuperscript{332} Congress capped the total visas issued each year at 10,000.\textsuperscript{333}

\textsuperscript{322} Cf. Raymond H. Brescia, \textit{Line in the Sand: Progressive Lawyering, “Master Communities,” and a Battle for Affordable Housing in New York City}, 73 ALB. L. REV. 715, 759 (2010) (stating that training pro bono attorneys is one difficulty in handling nuanced housing cases).


\textsuperscript{324} See 8 C.F.R. § 214.14 (2010) (listing the regulations); Hanson, supra note 323, at 187 (identifying the regulating authorities as the U.S. Citizenship and Immigration Services (USCIS), and later, the DHS).


\textsuperscript{326} 8 C.F.R. § 214.14(b) (2010); see also Hanson, supra note 323, at 190–91 (describing the requirement). For the enumerated list, which includes any form of human trafficking, see 8 U.S.C. § 1101(a)(15)(U)(iii).

\textsuperscript{327} 8 C.F.R. § 214.14(b)(2).

\textsuperscript{328} Id. § 214.14(b)(3).

\textsuperscript{329} Id. § 214.14(b)(4).

\textsuperscript{330} Id. § 214.14(g)(1); see generally Tahja L. Jensen, Comment, \textit{U Visa “Certification”: Overcoming the Local Hurdle in Response to a Federal Statute}, 45 IDAHO L. REV. 691, 696–99 (2009) (describing the requirements and application process for the U visa).

\textsuperscript{331} 8 C.F.R. § 214.14(c)(7); see also Jensen, supra note 330, at 694–95 (mentioning the benefits afforded to undocumented victims who meet U visa requirements).

\textsuperscript{332} See 8 C.F.R. § 214.14(f)(1) (allowing derivative status to spouses, children, parents of victims who are twenty-one years of age or younger, and unmarried siblings of victims who are eighteen years of age or younger).

The requirements and benefits of the U visa are therefore substantially the same as the T visa. The U visa allows for a broader range of applicants, however, including a lower evidentiary standard for trafficking, and it does not require a showing that extreme hardship would occur if removed. Thus, it is of little surprise that after two years of operation, U visas reached their annual maximum allocation in 2010. The U.S. Citizenship and Immigration Services (USCIS) attributed this milestone to an increased effort to train law enforcement officials and guide community advocates through the U visa process.

III. IMPROVING THE SEX TRAFFICKED PERSON’S ACCESS TO COMPENSATION

As amended, the TVPA attempts to thoroughly prosecute human traffickers, comprehensively protect the victims, and broadly prevent the practice. It is clear that Congress has emphasized the prosecution of traffickers. Protection of the victims, however—especially through social benefits and economic compensation—seems to be Congress’s lowest priority. This protection is important, and even critical, to the empowerment of survivors and the eradication of trafficking.

This part first suggests that Congress adjust the requirements of receiving benefits under the TVPA to account for the experience of the victims. It then recommends that advocates collaborate to make sex trafficked persons aware of civil litigation opportunities, and asserts that Congress should encourage that collaboration through public awareness and governmental partnerships with advocates. Finally, this part proposes that Congress hold prosecutors accountable to pursue and enforce restitution orders.

A. Modify the Requirements to Receive Benefits Under the TVPA

Congress should modify the requirements for receiving immigration relief through the T visa. Sex trafficking victims experience many physical and psychological maladies as a result of their ordeals. Their troubles often leave them unwilling or unable to pursue remedies. If and when they escape their oppressive situations, their immediate needs can include

334. See supra notes 151–57 and accompanying text (describing the requirements of the T visa); see also Hanson, supra note 323, at 202 (“The U-visa appears to offer the same benefits and protections of the T-visa . . . .”).
335. Hanson, supra note 323, at 202.
337. See id.
338. See supra note 10 and accompanying text.
339. See supra notes 218–29 and accompanying text.
340. See supra notes 218–29 and accompanying text.
341. See supra notes 230–43 and accompanying text.
342. See supra Part I.C.
343. See supra note 196 and accompanying text.
physical safety, housing, counseling, immigration relief, and financial resources. But to receive any of these benefits under the TVPA, individuals must first be identified as a victim of a severe form of trafficking. This has proven difficult, given the struggle to define trafficking and the inexperience of law enforcement in recognizing it. When victims are so identified, they must then be willing to cooperate with all reasonable requests by law enforcement to receive help. The combination of identification and cooperation has precluded countless victims from receiving protections they otherwise could have obtained.

Congress was careful to afford benefits only to victims of severe trafficking so as not to provide blanket amnesty to substantial numbers of otherwise illegal immigrants, but the government has only issued a fraction of the available T visas because the policy is too strict. In fact, some T visa applicants actually were trafficked but were not able to obtain T visas because their experience was not severe enough under the TVPA.

As an alternative to T visas, Congress allocates immigration relief to victims of various enumerated crimes through U visas, including trafficking. The benefits of U visas are substantially similar to T visas, yet the United States issued the entire allocated amount of 10,000 U visas in 2010. The T visa should emulate the U visa in its requirements. Congress should discard the requirement that victims suffer “severe” forms of trafficking—which the U visa does not require—and allow all victims of trafficking to obtain T visa relief. Congress should also drop the requirement that T applicants show extreme hardship if removed—which the U visa also does not require. Neither of these changes will hinder the prosecution of criminals; in fact, victims would be more willing and able to assist prosecutorial efforts because more of them would be certified to remain in the United States and able to obtain the relief they seek. Nor would these modifications abandon the concerns of Congress in creating blanket amnesty, because there would still be a limit on the visas issued.

As another option, Congress could remove the requirement that victims assist law enforcement and prosecution. Victims of severe trafficking are

344. See supra note 307 and accompanying text.
345. See supra notes 29–30 and accompanying text.
346. See supra notes 125–28 and accompanying text.
347. See supra note 154 and accompanying text.
349. See supra note 155–57 and accompanying text.
350. See supra notes 31 (mentioning that federal authorities do not deem physical abuse to be severe enough to qualify).
351. See supra Part II.H.
352. See supra notes 334–36 and accompanying text.
353. See supra note 326 and accompanying text.
354. See supra notes 326–29 and accompanying text (showing that none of the requirements to obtain a U visa include a showing of extreme hardship if removed).
355. See supra notes 156–57 and accompanying text.
 unlikely to come forward to demand relief and justice.\textsuperscript{357} Requiring them to cooperate with law enforcement and prosecutors is unrealistic.\textsuperscript{358} Therefore, Congress should not condition their ability to receive benefits on their cooperation with the criminal investigation and prosecution. It is unfair and unreasonable, especially in light of what most victims of severe forms of trafficking are willing or able to do.

Removing this requirement may encourage more victims to cooperate because the benefits and services they receive—such as staying in the country—give them a sense of safety in pursuing criminal justice. It is unlikely that some of these victims of severe forms of trafficking will assist prosecution without at least a guarantee that their more immediate needs\textsuperscript{359} will be met. Demonstrating a practical commitment to the interests of the victims, however, will likely rebuild victims’ trust in authority figures. Given what they have experienced, it is difficult for victims of severe forms of trafficking to assist in a process that does not focus on their best interests. If the TVPA meets the needs and interests of a broader range of victims, it will empower victims and encourage them to pursue additional avenues of justice and prevention.

\textbf{B. Include Civil Litigation in Collaborative Efforts to Combat Sex Trafficking}

Federal authorities and advocates should pursue civil remedies as part of their collaborative efforts. Labor trafficking victims have found success in obtaining this remedy,\textsuperscript{360} but no suits filed for sex trafficking victims under the new legislative scheme have reached the merits,\textsuperscript{361} even though there appear to be few legislative obstacles to the civil remedy provision.\textsuperscript{362} The only barrier to pursuing this remedy is that victims do not feel safe because the interests of the government supersede—and may preclude—those of the victim.\textsuperscript{363} It is noteworthy that of those few sex trafficked people who have cooperated with the prosecution of their traffickers and received immigration relief and other benefits, none have pursued civil remedies.\textsuperscript{364}

Initiating these civil suits is no small task because significant resources and cooperation are necessary to successfully obtain relief.\textsuperscript{365} Many of the current collaborative task forces might not be able to pursue civil litigation on behalf of the trafficked people that they serve. Although the process takes a long time, civil suits can ultimately vindicate the rights and privileges taken from the victims, give them financial resources to help lead

\textsuperscript{357}. See supra note 196 and accompanying text.
\textsuperscript{358}. See supra note 196 and accompanying text.
\textsuperscript{359}. See supra note 307 and accompanying text.
\textsuperscript{360}. See supra note 243 and accompanying text.
\textsuperscript{361}. See supra notes 16, 244 and accompanying text.
\textsuperscript{362}. See supra note 241 and accompanying text.
\textsuperscript{363}. See supra notes 218–29 and accompanying text; see also supra Part III.A.
\textsuperscript{364}. See supra note 208 and accompanying text (revealing that some T visas have been issued, meaning that there are victims who have assisted federal authorities and received immigration relief).
\textsuperscript{365}. See supra Part II.G.
lives of dignity, and deter traffickers from perpetuating the crime by increasing their liability for doing so.\textsuperscript{366} Additionally, working with task forces that are skilled at serving each of the victims’ needs should ensure that the victims’ experiences and interests are taken into account in any civil action.\textsuperscript{367} Civil remedies empower survivors by affording them the choice of when and how to hold their oppressors accountable.\textsuperscript{368} Some survivors will opt to pursue these remedies, which would accomplish all three goals of the TVPA: protecting the victims, punishing the traffickers, and preventing human trafficking.

Congress must encourage the efforts to aid civil remedies. To do so, it should establish task forces that will partner with organizations and agencies pursuing civil litigation on behalf of trafficking victims. To undertake the large task of obtaining economic relief, victim advocates will need the cooperation and support of the government—particularly in the coordination of criminal and civil proceedings.\textsuperscript{369} Economic compensation for the victims should be a criterion for creating these alliances. Such partnerships will more fully align state interests with private interests. Task forces can then effectively pursue civil remedies for trafficked persons, providing more relief and further ensuring their recovery.\textsuperscript{370}

\textbf{C. Ensure Collection of Restitution Damages}

Congress should ensure that mandatory restitution ordered in criminal proceedings under the TVPA is collected. Restitution streamlines the recovery process by punishing traffickers and making the victims whole in one proceeding.\textsuperscript{371} By the sentencing phase, the trafficker’s assets have already been frozen,\textsuperscript{372} which ensures that they cannot move their assets offshore and make them unreachable for a civil action. Even though restitution does not allow for non-economic damages such as emotional harm,\textsuperscript{373} compensation that seeks to make victims whole can be an important first step in their recovery.

Nevertheless, the restitution provisions, though mandated, are not always pursued.\textsuperscript{374} When they are pursued, they are often not collected.\textsuperscript{375} An uncollected order of restitution is purely nominal and gives a false sense that victims are being compensated.

Congress should therefore require the Attorney General to track the collection of restitution orders. The Attorney General already composes an

\begin{footnotes}
\footnotetext{366}{See supra notes 230–43 and accompanying text.}
\footnotetext{367}{See supra notes 306–13 and accompanying text.}
\footnotetext{368}{See supra note 236 and accompanying text.}
\footnotetext{369}{See supra notes 314–18, 320, and accompanying text.}
\footnotetext{370}{See supra note 243 and accompanying text.}
\footnotetext{371}{Cf. supra notes 158–65 and accompanying text.}
\footnotetext{373}{See supra note 231.}
\footnotetext{374}{See supra note 232 and accompanying text.}
\footnotetext{375}{See supra note 235 and accompanying text.}
\end{footnotes}
annual report on the prosecution of trafficking cases, so adding another element should not be prohibitive. If collection of restitution orders is tracked, prosecutors will not get credit for simply obtaining an order, but will be held responsible for pursuing and collecting the compensation. This will ensure that prosecutors have incentive to pursue the collection of a restitution order. Holding prosecutors and other government officials accountable for pursuing the collection of restitution damages will ensure victims receive their compensation without drastically altering current legislation or policy.

Of course, this recommendation only applies to cases where the prosecutor has decided to bring charges. Therefore, this modification should be made in conjunction with this Comment’s other recommendations for encouraging private actions, so that those victims whose oppressors are not involved in criminal proceedings may still obtain the compensation that they deserve. Private actions still offer additional advantages, especially empowerment of survivors, which may be missed when restitution is the only remedy. Nevertheless, ensuring the collection of restitution can be a stepping stone to empowering victims and encouraging further pursuit of compensation through civil actions.

These recommendations are relatively minor as they do not call for comprehensive policy changes. The recommendations are meant to fit within the stated goals of the TVPA. This Comment simply calls for a more demonstrated commitment to protecting victims of sex trafficking by allowing greater access to social services and economic compensation.

CONCLUSION

Sex trafficking is troubling, complex, and extensive. Many factors cause and perpetuate the practice, which victimizes people and inflicts serious harm on them. The Trafficking Victims Protection Act is groundbreaking, but it is not without its shortcomings. The provisions meant to compensate the victims for their suffering are difficult to utilize because some of the legislation’s other goals take precedence. Balancing these goals by focusing more on empowering victims through economic compensation can advance the critical work of the TVPA. Lowering the requirements to obtain immigration relief and benefits will serve more victims and facilitate care for their most immediate needs. Encouraging the important pursuit of civil actions through heightened public awareness and key partnerships will further compensate and empower these survivors. Ensuring the collection of restitution will provide critical economic relief to the victims in an efficient and relatively prompt manner. These are only minor recommendations, and the problem is far bigger than what any piece of legislation can eradicate. Understanding the plight of many sex trafficked people and seeking to assist them in leading lives of dignity, however, are important steps in increasing the value of each human being and abolishing the exploitative practice of trafficking people.

376. See supra note 236 and accompanying text.