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Don't Forget the Family: A Proposal for Expanding Immediate Protection to Families of Human Trafficking Survivors

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Don't Forget the Family: A Proposal for Expanding Immediate Protection to Families of Human Trafficking Survivors

Katrina Lynne Baker

Abstract

In Part I, this Note will discuss the current epidemic of human trafficking, the various ways the United Nations and the United States have attempted to combat trafficking, and highlight the importance of U.S. prosecutorial duties of witness protection that are especially implicated in human trafficking cases. Part II will present criticisms of efforts by the United Nations and the United States to protect victims of trafficking and their family members. This part will also focus on current U.S. protections afforded to families of human trafficking survivors and programs such as the Witness Security Program, from which U.S. lawmakers may model family protections. In Part III, this Note will argue that, despite an increase in cost, it is crucial that future legislative efforts expand current protection programs to better, and more quickly, protect families of victims. Offering family members in imminent harm derivative continued presence, currently only available to survivors of trafficking, is essential to the goals of U.S. trafficking legislation. Expanding protections for family members would accomplish three goals: (1) allow the survivor to feel secure in coming forward, knowing that her family members will not be harmed; (2) encourage survivors to come forward and cooperate with law enforcement officials, which could lead to further prosecutions of human traffickers and increase the protections offered to survivors of human trafficking; and (3) permit prosecutors to adhere to their duties of witness protection, which extend to family members who are in imminent danger due to the witnesses' cooperation.

NOTES

DON'T FORGET THE FAMILY: A PROPOSAL FOR EXPANDING IMMEDIATE PROTECTION TO FAMILIES OF HUMAN TRAFFICKING SURVIVORS

*Katrina Lynne Baker**

INTRODUCTION

While at a pastry shop in Tenancingo, Mexico, at the age of seventeen, Jane Doe met Josue Carreto.¹ The two married and became parents—but shortly after their wedding Josue locked Jane in a hotel room for two weeks, forced her into prostitution, and then illegally brought her to New York.² Carreto, his brothers, mother, and sister recruited poor, uneducated women, through deception and controlled them with rape, violence, and threats.³ The Carretos seduced, romanced, and even married their victims, offering gifts and the promise of a better life in the United States, where the victims could work and be with the men whom they thought were their devoted lovers.⁴

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1. See William Glaberson, *Sex-Trafficking Pleas Detail Abuse of Mexican Women*, N.Y. TIMES, Apr. 6, 2005, at B3 (reporting how Carreto met his first victim); see also John Marzulli, *She'll Tell Court: Lured by Love, Forced by Abuse*, DAILY NEWS, Apr. 4, 2005 (recounting prosecution's allegations).

2. See Anthony Destefano, *Sex Trafficking Trial; 3 Accused by Wives, Girlfriend in Smuggling of Women from Mexico to be First Tried Under Tough Federal Law*, NEWSDAY, Apr. 4, 2005, at A3 (stating allegations of victim); see also Marzulli, *supra* note 1 (laying out Jane Doe's story of forced prostitution).

3. See Glaberson, *supra* note 1 (citing prosecutor's allegations of coercion against victims); see also *Information Issued by U.S. Attorney's Office for the Eastern District of New York on April 27th: Three Defendants Sentenced for Forcing Young Mexican Women into Sexual Slavery in New York*, U.S. FED NEWS, Apr. 27, 2006 (noting defendants' admissions of using threats, deception, and violence to control victims).

4. See Glaberson, *supra* note 1 (noting that perpetrators would charm victims with

One Carreto brother broke a bottle over the head of one of at least eight, but likely many more, victims and tried to stab her with it.⁵ Another victim was forced to have an abortion so she could continue prostitution.⁶ Yet another victim's husband threatened violence on her family if she stopped servicing more than twenty men per day.⁷

Four of the six victims cooperating with law enforcement spoke at the Carretos' sentencing on April 27, 2006, in a Brooklyn courtroom.⁸ The three defendants pled guilty to a twenty-seven-count indictment for trafficking and forced prostitution crimes between 1991 and 2004.⁹ Two received fifty year sentences and the third was sentenced to twenty-five years.¹⁰

The investigation began in 2003 and prosecutors describe the Carreto case as among the largest sex-trafficking cases in the United States.¹¹ Federal agents raided the Carreto apartments in January 2004 finding condoms, sex advertisements, and five women.¹² Yet, a tip from a victim did not spark this investiga-

flowers and teddy bears); *see also* Destefano, *supra* note 2 (reporting investigators' allegations of Carretos' smooth-talking victims); *Three Mexicans Plead Guilty in New York Human-Trafficking Case*, STATES NEWS SERVICE, Apr. 6, 2005 (quoting Eastern District of New York U.S. Attorney that Carretos took advantage of victims' American dream).

5. *See* Glaberson, *supra* note 1 (describing allegations of prosecutors); *see also* Leroy G. Potts, Jr., *Global Trafficking in Human Beings: Assessing the Success of the United Nations Protocol to Prevent Trafficking in Persons*, 35 GEO. WASH. INT'L L. REV. 227, 229 (2003) (elaborating on violence traffickers use to control victims).

6. *See* Glaberson, *supra* note 1 (noting perpetrator forcing his girlfriend to abort her pregnancy); *see also* Mazulli, *supra* note 1 (reporting Josue Carreto forced his wife to abort her pregnancy when they arrived in New York).

7. *See* Glaberson, *supra* note 1 (reporting consequences to victim's family for victim's failure to prostitute herself); *see also* Anthony M. Destafano, *Sex Traffickers Sentenced to 50 Years: Two Brothers Were In a Gang That Forced Mexican Women To Work In Brothels In Queens, Brooklyn*, NEWSDAY, Apr. 28, 2006, at A22 (describing statements made by victim at sentencing of Carretos).

8. *See* Destafano, *supra* note 7 (recounting proceedings at sentencing); *see also* Marzulli, *supra* note 1 (conveying that eight victims were planning on testifying at trial prior to defendants' guilty pleas).

9. *See Information Issued by U.S. Attorney's Office*, *supra* note 3 (noting counts and timeline of indictment); *see also* Glaberson, *supra* note 1 (stating what lead to defendants' ultimate guilty plea).

10. *See Information Issued by U.S. Attorney's Office*, *supra* note 3 (describing judge's sentencing decision); *see also* Destafano, *supra* note 7 (highlighting that sentences were toughest ever given for human trafficking violations).

11. *See Three Mexicans Plead Guilty*, *supra* note 4 (noting background of investigation); *see also* Glaberson, *supra* note 1 (discussing importance of case).

12. *See Three Mexicans Plead Guilty*, *supra* note 4 (describing raid on Carretos); *see also* Glaberson, *supra* note 1 (detailing officer discoveries).

tion.¹³ Instead, an anonymous person contacted the U.S. Embassy in Mexico City to report the Carretos' sex-trafficking from Tenancingo, Mexico to Queens, New York.¹⁴

There are many reasons why victims of human trafficking do not come forward to tip off law enforcement officials—many may have to do with the current legislation.¹⁵ This Note argues that extending the protections afforded to family members of human trafficking survivors is essential to meeting the goals of anti-trafficking efforts. Furthermore, U.S. prosecutors have an ethical duty to protect their witnesses, whether they are U.S. citizens or not; this protection necessarily extends to the witnesses' families.

In Part I, this Note will discuss the current epidemic of human trafficking, the various ways the United Nations and the United States have attempted to combat trafficking, and highlight the importance of U.S. prosecutorial duties of witness protection that are especially implicated in human trafficking cases. Part II will present criticisms of efforts by the United Nations and the United States to protect victims of trafficking and their family members. This part will also focus on current U.S. protections afforded to families of human trafficking survivors and programs such as the Witness Security Program, from which U.S. lawmakers may model family protections.

In Part III, this Note will argue that, despite an increase in cost, it is crucial that future legislative efforts expand current protection programs to better, and more quickly, protect families of victims. Offering family members in imminent harm de-

13. See *Three Mexicans Plead Guilty*, *supra* note 4 (relating reasons investigation began); see also Glaberson, *supra* note 1 (indicating derivation of authorities' suspicions).

14. See *Three Mexicans Plead Guilty*, *supra* note 4 (reporting how authorities learned about Carretos); see also Glaberson, *supra* note 1 (explaining that tip came from complaint filed in Mexico City).

15. See Sasha L. Nel *Victims of Human Trafficking: Are They Adequately Protected in the United States?*, 5 JICL 3, 30 (2005) (suggesting statutory definition of trafficking fails to account for all forms of trafficking); see also *Developments in the Law—Jobs and Borders: II. The Trafficking Victims Protection Act*, 118 HARV. L. REV. 2180, 2195 (2005) (explaining that current definition excludes certain victims).

Throughout the Note, the terms "victim" and "survivor" will at times be used interchangeably, with a focus on the use of "survivor" to describe a person who is no longer in the custody of her trafficker. Furthermore, the author uses "she" and "her" as short forms to describe trafficking victims and survivors and as short forms to refer to prosecutors. This is not intended to imply that only women are trafficked or that only women prosecute trafficking.

rivative continued presence, currently only available to survivors of trafficking, is essential to the goals of U.S. trafficking legislation. Expanding protections for family members would accomplish three goals: (1) allow the survivor to feel secure in coming forward, knowing that her family members will not be harmed; (2) encourage survivors to come forward and cooperate with law enforcement officials, which could lead to further prosecutions of human traffickers and increase the protections offered to survivors of human trafficking; and (3) permit prosecutors to adhere to their duties of witness protection, which extend to family members who are in imminent danger due to the witnesses' cooperation.

I. HUMAN TRAFFICKING—BACKGROUND, EFFORTS TO ABOLISH MODERN SLAVERY, AND DUTY OF WITNESS PROTECTION

As will be described in this section, human trafficking is a widespread epidemic that touches all areas of the world. The United Nations and the United States have both made efforts to combat trafficking. But, the United States' focus on prosecution necessarily implicates duties of witness protection, which arguably should not create a tension with the need for prosecutorial neutrality.

A. Human Trafficking Background

The definition of human trafficking is a hotly contested issue,¹⁶ but there is widespread agreement that the phenomenon has become a form of modern slavery.¹⁷ Congress estimates that each year approximately 50,000 people are trafficked into the United States.¹⁸ However, precise estimates of human trafficking are limited because forced labor is so hidden, and collecting

16. For a discussion of human trafficking definitions see Ivy C. Lee & Mie Lewis, *Human Trafficking from a Legal Advocate's Perspective: History, Legal Framework and Current Anti-Trafficking Efforts*, 10 U.C. DAVIS J. INT'L L. & POL'Y 169, 172-73 (2003) (highlighting importance of defining human trafficking); see also Nel, *supra* note 15, at 6-10 (noting problems with current definitions, and their inability to address modern problems).

17. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 102(b)(1) (noting Congressional findings); see also Lee, *supra* note 16, at 171 (using term to generally discuss human trafficking).

18. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 102(b)(1) (noting Congressional findings); see also Lee, *supra* note 16, at 178 (recognizing that 50,000 is within range).

and analyzing these numbers is almost impossible.¹⁹ Furthermore, the U.S. Government only counts victims of a “severe form of trafficking,” which ignores other victims who may not meet the strict statutory requirements.²⁰

Unfortunately, the Carretos are only one example of the way trafficking exists today—traffickers also use fraudulent job offers to bait potential victims, including jobs for housekeepers, nannies, dancers, and waitresses.²¹ Traffickers exploit their victims’ desire for adventure, preying on those who long to leave their home countries—possibly explaining why countries in developed areas like Western Europe, North America, and the Middle East are primary destinations.²²

Often, traffickers hold victims responsible for travel, shelter, and food costs—such “debts” are typically arbitrarily inflated to around \$40,000.²³ Once indebted, victims are forced to work as domestic slaves or prostitutes; or in sweatshops, restaurants or farms; as peddlers in the street; or nude dancers at night clubs, for little or no pay.²⁴ The traffickers often increase the debt for medical bills and other incidentals and then tell the victim that if she does not pay off the debt, her family will be harmed.²⁵

19. See Free the Slaves, D.C. & Human Rights Ctr. of the Univ. of Cal., Berkeley, *Hidden Slaves: Forced Labor in the United States*, 23 *BERKELEY J. INT’L L.* 47, 57-58 (2005) [hereinafter *Free the Slaves*] (describing potential ranges of human trafficking statistical assessments); see also GAO Reports, *Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, July 18, 2006 [hereinafter *Better Data*] (elaborating on methodological weaknesses of current estimates).

20. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 103(8) (affecting “severe form of trafficking”); see also Free the Slaves, *supra* note 19, at 58 (stating that definitional requirements of law do not accurately measure impact of problem).

21. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 102(b)(4) (describing how individuals are trafficked); see also Free the Slaves, *supra* note 19, at 52 (noting widespread nature of human trafficking).

22. See *Developments*, *supra* note 15, at 2187 (listing primary destinations of victims of trafficking); see also Lee, *supra* note 16, at 177-78 (noting that most victims report fantasizing about immigrating to Western countries).

23. See Lee, *supra* note 16, at 189 (describing circumstances of victim’s debt to trafficker); see also Nel, *supra* note 15, at 1 (noting chain of events leading to debt bondage).

24. See Kathleen Kim & Kusia Hreshchyshyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States*, 16 *HASTINGS WOMEN’S L.J.* 1, 9 (2004) (describing different ways in which victims are exploited); see also *Developments*, *supra* note 15, at 2185 (noting that prostitution, forced labor, and domestic servitude are three most common forms).

25. See Martina Vandenberg, *Complicity, Corruption, and Human Rights: Trafficking in Human Beings*, 34 *CASE W. RES. J. INT’L L.* 323, 331-32 (2002) (noting victim’s debt is

Force or coercion can be broadly defined, but traffickers generally confine victims to their homes and use drugs, violence, rape, threats to the victims' families, or threats of deportation in order to compel the victims to cooperate and prevent them from escaping.²⁶ Traffickers routinely abuse their victims psychologically and physically, beaten and starved.²⁷ Traffickers often take their victim's immigration documents and passports, leaving her vulnerable to liability for immigration violations in the event that she dare escape.²⁸ The Victims of Trafficking and Violence Protection Act of 2000 ("TVPA") states that these violations expose the victim to harsher punishments than the trafficker.²⁹

Victims take such threats seriously.³⁰ Often their traffickers are from their home communities, and members of local law enforcement are often tied to criminal networks.³¹ Families are frequently aware of the danger they are in and these threats are terrifying because traffickers know where the women live.³²

his or her purchase price and victims paid for medical care, abortions, and were assessed interest fees and fines); *see also* Free the Slaves, *supra* note 19, at 65 (describing debts for transportation, work equipment, housing and utilities assessed to victims of agricultural servitude); Lee, *supra* note 16, at 189 (describing specific victim's ordeal with trafficking debt).

26. *See* Potts, *supra* note 5, at 229 (listing that traffickers will use any means necessary to ensure confinement); *see also* Kim, *supra* note 24, at 9 (elaborating on how traffickers exerted control over victims).

27. *See Developments*, *supra* note 15, at 2185 (noting types of maltreatment of victims); *see also* Free the Slaves, *supra* note 19, at 50 (stating that psychological assaults are designed to keep victims submissive).

28. *See Developments*, *supra* note 15, at 2185 (stating immigration obstacle if victim were to run away); *see also* Nel, *supra* note 16, at 1 (noting that traffickers seize victims' travel documents upon victim's arrival).

29. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 102(b)(17) (noting unfairness of immigration laws that do not recognize human trafficking); *see also* Nel, *supra* note 15, at 24 (describing why States generally treat human trafficking as immigration violation).

30. *See* Vandenberg, *supra* note 25, at 331 (highlighting danger victims may be in if they cooperate); *see also* Free the Slaves, *supra* note 19, at 54 (pointing to traffickers' native ties).

31. *See* Lee, *supra* note 16, at 188 (noting that one victim arrived only to find herself captive by her ex-boyfriend from her home village); *see also* Vandenberg, *supra* note 25, at 326, 331 (stating that traffickers know where their victims' families live; detailing that police complicity and corruption has made trafficking possible and profitable); Kim, *supra* note 24, at 15 (describing reasons victims refuse to cooperate with their local governments).

32. *See* Vandenberg, *supra* note 25, at 331 (noting that home is not safe and family members are constantly on guard for retaliation); *see also* Free the Slaves, *supra* note 19, at 54 (discussing trafficker's relationship with his victims as being from his native village).

Many of the victims leave behind children and only leave home so they can send money back to support them.³³ Traffickers use children of the victim as blackmail and, consequently, the victims have no reason to doubt that the traffickers will execute these threats.³⁴

B. *The U.N. Response to Human Trafficking—U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*
(“Trafficking Protocol”)

The United Nations first responded to the problem of human trafficking by assembling an ad hoc committee of Member States and non-governmental organizations (“NGOs”) in Vienna, Austria in January of 1999.³⁵ After several gatherings, the committee produced the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (“Protocol” or “Trafficking Protocol”).³⁶ To supplement the U.N. Convention against Transnational Organized Crime, the Protocol was signed in Palermo, Italy in December 2000 and began raising global awareness about human trafficking.³⁷

33. See Vandenberg, *supra* note 25, at 331 (recounting interviews with imprisoned victims in Israel); see also Kelly E. Hyland, *Protecting Human Victims of Trafficking: An American Framework*, 16 BERKELEY WOMEN’S L.J. 29, 43-44 (2001) (stating that victims are especially humiliated and ostracized when their goals of giving back to their families have failed).

34. See Vandenberg, *supra* note 25, at 331 (stating usage of family and children as blackmail); see also Anna Gorman, *Program to Fight Human Trafficking is Underused; Few Victims Come Forth, Authorities Find. Lack of Awareness and Simple Fear May Be Reasons*, L.A. TIMES, Dec. 19, 2005, at B1 (describing trafficker’s threats to hurt her victim’s family in Thailand).

35. See Potts, *supra* note 5, at 236 (describing how U.N. General Assembly called for its committee on trafficking); see also Joan Fitzpatrick, *Trafficking as a Human Rights Violation: The Complex Intersection of Legal Frameworks for Conceptualizing and Combating Trafficking*, 24 MICH. J. INT’L L. 1143, 1150 (2003) (pointing out that this type of ad hoc committee on crime control does not typically involve human rights groups). For a more thorough treatment of the history of international slavery laws see Nel, *supra* note 15, at 11-16 (discussing international laws addressing human trafficking).

36. See Potts, *supra* note 5, at 236 (noting U.N. General Assembly’s activities); see also Fitzpatrick, *supra* note 35, at 1148 (finding that in U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (“Trafficking Protocol” or “Protocol”) drafting process committee belatedly inserted human rights issues).

37. See U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, art 1. U.N. GAOR, 55th Sess., Annex 2, Agenda Item

Beyond raising awareness, one of the most useful features of the Trafficking Protocol is its broad definition of human trafficking.³⁸ It focuses on three elements: (1) migration of individuals; (2) by coercion, defined as fraud, force, or threats; (3) in order to exploit for prostitution, sex, labor, practices similar to slavery, or removal of organs.³⁹ This definition is the first international definition of trafficking in persons.⁴⁰ Most importantly, this definition considers consent irrelevant, a matter that often clouds legislation in the United States.⁴¹

In addition to defining human trafficking, the Protocol establishes the responsibility of each State to combat trafficking.⁴² The Protocol's purposes are to prevent trafficking, especially of women and children; to protect victims, with attention to their human rights; and to promote international cooperation in order to achieve these goals.⁴³

Specifically, the Trafficking Protocol calls for states to criminalize human trafficking, give assistance and protection to victims, cooperate with Member States via anti-trafficking programs, and share information.⁴⁴ When it comes to protecting

105, at 31, U.N. Doc. A/Res/55/25 (2001) [hereinafter Trafficking Protocol] (detailing specific responsibilities of Member States); *see also* Potts, *supra* note 5, at 236 (recounting background of Trafficking Protocol); Hyland, *supra* note 33, at 32 (noting that Protocol shows global recognition of intense problem of human trafficking).

38. *See* Trafficking Protocol, *supra* note 37, art. 3(a) (laying out definitions for use in Protocol); *see also* Free the Slaves, *supra* note 19, at 69 (describing Protocol's definition of human trafficking).

39. *See* Trafficking Protocol, *supra* note 37, at art. 3(a) (detailing Protocol's definition of human trafficking); *see also* Free the Slaves, *supra* note 19, at 69 (distilling language of Protocol).

40. *See* Linda Smith & Mohamed Mattar, *Global Challenges: Trafficking in Persons, Humanitarian Intervention, and Energy Policy: Creating International Consensus on Combating Trafficking in Persons: U.S. Policy, the Role of the UN, and Global Responses and Challenges*, 28 FLETCHER F. WORLD AFF. 155, 158 (2004) (noting that Protocol was first definition of trafficking in persons); *see also* Hyland, *supra* note 33, at 32 (lauding international definition).

41. *See* Trafficking Protocol, *supra* note 37, art. 3(b) (stating specifically that consent is not relevant); *see also* Rosy Kandathil, *Global Sex Trafficking and the Trafficking Victims Protection Act of 2000: Legislative Responses to the Problem of Modern Slavery*, 12 MICH. J. GENDER & L. 87, 90 (2005) (explaining value of international law making consent irrelevant).

42. *See* Smith, *supra* note 40, at 159 (finding that this is international responsibility). *See generally* Trafficking Protocol, *supra* note 37 (stating throughout various obligations of States parties).

43. *See* Trafficking Protocol, *supra* note 37, art. 2 (laying out Protocol's purposes); *see also* Potts, *supra* note 5, at 236 (quoting Protocol).

44. *See* Trafficking Protocol, *supra* note 37, art. 5(1), art. 6, art. 9(4), art. 10(1)

victims, Member States shall give assistance to victims during court proceedings and “shall consider” providing for physical and psychological recovery, appropriate housing, employment training opportunities, the physical safety of victims,⁴⁵ and measures permitting the victim to remain in the territory if appropriate.⁴⁶

C. The U.S. Response to Human Trafficking—The Trafficking Victims Protection Act (“TVPA”)

On December 3, 2005, the United States ratified the U.N. Convention against Transnational Organized Crime and in doing so became party to the Trafficking Protocol.⁴⁷ Prior to ratifying the Protocol, President Clinton signed into law the Victims of Trafficking and Violence Protection Act of 2000 (“TVPA”) on October 28, 2000, a piece of landmark legislation.⁴⁸ The TVPA was based upon the Trafficking Protocol’s “three Ps” framework of prevention, prosecution, and protection.⁴⁹ The Act is widely considered the world’s strongest domestic measure to combat in-

(encouraging criminalization of trafficking in persons as referred to in Article 3; stating different measures that should be taken; describing measures parties should take to cooperate with one another; finding cooperation by exchanging information will enable easier apprehension of traffickers and identify trends in trafficking schemes); *see also* Smith, *supra* note 40, at 160-162, 167 (explaining practical aspects of various measures required; indicating States’ responsibility to criminalize trafficking; pointing out importance of intergovernmental cooperation).

45. *See* Trafficking Protocol, *supra* note 37, art. 6 (stating protections and assistance that should be given to victims of trafficking); *see also* Smith, *supra* note 40, at 160 (detailing various protections Protocol suggests).

46. *See* Trafficking Protocol, *supra* note 37, art. 7(1) (asserting that Member States shall consider adopting measures to allow victims to remain in country); *see also* Smith, *supra* note 40, at 160 (discussing various reasons for which this provision is important).

47. *See* Office of the Spokesman, *United Nations Convention against Transnational Organized Crime*, U.S. DEP’T OF STATE, <http://www.state.gov/r/pa/prs/ps/2005/56006.htm> (last visited Feb. 12, 2007) (stating that United States deposited instrument of ratification on November 3, 2005 and became official party thirty days later); *see also* *United Nations Convention against Transnational Organized Crime*, U.N. OFFICE ON DRUGS & CRIME, http://www.unodc.org/unodc/en/crime_cicp_signatures_convention.html (last visited Feb. 12, 2007).

48. *See* Hyland, *supra* note 33, at 60 (recounting legislative history); *see also* U.S. Dep’t of Justice, *ASSESSMENT OF U.S. GOVERNMENT EFFORTS TO COMBAT HUMAN TRAFFICKING IN PERSONS 1*, (Sept. 2006) [hereinafter *ASSESSMENT 2006*] available at http://0225.0145.01.040/ag/annualreports/tr2006/assessment_of_efforts_to_combat_tip.pdf (discussing Victims of Trafficking and Violence Protection Act (“TVPA” or “Act”) background); *Victims of Trafficking and Violence Protection Act of 2000*, Pub. L. No. 106-386, *reauthorized by* Pub. L. No. 108-193 (2003) and Pub. L. No. 109-164 (2005).

49. *See* *Developments*, *supra* note 15, at 2189 (noting that Act is comprehensive); *see*

ternational human trafficking and has shown that the United States is leading the charge to eradicate slavery and forced labor.⁵⁰ But as discussed later in this section; however, the Act relies very little on a prosecutor's ethical duties to protect witnesses and their families, even though these duties are necessarily implicated by the nature of trafficking prosecutions.⁵¹

According to the *Trafficking in Persons Report of 2006*, the TVPA is a victim-centered approach⁵² strengthening existing laws against forced labor and the tools available to law enforcement and prosecution.⁵³ The U.S. Government has linked human trafficking to its most important priority—terrorism.⁵⁴

Regarding prevention, the Act is split into programs to create awareness of human trafficking, specifically targeting potential victims, and to institute sanctions on States that receive funding from the United States for their lack of action on the issue.⁵⁵ The TVPA also sets up an interagency task force to monitor and combat trafficking, which issues an annual report.⁵⁶ Further-

also ASSESSMENT 2006, *supra* note 48, at 1 (stating Act's framework modeling Trafficking Protocol).

50. See Kandathil, *supra* note 41, at 88 (applauding strength of U.S. efforts); see also Free the Slaves, *supra* note 19, at 73 (commending U.S. efforts toward eradicating human trafficking).

51. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 (lacking mention of ethical duties to protect victims).

52. See U. S. DEPT. OF STATE, *TRAFFICKING IN PERSONS REPORT*, 22, June 2006, [hereinafter *TRAFFICKING REPORT 2006*], <http://www.state.gov/documents/organization/66086.pdf> (asserting approach is victim-centered); see also *Fighting Human Trafficking A U.S. Governmentwide Effort*, STATE NEWS SERVICE, Feb. 9, 2007, [hereinafter *Fighting Human Trafficking*] (stating U.S. Government's victim-centered approach).

53. See Free the Slaves, *supra* note 19, at 70 (describing how Act strengthened laws against involuntary servitude); see also ASSESSMENT 2006, *supra* note 48, at 1 (detailing ways in which Act changed current laws).

54. See Jennifer M. Chacon, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 *FORDHAM L. REV.* 2977, 2990-91 (2006) (citing speech President Bush gave in 2003 in which he links terrorism to hidden humanitarian crisis); see also Louise Shelley, Professor and Director of Transnational Crime and Corruption Center, American University, *Statement to the House Committee on International Relations Subcommittee on International Terrorism, Nonproliferation and Human Rights*, 107th Cong. 20515-0128 (June 25, 2003) (stating that link is strongest in regions where trafficking is most profitable because profits and other resources feed terrorist activities).

55. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 §§ 106, 104 (stating portion of law dedicated to prevention of trafficking; laying out portion of law limiting financial assistance to certain countries); see also *Developments*, *supra* note 15, at 2189 (outlining areas of prevention).

56. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 105(d)(2) (establishing requirements for interagency task force and stating

more, the Act provides for severe punishment for traffickers.⁵⁷

1. The TVPA's Protections for Victims of Trafficking

Providing the victim protection from her trafficker is imperative because she almost always faces threats to herself and her family.⁵⁸ She is also more willing to cooperate with law enforcement officials if she knows that she and her family will be safe.⁵⁹ The TVPA recognizes some of these concerns, but only affords protection for what the Act calls a "victim of a severe form of trafficking."⁶⁰ According to the TVPA, this is a person who is induced by coercion, force, or deception to participate in commercial sex or the person is under eighteen years old and is forced into commercial sex.⁶¹ The victim is also considered a victim of a severe form of trafficking if she has been brought into the United States for labor through force, deception, or coercion and is subsequently put into debt bondage or involuntary servitude.⁶²

A survivor must be certified in order to be considered a vic-

agencies primary responsibility in assisting Secretary of State with Annual Report); *see also Better Data*, *supra* note 19 (highlighting that Act created Interagency Task Force and requires issuance of report on non-U.S. Governments' compliance).

57. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 §§ 111, 112 (allowing President discretion in sanctioning significant traffickers; increasing sentence traffickers receive from ten years to twenty years and allowing imprisonment for longer or life if certain treatment of victims is found); *see also* Chacon, *supra* note 54, at 2992 (shrugging new changes as merely stiffening sentences for crimes already recognized).

58. *See* Hyland, *supra* note 33, at 57 (recognizing threats to families of victims of trafficking and crucial nature of victim protection); *see also* Free the Slaves, *supra* note 19, at 84 (appreciating vulnerability of family members when victims of trafficking cooperate with law enforcement).

59. *See* Hyland, *supra* note 33, at 57 (positing that protection of family members will ease anxiety of victims and make them more likely to cooperate); *see also* Free the Slaves, *supra* note 19, at 84 (finding federal authorities unable to provide family with protection while family stays in country of origin).

60. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 103(8) (defining term); *see also* Chacon, *supra* note 54, at 2984 (pointing out that one could be victimized by trafficking but still not qualify for benefits or protection under TVPA).

61. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 §§ 103(8)(A), 103(13) (detailing definition of severe forms of trafficking; noting that victim is one which experiences severe forms of trafficking); *see also* Chacon, *supra* note 54, at 2984 (pointing out differences between Trafficking Protocol definitions and TVPA definitions).

62. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 §§ 103(8)(A), (13) (defining trafficking; indicating that trafficking must rise

tim of a severe form of trafficking and thereby gain the non-immigration benefits of that status, including temporary housing and health services.⁶³ To achieve certification the victim: (1) must, in every reasonable way, be willing to assist the investigation and prosecution of her trafficker; (2) must have applied for the visa that is available for victims of trafficking and not been denied; and (3) if investigation is ongoing, must have continued presence as necessary for prosecution.⁶⁴

The Act provides that "to the extent practicable" victims should receive protection, while in custody, if they are in danger of harm or recapture.⁶⁵ In such cases, measures should be taken to protect the person and her family members from intimidation and threats of retaliation from the trafficker.⁶⁶ Still, if a victim was not given protection and was subsequently harmed, the victim has no private cause of action against the sovereign or its employees.⁶⁷

In light of the fear of deportation that most victims have, the TVPA allows for temporary immigration status for victims of a severe form of trafficking.⁶⁸ There are two types of immigra-

to severe levels); *see also* Chacon, *supra* note 54, at 2984 (highlighting narrow definition).

63. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107(b)(1)(E) (noting requirements for certification); *see also* Nel, *supra* note 15, at 28 (stating that these benefits are similar to benefits given to refugees); *Fighting Human Trafficking*, *supra* note 52 (asserting that those certified receive many American social services).

64. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107(b)(1)(E)(i) (laying out specific requirements of certification); *see also* *Developments*, *supra* note 15, at 2191, n.89 (echoing statutory requirements for certification).

65. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107(c)(1)(C) (using general language to describe measures of protection offered to victims); *see also* *Developments*, *supra* note 15, at 2191 (reiterating language of Act).

66. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107(c)(1)(C) (discussing generally that measures should be taken to offer protection); *see also* Free the Slaves, *supra* note 19, at 83-84 (relaying story of family experiencing repeated threats from victim's traffickers).

67. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107(d) (stating law cannot be construed as providing victim with cause of action against sovereign); *see also* ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE, DEP'T OF JUSTICE, 75, 2005 [hereinafter ATTORNEY GENERAL GUIDELINES] (asserting that victim protections do not create litigatable rights).

68. *See* Hyland, *supra* note 33, at 43-44 (acknowledging that victim fears deportation because traffickers will look for her at home; she fears that her family will disown her; and she fears her country will punish her for illegal migration); *see also* Free the

tion relief in the Act: (1) continued presence where the victim is granted temporary stay in the United States; and (2) the T visa.⁶⁹ Both of these allow for social service benefits, but the T visa provides for adjustment to legal permanent residence and commentators state that it best addresses the lack of access to the U.S. legal system that non-immigrants experience.⁷⁰ Furthermore, the creation of the T visa marks a change in the U.S. immigration policy, which, prior to the Act, deported trafficking victims when they were discovered.⁷¹ Despite the high estimates of trafficked people in the United States, the Act limits T visas to 5000 annually.⁷²

Congress altered § 101(a)(15) of the Immigration and Nationality Act to include the specific requirements for a T visa. To be eligible, the survivor: (1) must be physically present in the United States; (2) must have cooperated with “reasonable requests” to assist in investigations or prosecutions of trafficking, or be under fifteen years old; and (3) “would suffer extreme hardship,” which includes “unusual and severe harm,” if removed from the United States.⁷³ In order to prove cooperation, a survivor generally needs an endorsement from a federal law enforcement official; however, the Act does not explicitly state

Slaves, *supra* note 19, at 71 (stating that temporary immigration status deals with unique needs of trafficking victims); Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 §§ 107(c)(3), (e) (giving authority to law enforcement to permit continued presence; allowing certain victims protection from removal).

69. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 §§ 107 (c)(3), (e) (allowing for continued presence); (laying out description of T visa); see also Free the Slaves, *supra* note 19, at 72 (showing types of immigration relief for which survivors of trafficking may be eligible).

70. See Free the Slaves, *supra* note 19, at 72 (noting that both forms offer social service benefits and work authorizations); see also Nel, *supra* note 15, at 26 (valuing T visas as useful to give victims legal rights and access to legal system).

71. See Nel, *supra* note 15, at 29 (finding T visa important since illegal immigrants would otherwise be held in detention facilities and then deported); see also Smith, *supra* note 40, at 160 (noting that traditional immigration laws would find alien victims of trafficking as violating immigration statutes).

72. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107(e)(2) (limiting visas to 5000 annually); see also *Developments*, *supra* note 15, at 2195 (pointing out lacking flexibility in this number).

73. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107 (e)(1)(C)(i) (laying out specific requirements for T visa eligibility); see also Victims of Trafficking and Violence Protection Act of 2003, Pub. L. No. 108-193 § 4(b)(1)(A) (adjusting age for eligibility without cooperation from eighteen to fifteen); Hyland, *supra* note 33, at 65 (highlighting extreme hardship prong); Nel, *supra* note 15, at 27 (detailing what victims must show to gain eligibility).

who must endorse the survivor.⁷⁴ To satisfy the third prong, the factors of “extreme hardship involving unusual and severe harm” are considered together, and often include physical or mental illness suffered due to the trafficking and the probability of re-victimization if the victim were to return to her country.⁷⁵

When a survivor receives a T visa, the U.S. Attorney General has a duty to refer the victim to an NGO to advise her of her options while in the United States, to provide her with the resources that are available to her, and to give her employment authorization.⁷⁶ She may later adjust to permanent status if she shows that she: (1) has been physically present in the United States continuously for three years; (2) has maintained good moral character; and (3) has cooperated with all reasonable requests of help in regards to investigating and prosecuting trafficking or would experience unusual and severe harm if removed from the United States.⁷⁷

Once the survivor is granted her T visa, derivative visas are available for her spouse or child if the individual is over twenty-one years old.⁷⁸ If she is under twenty-one years old, her parents and unmarried siblings under the age of eighteen are also eligible.⁷⁹ In either event, the derivative visa is only granted if it is

74. See *Free the Slaves*, *supra* note 19, at 72 (stating that federal law enforcement endorsement is preferred evidence); see also Lee, *supra* note 16, at 179-80 (noting that while endorsement from federal law enforcement is merely encouraged, application must be accompanied by statement describing victim's efforts to work with law enforcement).

75. See Lee, *supra* note 16, at 180 (specifying relevant factors and how determination is made); see also Kandathil, *supra* note 41, at 114 (stating that current definitions of terms were developed during immigrant deportation hearings).

76. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107(e)(4) (laying out U.S. Attorney General's duties with respect to T visa recipients); see also Fitzpatrick, *supra* note 35, at 1162 (detailing benefits as including cash, health care, job counseling, and work authorization).

77. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107(f) (describing requirements for adjustment to permanent status); see also Fitzpatrick, *supra* note 35, at 1162 (discussing how successful T visa applicants should be able to adjust to permanent residence); Human Trafficking.org, *Survivors of Human Trafficking Left in Limbo In the U.S.* (Mar. 28, 2007) available at <http://www.humantrafficking.org/updates/521> (last visited Mar. 30, 2007) (criticizing DHS for still not issuing regulations for availability of permanent residence adjustment).

78. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107(e)(1)(C) (establishing requirements of derivative visas for family members); see also Fitzpatrick, *supra* note 35, at 1162 (noting that derivative visas may be obtainable for immediate family members).

79. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No.

“necessary to avoid extreme hardship.”⁸⁰ The 5000 visa limit is applied only to principal T visas and there is no cap on derivative visas for family members.⁸¹ Unfortunately, this opportunity to petition for the survivor’s family members sometimes makes law enforcement officials suspicious of the motivations of the survivor, and at times law enforcement is slow to certify survivors due to this benefit.⁸²

2. The Results of the TVPA

In 2005, the United States initiated only 116 trafficking prosecutions and eighty percent were charged under the TVPA, almost twice as many as were initiated in 2004.⁸³ In addition, the U.S. Department of Justice charged defendants with more trafficking offenses than have ever been charged in a single year.⁸⁴ Of those charged, forty-five were convicted.⁸⁵ From the TVPA’s inception to 2005, trafficking investigations have more than

106-386 § 107(e)(1)(C) (relaying derivative visa eligibility); *see also* Victims of Trafficking and Violence Protection Act of 2003, Pub. L. No. 108-193 § 4(b)(1)(B) (adding unmarried siblings as eligible when victim is under twenty-one); Fitzpatrick, *supra* note 35, at 1162 (generalizing family derivative visa availability).

80. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107(e)(1)(C) (limiting circumstances of derivative visas); *see also* Fitzpatrick, *supra* note 35, at 1162 (indicating possibility of family visas).

81. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107(e)(3) (limiting cap to principal visas); *see also* Elaine Pearson, *Human Traffic, Human Rights: Redefining Victim Protection*, ANTI-SLAVERY INT’L, 123 (2002) http://ec.europa.edu/erupeaid/projects/eidhr/pdf/anti-slavery-international-traffic-report_en.pdf (last visited Feb 12, 2007) (stating that family members are excluded from cap).

82. *See* Fitzpatrick, *supra* note 35, at 1157 (noting that enforcement officials may be suspicious of victim’s motives because of derivative visa benefit); *see also* Gorman, *supra* note 34 (stating that officials warn of likelihood of fraud).

83. *See* TRAFFICKING REPORT 2006, *supra* note 52, at 53 (listing Department of Justice statistics for fiscal year 2005); *see also* Prepared Remarks of Grace Chung Becker, Deputy Assistant Attorney General, Civil Rights Division, Before the Senate Subcommittee Committee on Human Rights and the Law, 110th Cong. (2007) (boasting that number of human trafficking cases has increased by 600 percent since 2001).

84. *See* ASSESSMENT 2006, *supra* note 48, at 13 (stating that 2005 saw most charges for human trafficking); Ann Jordan, Initiative Against Trafficking in Persons Global Rights, *Statement to the House Committee on Homeland Security Subcommittee on Border, Maritime and Global Counterterrorism*, 110th Cong. (Mar. 20, 2007) (adding that 298 defendants have been charged from 2001 to 2005).

85. *See* TRAFFICKING REPORT 2006, *supra* note 52, at 53 (noting that thirty-five involved sexual exploitation); *see also* Jordan, *supra* note 84 (finding that 140 defendants were convicted from 2001 to 2005).

doubled.⁸⁶

Despite Congressional findings of widespread human trafficking in the United States, as of June 2006, only 839 people have been certified since 2001 by the U.S. Department of Health and Human Services ("DHHS").⁸⁷ It is significant that these are survivors who are only eligible for services, not immigration status.⁸⁸

Regarding T visas, in 2005 the U.S. Department of Homeland Security ("DHS") issued 112.⁸⁹ Since the department began issuing T visas to February 2006, there have been only 616 visas granted to survivors of trafficking and 573 to their family members.⁹⁰ In fact, in 2005, only 229 individuals had even applied for a principal T visa and less than half were approved.⁹¹ As for derivative visas, some family members appear to be applying and getting through the system.⁹² The U.S. Government chart, reporting the number and types of visas granted, shows

86. See ASSESSMENT 2006, *supra* note 48, at 13 (finding doubling of investigations occurred from 2001 to 2005); ASSESSMENT OF U.S. GOVERNMENT EFFORTS TO COMBAT HUMAN TRAFFICKING IN PERSONS 13, (Sept. 2005) [hereinafter ASSESSMENT 2005] available at <http://www.usdoj.gov/ag/annualreports/tr2005/assessmentofustipactivities.pdf> (indicating that interagency cooperation is necessary to investigate trafficking).

87. See ASSESSMENT 2006, *supra* note 48, at 4 (charting differences in certifications numbers since inception of TVPA); see also TRAFFICKING REPORT 2006, *supra* note 52, at 53 (listing countries victims came from in 2005). But see Fighting Human Trafficking, *supra* note 52 (stating that as of February 9, 2007 Department of Health and Human Services ("DHHS") had certified 1100 people).

88. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107(b)(1)(E) (outlining DHHS certification requirements and benefits); see also TRAFFICKING REPORT 2006, *supra* note 52, at 53 (noting that certification permits survivors to access benefits similar to refugees).

89. See TRAFFICKING REPORT 2006, *supra* note 52, at 53 (detailing progress of T visa program); see also ASSESSMENT 2006, *supra* note 48, at 10 (charting numbers of visas applied for, approved, and denied).

90. See TRAFFICKING REPORT 2006, *supra* note 52, at 53 (noting total number of visas issued); see also Katherine Kaufka, Supervising Attorney, National Immigrant Justice Center, *Statement To the Senate Judiciary Committee Subcommittee On Human Rights and the Law*, 110th Cong. (Mar. 26, 2007) (asserting that at time of her testimony 1500 visas had been issued).

91. See ASSESSMENT 2006, *supra* note 48, at 10 (listing number of victims applying for 2005); see also ASSESSMENT 2005, *supra* note 86, at 13 (indicating that in 2004, 136 principal T visas were approved and 292 were denied).

92. See ASSESSMENT 2006, *supra* note 48, at 10 (finding that 124 family members applied in 2005 and 177 applied in 2004, while 114 were accepted in 2005 and 216 were accepted in 2004, keeping in mind that those listed as accepted could have applied in prior years); see also ASSESSMENT 2005, *supra* note 86, at 13 (stating that twenty-five family members were denied in 2004, while twenty-five were still pending at year end).

more approvals than applications in a given year because the reporting system only tallies individual applications in the year in which they apply, suggesting that the process is slow and cumbersome.⁹³

These certification numbers by both DHHS and DHS are low in light of the fact that the Office for Victims of Crime ("OVC") has served 1184 trafficking survivors since the inception of its program in 2003.⁹⁴ The OVC has funded twenty-five direct services projects for trafficking survivors, and in 2005 the grantees served 682 survivors.⁹⁵

D. Prosecutorial Duty To Protect Survivors of Trafficking

Recently, as in human trafficking cases, victims' roles in the U.S. criminal justice system have increased, and therefore, so have the protections afforded to them.⁹⁶ It is important to look at prosecutorial ethics through the lens of the victim's role because it helps practitioners realize the various challenges of balancing interests that a prosecutor must undergo.⁹⁷ Prosecutors have a duty of neutrality; however, they also owe a duty to victims and witnesses—and in trafficking cases, this duty extends the families of victims and witnesses.⁹⁸

93. See ASSESSMENT 2006, *supra* note 48, at 10 (starring approval section as also coming from previous fiscal year filings); see also *Free the Slaves*, *supra* note 19, at 84-85 (recognizing process time can take years and does not meet immediate needs of family members).

94. See ASSESSMENT 2006, *supra* note 48, at 5 (reporting number of victims served but adding that some may have been counted twice because service providers may not have ability to meet all victim's needs); see also ASSESSMENT 2005, *supra* note 86, at 8 (indicating that program began in January of 2003).

95. See ASSESSMENT 2006, *supra* note 48, at 5 (detailing Office for Victims of Crime ("OVC") funding practices and victims served, adding that victims served were up in 2005 from 357); see also ASSESSMENT 2005, *supra* note 86, at 8 (explaining that OVC services meet immediate needs of survivors before they are certified due to their vulnerability).

96. See Bennet L. Gershman, *Symposium: Prosecutorial Ethics and Victims' Rights: The Prosecutor's Duty of Neutrality*, 9 LEWIS & CLARK L. REV. 559, 559 (2005) (stating developments in criminal system that increase victim involvement); see also Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107(c)(1)(C) (describing protections offered to victims).

97. See Gershman, *supra* note 96, at 560 (noting lack of examination of prosecutor and victim relationship and necessity of viewing ethics through victim's eyes); see also Stacy Caplow, *What if There Is No Client?: Prosecutors as "Counselors" of Crime Victims*, 5 CLINICAL L. REV. 1, 2 (1998) (acknowledging that most legal scholarship is of little use to prosecutors because it ignores balancing prosecutors necessarily engage in).

98. See Gershman, *supra* note 96, at 562 (opining that neutrality does not mean

Who is the Client?: Prosecutorial Neutrality

In the current U.S. prosecutorial scheme, the victim no longer has a role in initiating criminal proceedings.⁹⁹ Instead, because U.S. jurisdictions employ public and independent prosecution, a prosecutor's clients are the individuals who live in her jurisdiction.¹⁰⁰ These people include law enforcement officials, victims, witnesses, and can include the defendant.¹⁰¹

Like other attorneys, the prosecutor has a fiduciary obligation to her clients.¹⁰² But, hers is a greater obligation to remain independent.¹⁰³ She must be independent from police, victims, and families of victims.¹⁰⁴ This duty of neutrality assures everyone within the judicial system that the unreviewable discretion a prosecutor has will not be affected by her own interests or any other party's interests.¹⁰⁵

Furthermore, the prosecutor is not to be a counselor to victims of crimes because her client is *the people*.¹⁰⁶ Prosecutors often discuss cases with victims, but should not defer to them, as the prosecutor is the ultimate decision-maker.¹⁰⁷ But if the case

ignoring victim's injuries); *see also* Caplow, *supra* note 97, at 44 (stating that if prosecutors worked more with victims they could appropriately balance their interests).

99. *See* Caplow, *supra* note 97, at 9 (noting that this approach theoretically allows prosecutors to fairly determine whether to move forward); *see also* Gershman, *supra* note 96, at 561 (stating that prosecutors owe duties to people independent of victims).

100. *See* Gershman, *supra* note 96, at 563 (discussing prosecutors' clients); *see also* Caplow, *supra* note 97, at 9 (finding that prosecutors balance conflicting interests of their communities).

101. *See* Gershman, *supra* note 96, at 563 (listing prosecutors' clients); *see also* Caplow, *supra* note 97, at 9 (noting different members of community who are implicated in prosecutors' decision-making).

102. *See* Gershman, *supra* note 96, at 563 (describing fiduciary duty owed by prosecutors); *see also* Bruce A. Green & Fred C. Zacharias, *Prosecutorial Neutrality*, 2004 Wis. L. Rev. 837, 860 (2004) (noting types of decision-making prosecutors should employ).

103. *See* Gershman, *supra* note 96, at 563 (elaborating on prosecutorial duties); *see also* Green & Zacharias, *supra* note 102, at 860 (explaining decision-making methods prosecutors should utilize).

104. *See* Green & Zacharias, *supra* note 102, at 860-61 (stating that neutrality often involves remaining independent from listed individuals); *see also* Gershman, *supra* note 96, at 564 (detailing different ways prosecutors may violate their duty of neutrality by working with victims).

105. *See* Gershman, *supra* note 96, at 563 (stating reasoning behind mandate of neutrality); *see also* Green & Zacharias, *supra* note 102, at 864 (finding this neutrality accounts for great discretion prosecutors have).

106. *See* Caplow, *supra* note 97, at 9-10 (noting that this assertion is without debate); *see also* Green & Zacharias, *supra* note 102, at 861-62 (describing prosecutor's client as abstract).

107. *See* Caplow, *supra* note 97, at 5 (stating that prosecutors often discuss strate-

goes to trial, the prosecutor often will need the victim to testify in order to secure a conviction.¹⁰⁸ This necessity creates a tension—the prosecutor must maintain trust between herself and the victim, but only until she is finished using the victim in the trial, at that point she no longer needs to sustain the relationship.¹⁰⁹ If a victim decides not to testify, a prosecutor has tools to motivate a witness, including contempt citations or arrest.¹¹⁰ The decision to use these tools could also implicate a prosecutor's duty of neutrality to the extent that she employs coercive tactics to get an unwilling victim to testify.¹¹¹

Neutrality is not unattainable—it does not mean that the prosecutor should not be concerned for the victim's safety or injury.¹¹² The prosecutor must merely avoid using her position to further personal motivations against the defendant or motivations to favor the victim, if that favoritism is at odds with the prosecutor's duty of neutrality.¹¹³ Prosecutorial ethics scholars argue that prosecutors must reconcile the need to remain neutral and protect the public with ensuring the rights of the accused and the victim.¹¹⁴

gies with victims, but do not defer to them when two disagree); *see also* Green & Zacharias, *supra* note 102, at 861 (asserting that prosecutors' independence requires that they not be influenced by others).

108. *See* Caplow, *supra* note 97, at 12, 24 (explaining that in such cases prosecutors choose between motivating victims or devaluing case); *see also* Gershman, *supra* note 96, at 560 (acknowledging victim's often critical role in prosecuting criminals).

109. *See* Caplow, *supra* note 97, at 12 (finding that this situation creates paradox for prosecutors); *see also* Gershman, *supra* note 96, at 560 (pointing out that prosecutors may align themselves with victims to maintain relationship).

110. *See* Caplow, *supra* note 97, at 14 (detailing ways prosecutors can motivate witnesses to comply with requests for cooperation); *see also* Gershman, *supra* note 96, at 577 (describing hypothetical where prosecutor may use legal methods to compel testimony of unwilling witnesses).

111. *See* Gershman, *supra* note 96, at 564, 576-77 (highlighting that prosecutor's decision to compel testimony may trigger neutrality duties); *see also* Caplow, *supra* note 97, at 14 (contrasting this ability with tools available to attorneys with clients).

112. *See* Gershman, *supra* note 96, at 562 (debunking idea that neutrality means indifference to victims' safety); *see also* Caplow, *supra* note 97, at 11 (pointing out that prosecutors may represent interests of victims as long as those interest do not conflict with other goals of justice).

113. *See* Gershman, *supra* note 96, at 562-63 (stating that prosecutors motivated in this way do not serve justice); *see also* Green & Zacharias, *supra* note 102, at 857 (adding that ideally prosecutors with different viewpoints would come to similar conclusions).

114. *See* Gershman, *supra* note 96, at 561 (concluding that balancing these interests requires skill); *see also* Caplow, *supra* note 97, at 6 (noting that this balancing should allow for inclusion of victim's interests).

2. Prosecutor's Duty to Protect Victims and Witnesses

There are few rules governing a prosecutor's ethical duties to crime victims or witnesses.¹¹⁵ The American Bar Association Standards for Criminal Justice state that prosecutors "should seek to insure" that victims and witnesses who may need protection are given it "where feasible."¹¹⁶ Whenever practical, a prosecutor should consult with and provide information to victims or their representatives before the prosecutor decides whether to prosecute, offer a plea bargain, or drop the charges.¹¹⁷

A prosecutor should be mindful that a victim is not just another witness, since the victim has a stake in the case.¹¹⁸ Congress appreciated this issue and recognized that a crime victim has a right to reasonable protection by enacting the Crime Victims' Rights Act.¹¹⁹ It is useful to note that the statute enacted by Congress does not include protection for family members of victims.¹²⁰

II. CRITICISMS OF THE TRAFFICKING PROTOCOL, THE TVPA, AND MODELS FOR A SOLUTION

Despite U.N. and U.S. efforts, human trafficking has become a global crime—one to which no part of the world is im-

115. See Gershman, *supra* note 96, at 562 (adding that American Bar Association's ("ABA") Model Rules do not give guidance for involvement of crime victims); see also Green & Zacharias, *supra* note 102, at 901 (suggesting that rule drafters identify prosecutorial principles of conduct).

116. See AMERICAN BAR ASSOCIATION STANDARDS FOR CRIMINAL JUSTICE: PROSECUTION FUNCTION, Standard 3-3.2(d) (3d ed. 1993) [hereinafter ABA STANDARDS] (confirming prosecutorial obligation to ensure safety for victims and witnesses); see also Bruce A. Green, *Symposium: Ethics 2000 and Beyond Reform or Professional Responsibility As Usual?: Prosecutorial Ethics As Usual*, 2003 U. ILL. L. REV. 1573, 1596 (2003) (noting special obligations prosecutors have toward victims of crime).

117. See ABA STANDARDS, *supra* note 116, at 3-3.2 (h) (stating these obligations); see also Erin L. Han, *Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases*, 23 B.C. THIRD WORLD L.J. 159, 172 (2003) (highlighting that this standard does not require prosecutors to obey victims' wishes).

118. See Caplow, *supra* note 97, at 13 (asserting that these victims have different expectations of their cooperation); see also Gershman, *supra* note 96, at 573 (suggesting that if prosecutors fail to recognize victims' interests they are likely to alienate victims).

119. See Crime Victims' Rights Act of 2004, Pub. L. No. 108-405 § 102(a) (listing protection as victims' right); see also Sen. Hatch Introduces Crime Victims' Rights Act, STATES NEWS SERVICE, Apr. 22, 2004 (stating aims of original bill).

120. See Crime Victims' Rights Act of 2004, Pub. L. No. 108-405 § 102(a) (limiting family involvement to situations where victim is under eighteen years of age, incompetent, deceased, or otherwise incapacitated).

mune.¹²¹ As the third largest international criminal enterprise, it is behind only drug trafficking and arms smuggling.¹²² Critics have cited various areas where protection for victims could be improved. But, it is also useful to look at similar models for protection of witnesses' family members, such as current efforts to aid family members of victims of trafficking, the Witness Security Program, and the U.S. Attorney General Guidelines for Victim and Witness Assistance.

A. *Criticisms of the Trafficking Protocol*

While the Trafficking Protocol has done much to advance awareness of human trafficking and provides a working definition, the Protocol primarily focuses on the immediate needs of the victim, such as shelter and food and does not acknowledge or mention any rights of protection for her family.¹²³ Also despite its binding nature, the Protocol's section concerning protection is couched in non-mandatory language—making only modest requirements of the ratifying members.¹²⁴ The “shall consider” language suggests that the focus of the Trafficking Protocol is on prosecution and deterrence, and therefore, such limiting language is little use to practitioners attempting to serve

121. See Smith, *supra* note 40, at 158 (noting that every country is either of origin, transit, destination, or combination); see also Nel, *supra* note 15, at 1 (asserting that human trafficking is uncontrollable problem globally).

122. See *Developments*, *supra* note 15, at 2186 (stating human trafficking's rank among criminal enterprises); see also Kandathil, *supra* note 41, at 88 (stating same and adding that human trafficking is growing fastest). For a discussion of the reasons behind the profitability of human trafficking see *Developments*, *supra* note 15, at 2187-88 (noting various social and economic factors that allow for human trafficking's profitability). For more on the history of trafficking, factors causing trafficking, people at risk, and how they are trafficked, see Hyland, *supra* note 33, at 35-36 (outlining various socioeconomic factors that play into human trafficking). See generally Lee, *supra* note 16 (writing evolution of human trafficking).

123. See Trafficking Protocol, *supra* note 37 (lacking mention of family members in any context); see also Hyland, *supra* note 33, at 32 (applauding Protocol for inclusive definition).

124. See Trafficking Protocol, *supra* note 37, arts. 6, 7 (laying out victim protections that members states *should consider*); see also Fitzpatrick, *supra* note 35, at 1151-52 (noting that Protocol does not require additional human rights obligations towards victims of trafficking and that its statement of protection for physical and social recovery of victims is no more than States would already be obliged to provide for under other legal principles); Tal Raviv, *Symposium: International Trafficking in Persons: A Focus On Women and Children—The Current Situation and the Recent International Legal Response*, 9 *CARDOZO WOMEN'S L.J.* 659, 668 (2003) (acknowledging criticism of Protocol due to optional nature of provisions).

the victims of trafficking.¹²⁵ Moreover, critics suggest that the largest test for parties to the Protocol will be whether they can provide victims with adequate protections.¹²⁶

B. Criticisms of the TVPA

Commentators have been quick to state that the TVPA has clearly taken bold steps toward combating human trafficking.¹²⁷ The enactment and implementation of the TVPA represent only the beginning of granting greater protections to survivors of trafficking.¹²⁸ Yet, others have argued that the United States needs to evaluate the effectiveness of the Act and propose new amendments that can further strengthen the tools to eradicate trafficking.¹²⁹

Governmental officials expected the T visa incentive to dramatically increase the number of survivors cooperating, but, as previously noted, that did not occur.¹³⁰ Advocates for survivors cite the need to make the following further changes: train all individuals involved in the prosecution,¹³¹ increase penalties for individuals paying for sex,¹³² add a broader definition of human

125. See Fitzpatrick, *supra* note 35, at 1151 (stating that focus is on crime control and deterrence of illegal immigration); see also Lee, *supra* note 16, at 187-88 (pointing out that non-mandatory language limits force of international anti-trafficking law and is of little use to practitioners).

126. See Nel, *supra* note 15, at 15 (noting Protocol's focus on punishment rather than protection); see also Chacon, *supra* note 54, at 2984 (pointing out that U.S. law has already narrowed protections by limiting eligible victims).

127. See Hyland, *supra* note 33, at 70 (admitting value of legislation); see also Kandathil, *supra* note 41, at 88 (commending strength of U.S. efforts, but noting its shortcomings).

128. See Hyland, *supra* note 33, at 70-71 (stating that current legislation is only starting to focus on victims of trafficking); see also U.S. Dep't of Justice, *Pen and Pad Roundtable with Attorney General Alberto Gonzales, Assistant Attorney General Wan Kim, and Senior Justice Department Officials*, FEDERAL NEWS SERVICE, Jan. 31, 2007 [hereinafter *Gonzales Roundtable*] (announcing creation of Human Trafficking Prosecution Unit to design new strategies to fight trafficking).

129. See Free the Slaves, *supra* note 19, at 52 (calling for authorities to evaluate effectiveness of TVPA); see also *Developments*, *supra* note 15, at 2195 (pointing out that expansion of definition of victims of trafficking would be appropriate).

130. See Gorman, *supra* note 34 (quoting Wade Horn, assistant secretary with DHHS); see also Kaufka, *supra* note 90 (decrying low prosecution statistics and stating that they show TVPA's failure to identify survivors).

131. See Nel, *supra* note 15, at 29 (stating that all people involved in prosecution process should be trained); see also *TRAFFICKING REPORT 2006*, *supra* note 52, at 12 (recommending training for law enforcement to better identify victims).

132. See Nel, *supra* note 15, at 30 (recommending criminalization of all people

trafficking elements and requirements,¹³³ improve data,¹³⁴ and create local human trafficking laws—just to name a few.¹³⁵

While the TVPA states its commitment to the “three Ps” framework, in practice, the P for protection is not achieved.¹³⁶ The U.S. Government knows that in order to prosecute traffickers, it cannot rely on the self-identification of victims.¹³⁷ The desire for prosecution, not protection, seems to be the main motivation in offering the T visa, especially because the visa requires compliance with any request for assistance from prosecutors.¹³⁸ This focus on prosecution has made the TVPA an ineffective tool in aiding victims of trafficking.¹³⁹ Victims, law enforcement officials, and prosecutors perceive the victims as instruments of law enforcement rather than people who deserve protection and jus-

involved in trafficking); *see also* Smith, *supra* note 40, at 171 (asserting that successful enforcement would include imposing liability on customers of sexual services).

133. *See* Nel, *supra* note 15, at 30 (suggesting that defining trafficking as broader would take all forms of trafficking into account); *see also* *Developments*, *supra* note 15, at 2195 (noting that current definition excludes certain victims from eligibility); Kandathil, *supra* note 41, at 90 (averring that debate revolves around use of consent in definition).

134. *See* *Better Data*, *supra* note 19 (recommending finding way to develop accurate trafficking estimates); *see also* ASSESSMENT 2006, *supra* note 48, at 33 (noting that data should be actionable).

135. Because trafficking is a federal crime, local coordination proponents argue that lack of local laws permit traffickers to go undetected and local officials cannot provide victims with protection. *See* *Free the Slaves*, *supra* note 19, at 49 (stating problem with lack of local coordination). *See generally* Michael C. Payne, *The Half-Fought Battle: A Call For Comprehensive State Anti-Human Trafficking Legislation and a Discussion of How States Should Construct Such Legislation*, 16 KAN. J.L. & PUB. POL’Y 48 (2006) (recommending state anti-trafficking legislation). On November 9, 2006, Pennsylvania enacted a state law criminalizing human trafficking. *See* Christina Kauffman, *Police: Human Trafficking Bill Would Help Combat Brothels*, YORK DISPATCH, Oct. 25, 2006 (reporting background of Pennsylvania law); *see also* 18 PA. CONS. STAT. § 3002 (2006) (describing trafficking offense as knowing subjection of person to forced labor or services).

136. *See* TRAFFICKING REPORT 2006, *supra* note 52, at 12 (acknowledging that law enforcement needs to proactively identify victims); *see also* ASSESSMENT 2006, *supra* note 48, at 33 (recommending more resources go toward identifying victims).

137. *See* TRAFFICKING REPORT 2006, *supra* note 52, at 12 (disparaging reactive approaches to identifying victims); *see also* ASSESSMENT 2006, *supra* note 48, at 33 (suggesting that governmental efforts focus on better identification of victims).

138. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107 (e)(1)(C)(T)(i)(III) (stating victim must comply with requests for assistance in investigation); *see also* Chacon, *supra* note 54, at 3025 (noting that victim’s non-cooperation automatically allows for denial of visa application).

139. *See* Chacon, *supra* note 54, at 3024 (contemplating that further emphasis on protection and prevention would improve efforts); *see also* *Developments*, *supra* note 15, at 2194 (finding that despite TVPA’s assertion of victim-centered legislation, in practice Act wrongly allows protection and prevention to be secondary goals).

tice.¹⁴⁰ Due to these perceived goals, at least one critic finds that prosecutors are necessarily torn between prosecuting traffickers and abiding by their ethical duties to protect witnesses.¹⁴¹

Some commentators argue that by solely focusing on *prosecution* of trafficking, Congress fails to address the reasons victims do not come forward.¹⁴² In fact, this failure to protect leads to a cynical concern that a prosecutor may use a victim only to pursue the attorney's prosecution.¹⁴³ In turn, the attorney might fail to help the survivor obtain her T visa, or the attorney might promise benefits, but the victim will not meet the strict criteria of the Act.¹⁴⁴ Another issue is that, assuming a survivor comes forward, the prosecutor has the discretion of deciding whether to investigate, a decision that has serious ramifications for the safety of the victim and her family because she is unlikely to receive a T visa if there is no investigation.¹⁴⁵

Victim cooperation, although key to a good prosecution, can jeopardize the victim's safety.¹⁴⁶ These investigations and prosecutions can take between eight months and three years.¹⁴⁷

140. See *Free the Slaves*, *supra* note 19, at 74 (noting that conditions on benefits available support this argument); see also *Developments*, *supra* note 15, at 2195-96 (finding victim testimony integral to investigation and therefore creating cross-purposes in which protection manifests itself into tool of prosecution); Gonzales Roundtable, *supra* note 128 (stating explicitly that victims need to be given services in order to cooperate with prosecutions).

141. See *Developments*, *supra* note 15, at 2196 (finding that goals of protection and goals for prosecution are at inherent crossroads).

142. See Chacon, *supra* note 54, at 3023 (asserting that debate in Congress over TVPA failed to recognize complexities of identifying victims and current prosecution definitions exclude many victims); see also ASSESSMENT 2006, *supra* note 48, at 33 (recommending increasing efforts to identify victims).

143. See *Developments*, *supra* note 15, at 2196 (indicating concerns with prosecution-focused approach); see also *Free the Slaves*, *supra* note 19, at 104 (indicating that study links effectiveness of law enforcement efforts with survivor cooperation).

144. See *Developments*, *supra* note 15, at 2196 (contemplating potential pitfalls of prosecution focused approach); see also *Free the Slaves*, *supra* note 19, at 81 (reporting federal prosecutors acknowledging victims as necessary to win criminal cases).

145. See Kim, *supra* note 24, at 15 (noting prosecutorial discretion not to investigate will likely effect victim's T visa application); see also *Free the Slaves*, *supra* note 19, at 81 (recounting prosecutors dragging their feet to investigate involuntary servitude case).

146. See *Free the Slaves*, *supra* note 19, at 82 (finding non-alignment of goals of prosecution and protection for victims); see also *Developments*, *supra* note 15, at 2196 (noting protection and prosecution are at inherent cross-purposes).

147. See *Free the Slaves*, *supra* note 19, at 82 (estimating prosecution timeline); see also Kim, *supra* note 24, at 18 (noting that this lengthy process is especially difficult for individuals suffering from trauma).

Due to the U.S. Government's focus on prosecution over protection, the responsibility of providing social and legal services to trafficking survivors has mostly fallen on NGOs and social service agencies—but less than half of them are able to meet the survivors' needs.¹⁴⁸ Survivors rely on these NGOs once they begin cooperating with law enforcement, but are terrified throughout the long prosecution and investigation time that they will be captured or killed.¹⁴⁹ Until there is more of a commitment to protect these survivors, prosecution numbers will remain low.¹⁵⁰

If a survivor has come forward, her trafficker may be aware of her association with law enforcement officials and seek retribution against her family.¹⁵¹ For example, in January 2000, Lakireddy Bali Reddy, a man who exploited girls from his home village in India, was eventually convicted for trafficking in the United States.¹⁵² Because the parents of the victim were petrified of retribution, U.S. immigration authorities took the unique step of bringing them into the United States.¹⁵³ They had good reason for doing so, as several months later, a group attacked a critic of Reddy and his family in India—dousing them with acid.¹⁵⁴ Later, two men dressed as police officers attempted to

148. See *Free the Slaves*, *supra* note 19, at 50 (appreciating TVPA's efforts to prosecute, but exposing fact that non-governmental organizations ("NGO") experience resource draining); see also United States Conference of Catholic Bishops, Migration & Refugee Services: Anti-Trafficking Grants & Programs, <http://nccbuscc.org/mrs/traffickingweb2.shtml> (explaining types of anti-trafficking grants organization administers to aid survivors that lack certification).

149. See Kim, *supra* note 24, at 18 (asserting that retaliation threats keep victims from participating in criminal prosecutions); see also Chacon, *supra* note 54, at 3026 (finding that constant fear makes victims poor witnesses).

150. See Vandenberg, *supra* note 25, at 329 (stating that prosecutions rely on victims, but victims will not cooperate unless they have real protection); see also Kandathil, *supra* note 41, at 117 (finding that without adequate protections, prosecutors will not have victims as resources for prosecutions).

151. See *Free the Slaves*, *supra* note 19, at 76 (acknowledging that traffickers may know victim is cooperating and retaliate); see also Kim, *supra* note 24, at 18 (noting that victims receive threats of retaliatory violence).

152. See *Free the Slaves*, *supra* note 19, at 54, 83 (reporting Reddy conviction); see also Pearson, *supra* note 81, at 128-29 (indicating fear of family members and their ultimate departure from home village).

153. See *Free the Slaves*, *supra* note 19, at 83 (reporting details surrounding Reddy case); see also Pearson, *supra* note 81, at 128-29 (highlighting Reddy case as instance of protecting family members in immediate harm).

154. See *Free the Slaves*, *supra* note 19, at 83 (recounting circumstances surrounding attack); see also Lisa Fernandez, *Women Who Testified Against Landlord Say They Were Told To Lie*, *SAN JOSE MERCURY NEWS*, Oct. 24, 2001 (reporting various suspicious circumstances surrounding Reddy's case).

enter a domestic violence shelter that was housing the survivors.¹⁵⁵

Also, even after perpetrators are convicted, survivors and their families frequently remain in danger.¹⁵⁶ In one case, several traffickers escaped to Mexico and lived in the same town as the survivors and their families—continually threatening and harassing them.¹⁵⁷ In another case, a survivor who served as a witness believed he was in danger because the people arrested were not the only traffickers involved.¹⁵⁸

The vulnerability of a survivor's family members greatly affects her decision to come forward, because the perpetrators are frequently strong members of the community, and their threats of retaliation are credible.¹⁵⁹ In one case in India in which a victim escaped, the traffickers allegedly called the victim's home to find out if the victim had returned, and consequently the police abducted and beat the victim's brother due to the victim's escape.¹⁶⁰ In another case, one trafficking survivor is currently seeking derivative visas for her children in Thailand in order to bring her children into the United States before her trafficker is released.¹⁶¹

155. See *Free the Slaves*, *supra* note 19, at 83 (describing lack of protection for Reddy's victims once they began cooperating); see also *Prepared Remarks of Grace Chung Becker*, *supra* note 83 (mentioning case in which traffickers threatened to report victim's family member to Egyptian police for theft if victim escaped).

156. See *Free the Slaves*, *supra* note 19, at 83 (noting that this danger is present whether or not victims return home or stay); see also Kaufka, *supra* note 90 (including that even if survivor reports trafficking, traffickers often threaten her, thereby preventing her from cooperating).

157. See *Free the Slaves*, *supra* note 19, at 83-84 (detailing how this family continued to live in fear); see also Kaufka, *supra* note 90 (acknowledging that because family members are often outside United States, survivors feel powerless in protecting them).

158. See *Free the Slaves*, *supra* note 19, at 84 (relaying fears of witness in case against R&A Harvesting); see also Kaufka, *supra* note 90 (indicating that this fear also prevents survivors from cooperating).

159. See *Free the Slaves*, *supra* note 19, at 84 (underscoring influence of perpetrators in their home communities); see also Peter Landesman, *The Girls Next Door*, N.Y. TIMES, Jan. 25, 2004, (Magazine), at 30 (stating that victims' fears are legitimate since tentacles of trafficking reach into their hometowns).

160. See *Free the Slaves*, *supra* note 19, at 84 (recounting details of John Pickle Company case); see also Kaufka, *supra* note 90 (revisiting story of child who confessed to authorities that she was fearful of cooperation because her trafficker threatened to harm her younger sisters at home).

161. See *Free the Slaves*, *supra* note 19, at 84 (stating victim's sense of urgency is due to her trafficker's past threats of hiring someone to kill her); see also Kaufka, *supra* note 90 (asserting that child survivor was terrified of cooperating due to threats to her family).

Furthermore, it has been argued that, even if a victim does come forward, the T visa application process is slow and complicated.¹⁶² As alluded to above, law enforcement could wait several months before issuing a T visa endorsement.¹⁶³ On average, a T visa application takes four to twelve months to process and approve.¹⁶⁴ This renders the family member protection aspect of the T visa useless to immediate safety needs.¹⁶⁵

Given all of the risks that survivors bear if they get involved in prosecution, many community-based organizations decline to report cases of trafficking to law enforcement authorities because they know that the survivors and their families cannot be adequately protected.¹⁶⁶ Some prosecutors appreciate these obstacles: Assistant U.S. Attorney Caroline Wittcoff, from the Central District of California, stated that victims are kept from cooperating or escaping because of their fear.¹⁶⁷ The ability to calm this fear and provide the survivors and their families with safety is critical to enabling survivors to move on with their lives and cooperate with prosecutors.¹⁶⁸ Therefore, the U.S. Congress needs to develop mechanisms to protect survivors and their fam-

162. See *Free the Slaves*, *supra* note 19, at 101 (outlining various steps necessary for process); see also Kandathil, *supra* note 41, at 100 (stating that this process is slow when victims' needs are most urgent).

163. See *Free the Slaves*, *supra* note 19, at 101 (noting discretion of law enforcement officials to wait before endorsing applications); see also Lee, *supra* note 16, at 179-80 (adding that application should be accompanied by statement detailing survivor's efforts to cooperate with law enforcement).

164. See *Free the Slaves*, *supra* note 19, at 101 (noting amount of time immigration agency takes to process and approve visa application); see also Jordan, *supra* note 84 (explaining that Immigration and Custom Enforcement delays have led to several month delays in survivors receiving continued presence).

165. See *Free the Slaves*, *supra* note 19, at 104 (stating that working transnationally with NGOs could work to protect family members); see also Jordan, *supra* note 84 (finding that due to survivors' vulnerability when waiting for continued presence because they lacking work authorization forms, oftentimes they abandon cooperation).

166. See Gorman, *supra* note 34 (noting that less restrictive T visas would send different message to victims); see also *Free the Slaves*, *supra* note 19, at 79 (noting that since cooperating with law enforcement does not meet needs of victims, they refuse to come forward).

167. See Gorman, *supra* note 34 (quoting human trafficking prosecutor); see also *Prepared Remarks of Grace Chung Becker*, *supra* note 83 (stating, from prosecutor's perspective, that traffickers' threats keep survivors from cooperating).

168. See *Free the Slaves*, *supra* note 19, at 104 (noting that study links effectiveness of law enforcement with cooperation of witnesses); see also Gonzales Roundtable, *supra* note 128 (stating that offering services to victims is essential component of their cooperation).

ilies from the imminent danger of their traffickers.¹⁶⁹ In recent U.S. House and Senate Committee Hearings, two advocates recommended allowing family members of trafficking survivors to obtain derivative continued presence.¹⁷⁰ Without protections for family members, victims cannot be expected to serve prosecutorial goals.¹⁷¹

*C. Models To Provide Family Members of Trafficking Survivors
Immediate Protection*

In order to improve protections afforded to trafficking survivors' family members, it is helpful to look at current models of protection. There are methods to help family members once the survivor obtains a T visa or in extraordinary circumstances. Furthermore, the Witness Security Program and the U.S. Attorney General Guidelines for Victim and Witness Assistance offer additional guidance in protecting family members of survivors of trafficking.

1. The Return, Reintegration, and Family
Reunification Program

Governmental officials have publicly stated that they will reassess the issue if more trafficking cases are not uncovered.¹⁷² One element of that reassessment, and a method for prosecutors to fulfill their ethical duties of witness protection, could be the launch of the Return, Reintegration, and Family Reunification

169. See *Free the Slaves*, *supra* note 19, at 107 (concluding that government needs to create incentives for survivors to cooperate by implementing mechanisms for protection); see also Jordan, *supra* note 84 (suggesting to Congressional Hearing that continued presence should be mandatory when authorities commence trafficking investigation and should be offered to family members).

170. See Jordan, *supra* note 84 (persuading Congress to offer continued presence for family members of trafficking survivors); see also Kaufka, *supra* note 90 (recommending derivative continued presence for family members).

171. See Potts, *supra* note 5, at 239-40 (stating that victims will be reluctant to cooperate if not given protection); see also ASSESSMENT 2006, *supra* note 48, at 3 (recognizing that in order to successful combat human trafficking law enforcement needs to provide victims with benefits).

172. See Gorman, *supra* note 34 (quoting Laura Lederer, senior trafficking advisor for U.S. State Department); see also Gonzales Roundtable, *supra* note 128 (realizing that enormous magnitude of human trafficking and citing that realization as reasoning behind creating new Human Trafficking Prosecution Unit); *Prepared Remarks of Grace Chung Becker*, *supra* note 83 (recommending Congress authorize additional \$1.7 million to Civil Rights Division to fund trafficking prosecutions).

Program for Victims of Trafficking pilot program.¹⁷³ The Bureau of Population, Refugees, and Migration ("PRM") is charged with providing trafficking victims with services.¹⁷⁴ Beginning in 2005, the program works to reunite eligible survivors with their family members in the United States and helps survivors return to their home countries.¹⁷⁵ It is implemented by the International Organization for Migration ("IOM") and works with NGOs, law enforcement, and other service organizations to aid the families of T visa recipients with escorting children, providing financial assistance, and helping with travel documents.¹⁷⁶ By August 2006, the program had assisted sixty-seven family members reunite with survivors in the United States.¹⁷⁷ The U.S. Government acknowledges that this program is a crucial step toward providing protection for survivors and furthering prosecution of traffickers.¹⁷⁸

2. Humanitarian Parole

Another option that is available to family members is humanitarian parole.¹⁷⁹ The Secretary of DHS has discretion to

173. See U.S. Dep't of State, *TRAFFICKING IN PERSONS REPORT*, 240 (June 2005) [hereinafter *TRAFFICKING REPORT 2005*], <http://www.state.gov/documents/organization/47255.pdf> (last visited Feb. 12, 2007) (reporting efforts of PRM); see also *ASSESSMENT 2006*, *supra* note 48, at 7 (discussing project goals).

174. See *ASSESSMENT 2006*, *supra* note 48, at 7 (noting Bureau of Population, Refugees, and Migration's ("PRM") responsibilities); see also *TRAFFICKING REPORT 2005*, *supra* note 173, at 240 (pointing out PRM's other migration responsibilities in addition to aiding victims of trafficking).

175. See *ASSESSMENT 2006*, *supra* note 48, at 7 (stating project's role in protecting victims and families); see also Int'l Org. for Migration, Return, Reintegration, and Family Reunification for Victims of Trafficking in the United States, <http://www.iom.int/unitedstates/ct/usrrr.htm> (last visited Mar. 30, 2007) [hereinafter *IOM Homepage*] (detailing services that program provides).

176. See *ASSESSMENT 2006*, *supra* note 48, at 7 (listing various partners involved in these efforts); see also *IOM Homepage*, *supra* note 175 (noting different organizations with which program works).

177. See *ASSESSMENT 2006*, *supra* note 48, at 7 (reporting results as of date of assessment); see also *IOM Homepage*, *supra* note 175 (stating that as of date of website access, program has helped sixty-seven people return home or reunite with their family members).

178. See *ASSESSMENT 2006*, *supra* note 48, at 17 (asserting that this program was important in order to maximize protection for victims who cooperate with law enforcement); see also *ASSESSMENT 2005*, *supra* note 86, at 20 (boasting that program will assist victims, NGOs, and authorities).

179. See 8 U.S.C. § 1182(d)(5) (describing U.S. Attorney General's discretion to temporarily patrol individuals on case-by-case basis); see also U.S. Immigr. & Customs Enforcement, Public Information: Frequently Asked Questions, <http://www.ice.gov/>

temporarily grant humanitarian parole to individuals on a case-by-case basis either in order to respond to urgent humanitarian circumstances or if the matter concerns a significant public benefit.¹⁸⁰ The Parole and Humanitarian Assistance Branch of DHS handles all requests and ultimately decides whether an individual receives this type of relief.¹⁸¹ According to DHS, these requests can take up to ninety days and therefore would be inadequate to respond to the urgent security needs of survivors' families.¹⁸²

3. The Witness Security Program and the U.S. Attorney General Guidelines for Victim and Witness Assistance

Through the Witness Security Program ("WITSEC"), authorized by the Organized Crime Control Act of 1970, Congress authorized mechanisms for the U.S. Attorney General to protect witnesses.¹⁸³ The program provides protection and relocation for witnesses and their families before, during, and after trial.¹⁸⁴ It has proven to be a powerful tool to induce cooperation of members of organized crime, for whom retribution for testifying is a well-founded fear.¹⁸⁵

pi/faqs.htm (last visited Feb. 25, 2007) [hereinafter ICE FAQs] (noting that this type of parole is for individuals who are otherwise ineligible for other types of visas).

180. See 8 U.S.C. § 1182 (d)(5) (stating that this parole does not affect admission); see also Creola Johnson, *Symposium: Quarantining HIV-Infected Haitians: United States' Violations Of International Law At Guantanamo Bay*, 37 How. L.J. 305, 323 (1994) (noting that humanitarian parole could have been used for HIV positive Haitians, but was not).

181. See U.S. Citizenship and Immigration Services, *Humanitarian Parole*, <http://www.uscis.gov/portal/site/uscis> (search "humanitarian parole") (last visited Feb. 26, 2007) [hereinafter USCIS Humanitarian Parole] (stating that there is no statutory provision for appeal); see also 8 U.S.C. § 1182(d)(5) (failing to state appellate process).

182. See USCIS Humanitarian Parole, *supra* note 181 (approximating adjudication time for applications); see also Justin Walden, *Ailing Boy Has Determined Friends in Tier*, PRESS & SUN-BULL., July 25, 2005, at 1A (noting typical application process timing).

183. See generally Organized Crime Control Act of 1970, Pub. L. 91-452, 84 Stat. 922, Title V (1970) (providing protected facilities to house government witnesses); see also Witness Security Reform Act, 18 U.S.C. § 3521(a)(1) (amending previous Act and specifically authorizing law enforcement to relocate and protect witnesses).

184. See Witness Security Reform Act, 18 U.S.C. § 3521(a)(1) (reasoning that these measures are necessary if witnesses and families are likely to be retaliated against because of their involvement in prosecution); see also Tarik Abdel-Monem, *Foreign Nationals in the United States Witness Security Program: A Remedy for Every Wrong?*, 40 AM. CRIM. L. 1235, 1237, 1238 (2003) (noting intent of law; reporting that Witness Security Program ("WITSEC") provides witnesses with new identities); James B. Jacobs & Lauryn P. Gouldin, *Cosa Nostra: The Final Chapter?*, 25 CRIME & JUST. 129, 167 (1999) (detailing timeline for protection).

185. See Jacobs, *supra* note 184, at 167 (showing that before WITSEC, only one

Law enforcement officials and U.S. Attorneys submit applications for witnesses to be admitted into the program.¹⁸⁶ The U.S. Attorney General then assesses the importance of the individual's testimony, the danger the individual and her family may encounter due to her cooperation, and the possibility of procuring testimony from another source.¹⁸⁷ While the program is highly secretive, it provides individuals with transportation assistance, relocation, and new identification documents; it has been extremely successful in protecting people involved in the program.¹⁸⁸

Recently, law enforcement has increased its pursuit of international law breakers, elevating the number of non-U.S. national witnesses involved in the WITSEC program.¹⁸⁹ There are no special immigration procedures for non-U.S. nationals in the WITSEC program.¹⁹⁰ But without them, a non-U.S. national is in limbo because she cannot return home nor can she apply for immigration status lest she reveal her true identity.¹⁹¹ Therefore, the T visa is more immigration protection than non-U.S. national witnesses involved in WITSEC receive, but unlike the TVPA, WITSEC gives prosecutors procedures to protect domestic witnesses and their family members.¹⁹²

organized crime member had ever flipped); *see also* Abdel-Monem, *supra* note 184, at 1237 (underscoring importance of WITSEC in fighting organized crime).

186. *See* Abdel-Monem, *supra* note 184, at 1238 (stating process of applying for program); *see also* U. S. Marshals Serv., Witness Security Program <http://www.usmarshals.gov/witsec> (last visited Feb. 26, 2007) [hereinafter Marshals Service] (describing applications as attorney recommendations).

187. *See* Witness Security Reform Act, 18 U.S.C. § 3521(c) (listing considerations for U.S. Attorney General to take into account); *see also* Abdel-Monem, *supra* note 184, at 1238-39 (detailing review afforded to applications).

188. *See* Abdel-Monem, *supra* note 184, at 1239 (reporting services WITSEC provides); *see also* Marshals Service, *supra* note 186 (noting that no guideline-abiding participant has ever been harmed).

189. *See* Abdel-Monem, *supra* note 184, at 1242 (describing need to offer immigration protection for these witnesses); *see also* Nora V. Demleitner, *Immigration Threats and Rewards: Effective Law Enforcement Tools in the "War" on Terrorism?*, 51 EMORY L.J. 1059, 1076 (2003) (stating that there are program witnesses currently lacking immigration status).

190. *See* Abdel-Monem, *supra* note 184, at 1252 (disclosing uncertainty of witness' immigration status); *see also* Demleitner, *supra* note 189, at 1076 (emphasizing vulnerability of non-immigrants in WITSEC).

191. *See* Abdel-Monem, *supra* note 184, at 1252 (noting that witness is in eternal limbo without immigration status); *see also* Demleitner, *supra* note 189, at 1076 (underscoring dilemma of noncitizens in protection program).

192. *See* Demleitner, *supra* note 189, at 1077 (stating that S, T and U visas are more

The WITSEC law requires that the U.S. Attorney General issue guidelines for assistance and specifically removes civil liability for lack of protection.¹⁹³ The U.S. Attorney General devotes an entire section to victims of human trafficking in the Guidelines for Victim and Witness Assistance.¹⁹⁴ But it merely presents prosecutors with a simplified version of the TVPA.¹⁹⁵ One of the few additions is the possibility of significant benefit parole (humanitarian parole) for family members; however, as mentioned previously, this relief is not available at a sufficient speed to aid family members with their urgent security needs.¹⁹⁶

III. A METHOD TO PROTECT VICTIMS' FAMILIES, ADHERE TO ETHICAL DUTIES OF PROTECTION, AND INCREASE PROSECUTIONS

Despite having made great progress toward combating human trafficking, the United States has not given due attention to what is the third largest criminal enterprise in the world.¹⁹⁷ Human trafficking is not a rare occurrence, but it would not be apparent by looking at current prosecution levels.¹⁹⁸ Charging only 116 people in all of 2005 is absurd for a criminal enterprise

attractive for noncitizens than protections offered by WITSEC); *see also* Abdel Monem, *supra* note 184, at 1252 (recounting Congress' recognition in hearings of lacking immigration protections for these individuals).

193. *See* Witness Security Reform Act, 18 U.S.C. §§ 3521 (a)(2), (3) (stating that guidelines will define types of cases that are eligible; removing civil liability); *see also* *United States v. Van Engel*, 15 F.3d 623, 629 (7th Cir. 1993) (indicating that U.S. Department of Justice ("U.S. DOJ") must exercise sound judgment not merely blind faith).

194. *See* ATTORNEY GENERAL GUIDELINES, *supra* note 67, at 67 (offering guidelines for six pages); *see also* Gonzales Roundtable, *supra* note 128 (stating that using survivors as witnesses is key to stopping cycle of victimization).

195. *Compare* ATTORNEY GENERAL GUIDELINES, *supra* note 67, at 67-72 (detailing guidelines and noting their correspondence with Act), *with* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 (stating same guidelines).

196. *See* ATTORNEY GENERAL GUIDELINES, *supra* note 67, at 71 (stating this relief as loop hole to get around TVPA requirements); *see also* USCIS Humanitarian Parole, *supra* note 181 (estimating up to three months to process humanitarian parole application).

197. *See supra* notes 83-86 and accompanying text (reporting results of recent prosecutions); *see also supra* notes 121-122 and accompanying text (recognizing scope of trafficking problem).

198. *See supra* notes 83-86 and accompanying text (describing low levels of prosecution).

that is so prolific.¹⁹⁹

Both the TVPA and the Trafficking Protocol have too often ignored the necessity of providing protection for families endangered by a survivor's cooperation with law enforcement officials.²⁰⁰ The TVPA and the Trafficking Protocol vaguely mention the possibility of providing protection for families, without providing official procedures or funding that might allow prosecutors to bring family members into the United States immediately.²⁰¹

The TVPA allows for T visa recipients to petition in their family members.²⁰² However, the family member must first wait, at times up to a year, for the survivor to receive her visa.²⁰³ These "protections" do not address the imminent harm that families face.²⁰⁴ The Reddy case showed that as soon as a survivor escapes, her family is at risk of retaliation.²⁰⁵

The United States has made some progress with the IOM's Return, Reintegration and Family Reunification Program.²⁰⁶ This program, however, officially only helps once the survivor has received her T visa; therefore, it may come into the process too late for survivors or family members that are in immediate harm.²⁰⁷

While the prosecutor has a duty of neutrality, this indepen-

199. *See supra* note 83 and accompanying text (stating number of prosecutions for 2005).

200. *See supra* notes 78-81 and accompanying text (explaining derivative family visa qualifications); *see also supra* note 165 and accompanying text (explaining that derivative T visas are useless for family members in immediate danger); *supra* note 126 and accompanying text (presenting critics' suggestion that ultimate text for Protocol is whether it can adequately protect trafficking victims).

201. *See supra* note 65 and accompanying text (describing Act's protectionary language); *see also supra* notes 45-46 and accompanying text (mentioning Protocol's victim protection language).

202. *See supra* note 80 and accompanying text (describing derivative visa requirements).

203. *See supra* notes 162-165 and accompanying text (highlighting process time for family members).

204. *See supra* note 165 and accompanying text (recognizing that current measures are insufficient for immediate protection needs).

205. *See supra* notes 151-161 and accompanying text (describing past retaliation that family members have faced).

206. *See supra* notes 173-178 and accompanying text (reporting what is known about PRM's program).

207. *See supra* note 176 and accompanying text (stating details of program).

dence is not at the peril of the victim or witness.²⁰⁸ The American Bar Association requires prosecutors to protect witnesses who are in danger because of their cooperation, where feasible.²⁰⁹ It is perfectly reasonable to conclude that this rule should extend to the witness' family members whose safety is jeopardized due to the witness' cooperation.²¹⁰ Indeed, individual family members are sometimes even more endangered than the witness; traffickers know where they live, have the cooperation or acquiescence of corrupt law enforcement officials, and know that traffickers can threaten or harm whomever they choose.²¹¹

Extending the duty to protect the witness to the witness' family is crucial.²¹² Even if prosecutors do appreciate their obligations to family members, they are only capable of offering protection "where feasible."²¹³ With the TVPA, immigration laws, and the lack of sufficient funding for witness protection of trafficking survivors, true protection for family members is not feasible. Because effective protection of witnesses is essential to encouraging them to come forward, without these protections, not only will the numbers of prosecutions and T visas fail to increase, but it is simply impossible for prosecutors to live up to their ethical duties.²¹⁴

Currently, once a victim is identified, she is often given continued presence so that she can stay in the United States and cooperate with law enforcement officials until either it is determined that it is safe for her to return home or she obtains a T visa.²¹⁵ This continuance gives her the immediate protection she needs.²¹⁶ Similarly, as soon as a witness in WITSEC begins cooperating with law enforcement, she and her family are relocated

208. See *supra* notes 99-114 and accompanying text (relaying notion of neutrality).

209. See *supra* note 116 and accompanying text (stating ABA standard).

210. See *supra* notes 184, 188 and accompanying text (describing how WITSEC extends this protection to family members).

211. See *supra* notes 151-161 and accompanying text (recounting stories of family members in danger).

212. See *supra* notes 150-171 and accompanying text (indicating need for family member protection).

213. See *supra* note 116 and accompanying text (reporting standard's language).

214. See *supra* notes 127-171 and accompanying text (highlighting TVPA criticisms).

215. See *supra* notes 63-66 and accompanying text (describing states of victim cooperation and protection).

216. See *supra* note 69 and accompanying text (stating immigration benefits of cooperation).

and provided with all the documentation necessary to start their new lives and escape imminent harm.²¹⁷ As the United States begins expanding prosecution of international crime, this program, or elements of it, should not be limited to U.S. citizens.²¹⁸

The U.S. Government should develop a similar program for family members of trafficking survivors no matter where they reside.²¹⁹ In this pilot program, as advocates of survivors have recently suggested, derivative continued presence should be extended to family members and money should be designated to provide prosecutors with the opportunity to quickly rescue family members and bring them into the United States.²²⁰ This program would need to aid family members in procuring passports or other necessary travel documentation.²²¹ It would also need to provide for airfare, housing, and employment authorization—akin to services given to a refugee or those that the Return, Reintegration and Family Reunification Program provides.²²² Immigration status could remain temporary, as does the survivor's, until the individuals are eligible to apply for a derivative T visa.²²³

The typical concern of opening the flood gates to individuals trying to take advantage of immigration policies and the concern of the amount of funding required for this program will raise eyebrows.²²⁴ But for now, the current “extreme hardship” requirement of family members should be sufficient in limiting applications to those who are in the most desperate need.²²⁵

217. *See supra* notes 184, 188 and accompanying text (noting WITSEC's procedures and benefits).

218. *See supra* notes 189-191 and accompanying text (highlighting increase in non-citizens in WITSEC and their lack of adequate immigration status).

219. *See supra* notes 150-171 and accompanying text (pointing out various dangers family members face and need for protection).

220. *See supra* note 170 and accompanying text (echoing recommendations to provide continued presence for family members).

221. *See supra* notes 174-176 and accompanying text (noting that travel documents are obstacles that Return, Reintegration and Family Reunification Program (“RRFR”) provides).

222. *See supra* notes 174-176 and accompanying text (describing RRFR's program).

223. *See supra* note 69 and accompanying text (explaining continued presence available for survivors).

224. *See supra* note 82 and accompanying text (relaying that some prosecutors are suspicious of survivors' immigration motives).

225. *See supra* note 73 and accompanying text (noting T visa requirement of extreme hardship). Eventually, this could broaden if and when defining victims becomes more expansive. *See id.*

Prosecution numbers are low because prosecutors do not have the tools to serve their duties of protection, as the incentives for witness cooperation are not sufficient.²²⁶ The program proposed above would alleviate the pressure prosecutors face when balancing their duty to protect victims and witnesses with the desire to prosecute traffickers.²²⁷ Furthermore, such a program will make NGOs more confident that prosecutors can more adequately shield the survivor from retaliation.²²⁸

Therefore, if the United States is committed to fighting trafficking, it must provide for immediate protection of family members.²²⁹ A program like the one described above will: (1) protect more people from being victimized; (2) effectively combat human trafficking in the United States by increasing prosecutions; and (3) grant prosecutors the ability to adhere to their ethical duties to protect victims and witnesses.

In *United States v. Van Engel*, the majority held that with all the power that the U.S. Department of Justice has, it also has a responsibility to exercise sound judgment—not just faith in its decision-making.²³⁰ The current state of protections for families of trafficking survivors requires that the U.S. prosecutor ignore her essential ethical duties and rely on faith that no one will get hurt due to her prosecution.

CONCLUSION

As the Member of the Trafficking Protocol making the greatest efforts to combat the international criminal enterprise of human trafficking, the United States is the model for prosecuting traffickers and protecting victims. But, the current law enforcement scheme does not adequately address the actual risks that trafficking survivors' families face when a survivor cooperates with law enforcement. Future U.S. trafficking laws and future laws implemented throughout the world must ad-

226. See *supra* note 169 and accompanying text (indicating that mechanisms to protect family members are necessary).

227. See *supra* note 141 and accompanying text (stating that prosecutors are necessarily at crossroads when their interests fail to align with interests of survivors).

228. See *supra* note 148 and accompanying text (noting that NGOs are under-resourced).

229. See *supra* note 171 and accompanying text (finding that without protection for family members, United States will not meet its prosecutorial goals).

230. See *supra* note 193 (explaining responsibilities of U.S. DOJ).

dress the safety concerns of family members who are often in more danger than the survivors themselves. Not only do prosecutors owe protection to family members because they are in danger due to cooperation with law enforcement, but this protection will also encourage survivors to report trafficking and increase their likelihood of cooperating with prosecutions.