August 20, 2012

Disparate Protections for American Human Trafficking Victims

Amanda J Peters, South Texas College of Law
Disparate Protections for American Human Trafficking Victims

By Amanda PetersFNal

Article Outline:

I. Introduction
II. Profiles of Trafficking Victims: Lives Enslaved
   A. Foreign Trafficking Victims
   B. Domestic Trafficking Victims
III. The Trafficking Victim’s Protection Act: Carrots and Sticks
   A. The 3-P Paradigm
      1. Prevention
      2. Prosecution
      3. Protection
IV. Protecting Human Trafficking Victims in the United States
   A. TVPA-Funded Protections to Foreign Adult Victims
   B. TVPA-Funded Protections to Foreign Child Victims
   C. Foreign Victims Ineligible to Receive Protections
   D. American Trafficking Victims’ Protections
      1. Exclusion from TVPA-Funded Protections
      2. Limitations on Other Federal Protections for Domestic Victims
      3. Limitations on NGO Protections for Domestic Victims
      4. Limitations on State Protections for Domestic Victims
         a. Americans Not Identified as Trafficking Victims
         b. The Arrest & Prosecution of American Trafficking Victims
         c. Inadequate Housing for American Victims
         d. Inadequate Services for American Victims
V. Implications of the United States’ Two-Tier Protection System
VI. Conclusion

FNal Associate Professor, South Texas College of Law. I would like to thank Professors Kathy Cerminara, Samuel Vincent Jones, Njeri Rutledge Mathis, and Fran Ortiz for comments on earlier drafts of this article, the SEALS Conference for giving me an opportunity and a forum to present this article as a New Scholar, and Tommy Choi for his research assistance. Finally, I would like to thank my husband Bret and my children Simon, Faith, Isaac, and Samuel for their love, patience, and understanding while I wrote this article.
I. Introduction

According to Secretary of State Hillary Clinton, 2012 is the year of protection for human trafficking victims worldwide. In her introductory remarks to the release of the 2012 Trafficking in Persons (TIP) Report, which is the international report card of human trafficking efforts, she encouraged governments to consider using innovative ways to protect victims of human trafficking. Through the TIP Report, the United States details each country’s efforts to prevent human trafficking, prosecute traffickers, and protect individuals who have been trafficked. Anti-trafficking legislation and policy focus on these three goals: prevention, prosecution, and protection. Each year, the TIP Report spotlights an objective; this year, it is protection.

The United States, using its political clout and resources, has become the self-appointed global watchdog when it comes to monitoring other nations’ anti-trafficking efforts. Nations that fail to meet minimum standards in the battle against modern-day slavery risk losing United States-backed financial assistance. However, the United States’ own anti-trafficking approach is flawed. While it has sanctioned other countries for their failures in anti-trafficking efforts, the United States has itself instituted policies and practices that deny trafficked Americans the protections and services they need.

2 Id. (stating that countries can learn from “proven practices and innovative approaches to protecting victims” contained within the report).
4 The United States government stepped into its role as overseer after “[s]ome foreign governments, because of lack of interest, insufficient resources, differing national priorities, or outright corruption, had done little to address trafficking,” ANTHONY M. DESTEFANO, THE WAR ON HUMAN TRAFFICKING: U.S. POLICY ASSESSED, 34 (2007).
The federal government places victims, for the purpose of protection, into two categories: foreign victims and American victims. Foreign victims are those individuals who have been trafficked into the United States from other countries. They are often underprivileged or undereducated persons who took great risks to travel abroad for work or education opportunities that did not exist in their home countries. Their circumstances were exploited, as was their labor, by traffickers who bought and sold them. If an international trafficked person qualifies to receive services as a result of having been trafficked, the United States will provide refugee-like protections through the Trafficking Victims Protection Act (TVPA). These protections include housing, food, cash assistance, job training, counseling, medical care, counseling, legal assistance, and many more services that are available to this population for years. Victims who are Americans, on the other hand, must find protection elsewhere. The United States government specifically excludes its own trafficked citizens from receiving federally-funded TVPA protections.

Sexually exploited minors, oftentimes underage runaways or abandoned children, are the largest group of trafficked persons in America today. Many of these children are approached by

---

7 2010 Attorney General’s Report, supra note 6, at 28.
an adult within 48 hours of their absence from home and are eventually forced into the commercial sex trade by people who profit from them. Children who are young, impoverished, sexually or physically abused, or those who lack familial support are at greater risk of being trafficked. The federal government recognizes that these kids, often between the ages of 11 and 14 when they are first sexually exploited, are “deceived, manipulated, forced, or coerced” into participating in the commercial sex industry every day. Yet, the federal government has created a two-tier system of protection whereby qualifying international victims of human trafficking receive a wealth of protections but American victims receive little, if any, protection from federal or state governments. While the federal government has recognized American victims as individuals worthy of protection under the TVPA, it has yet to meaningfully act in a way that demonstrates this belief.

Protection is the humanitarian prong of the TVPA. The right of protection extends to all victims of human trafficking. Services rendered under the protection prong are designed to restore victims and help them heal from the trauma of being trafficked. Protections in the form of benefits and services act as a crime victims’ compensation program for trafficked persons. Sexually exploited children, who are often unable to rely upon their families, the state child

http://aspe.hhs.gov/hsp/07/HumanTrafficking/LitRev/index.shtml [Health & Human Services Literature Review] (stating that the United States has limited information on domestic victims of trafficking, particularly male victims of trafficking).


10 While there is some indication that a small number of teens become victims of labor slavery, there is little data to support that adult Americans are at risk of human trafficking. Health & Human Services Literature Review, supra note 8, at 6 (stating that the near 6,000 children found working in hazardous conditions in the U.S. are at risk for labor slavery).

11 Health & Human Services Literature Review, supra note 8, at 8-9. Poverty may be the biggest risk factor for victimization; victims originate from impoverished areas. Id. (stating that a study of American teenage prostitutes revealed that 100% of them came from homes where the parents were classified as poor or working class).

12 Id. at 8.
welfare system, and adults in law enforcement and social service groups, desperately need the same kinds of protections offered to their international counterparts. A separate and unequal system of protections tells these children and the world that only some human trafficking victims are worth protecting. Though the United States government recognizes that there is a disparity in the services and protections offered to Americans, it has yet to provide a remedy. As a result, the global watchdog is failing to protect the lambs in its own flock.

The purpose of this article is to compare foreign and domestic victims, examine the protections each group receives, identify the disparities in protections for citizen victims, highlight inconsistencies in federal law and the practical enforcement of the law, and discuss the implications at home and abroad of having a two-tier system of protection for human trafficking victims in America. The second part of this article examines the characteristics and circumstances of international and domestic victims. The third section discusses the TVPA and the United States’ foreign policy when it comes to human trafficking prevention, prosecution, and protection. The fourth part of this article explores the limitations in protections available to domestic victims. Finally, the fifth section of this article examines the foreign and domestic policy implications of the United States’ two-tiered system of protection. It is hoped that this article might encourage federal and state law makers to remedy the current disparity in protections.

I. Profiles of Trafficking Victims: Lives Enslaved

13 See e.g., William Adams et al., U.S. Dep’t of Justice, Office of Juvenile Justice and Delinquency Prevention, Effects of Federal Legislation on the Commercial Sexual Exploitation of Children, 4 (July 2010), available at https://www.ncjrs.gov/pdffiles1/ojjdp/228631.pdf [hereinafter Commercial Sexual Exploitation Study] (“U.S. citizen and foreign … victims are treated differently when they are identified, characterized, and offered services.”); 2012 TIP Report, supra note, at 363 (recognizing a failure to serve all types of human trafficking victims equally and an inability to offer the same kind of comprehensive care to all victims of human trafficking).
The United States is a source and destination country for human trafficking victims; while some individuals are trafficked into America from abroad, others are trafficked in the American towns and cities where they were born. Some of the defining characteristics of trafficked persons, regardless of their national origin, are that they often lack political power, education, or material resources. While men find themselves victimized in the areas of labor bondage in the service, construction, manufacturing, or agriculture industries, women are trafficked into sexual slavery or into forced labor, working for factories or agricultural businesses or as a domestic servant. Trafficked children in the United States are most often forced into the commercial sex trade.

Once enslaved, victims are destitute, socially isolated, tortured and physically, mentally, verbally, and psychologically abused by their buyers and traffickers. Labor trafficking victims may encounter malnutrition, dehydration, physical abuse, and injuries due to long hours of repetitive-motion labor. Sexual trafficking victims are raped, and may face unwanted pregnancies, forced abortions, sexually transmitted diseases, drug or alcohol dependence, sterility, miscarriages, and damage to reproductive cycles or organs. Finally, child labor

---

15 Health & Human Services Literature Review, supra note 8, at 7 (identifying poverty, sexual abuse, unemployment, health problems, corruption, and living in a high crime area as risk factors to trafficking).
17 Kelly Hyland Heinrich, Ten Years after the Palermo Protocol: Where are Protections for Human Trafficking Victims, 18 NO. 1 HUM. RTS. BRIEF 2, 2 (2010).
18 Jones, supra note 16, at 1149 (noting that half of all child pornography features boys).
19 Id. at 1148.
trafficking victims may experience stunted growth from malnutrition and “missed critical opportunities for social, moral, or spiritual development.”22 As a result, “[a]nxiety and fear saturate the daily lives of the victims and destroy their mental health, often leading to problems such as post-traumatic stress disorder, depression, and disorientation.”23 While it is impossible to generalize victims’ histories and experiences based upon their national origin, this section will attempt to examine the common attributes that may exist within international victim and American victim groups.

A. Foreign Trafficking Victims

A physically and sexually abused teenage girl from Cameroon working as a nanny and housekeeper around the clock without compensation24 and a Thai man picking fruit without pay despite promises of a generous salary25 have much in common. They both came from countries where their ability to get an education and earn a living wage may have been challenging, if not impossible.26 They were willing to travel abroad to better their education or work opportunities.27 They were misled by traffickers about the work or the education they would

22 Birkenthal, supra note 20, at 29; Mariconda, supra note 20, at 165-66.
24 This characterization is based upon the real life experience of the human trafficking victim in United States v. Djoumessi, 538 F.3d 547, 549-50 (6th Cir. 2008).
26 Ankita Patel, Back to the Drawing Board: Rethinking Protections Available to Victims of Trafficking, 9 SEATTLE J. FOR SOC. JUST. 813, 819 (2011) (“victims tend to originate from countries with social and economic conditions that increase citizens’ vulnerability to being exploited by traffickers”).
27 Id. (“Either out of desperate need for better jobs or the promise of a better life by traffickers, victims often travel to countries with a reputation for a thriving economy and the prospect of a higher income.”).
receive. And they were likely robbed of their identification documents, which made traffickers’ threats of deportation if they failed to work plausible.

The coercion does not end with the destruction of victims’ travel documents, however. Because the “have” countries tighten immigration laws to prevent people from the “have not” countries from lawfully entering, victims must rely upon criminal organizations with experience in human smuggling to enter destination countries. The great risks that individuals take to travel to destination countries are accompanied by great debt owed to criminal organizations, debts that are made impossible to repay by traffickers. After all, as long as the debt is unpaid, the victim can be manipulated or coerced to continue the work.

When trafficking victims are unable to pay off their debts or send money home, family members may suffer at the hands of loan sharks and those involved in the trafficking scheme. This knowledge is often used as a way of exercising continued control over the trafficking victim. Fear of retribution against family members is sometimes so great that it prevents trafficking victims from coming forward or cooperating with law enforcement officers who assist

---

29 Id. (“Stripped of any documentation, disoriented in a foreign country, and immobilized by well-founded fears of violence and deportation, [human trafficking victims] have nowhere to turn for help.”).
30 See Carole Angel, Immigration Relief for Human Trafficking Victims: Focusing the Lens on the Human Rights of Victims, 7 U. MD. L. J. RACE, RELIGION, GENDER & CLASS 23, 23 (2007) (stating that by tightening borders and creating more immigration laws in an effort to decrease the prevalence of human trafficking, governments are merely creating more demand for human smuggling); Patel, supra note 26, at 831 (noting a link between the tightening of immigration laws, the price requested of human smugglers, and the possibility that the high fees might be paid off through exploited labor).
31 Jones, supra note 16, at 1153 (recognizing the link between human smuggling and human trafficking due to the “lawful travel into the United States has become possible mostly for the economically privileged or ethnically preferred”).
them. Victims who can overcome this fear, however, are generally grateful for the help the United States offers them.

In the United States, of the international victims who qualify to receive federal assistance, more men have been identified as trafficking victims than women, and ninety percent of all foreign trafficking victims are adults. The overwhelming majority of foreign victims (81%) were victims of labor trafficking, while the rest (19%) were victims of sexual slavery or a combination of sexual and labor slavery.

B. Domestic Trafficking Victims

American minors involved in the commercial sex trade comprise the largest group of citizen victims in the United States. Experts estimate that there are currently 100,000 sexually exploited children in the United States. Studies reveal that an alarming number of these

---

33 Anne Marie Tavella, Sex Trafficking and the 2006 World Cup in Germany: Concerns, Actions and Implications for Future International Sporting Events, 6 NW. U. J. INT'L HUM. RTS. 196, *10 (2007) (explaining that fear of retribution often prevents trafficking victims from cooperating with investigating officers).
34 Kate Brittle, Child Abuse by Another Name: Why the Child Welfare System is the Best Mechanism in Place to Address the Problem of Juvenile Prostitution, 36 HOFSTRA L. REV. 1339, 1349-50 (2008).
35 2010 Attorney General’s Report, supra note 6, at 35 (reporting that in 2010, of the certified victims eligible to receive federal benefits, 57% were male and 43% were female). Despite this knowledge, there continues to be a focus on sex slavery, particularly female sex slaves, in legal policy world-wide. Janie A. Chuang, Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy, 158 U. PA. L. REV. 1655, 1706 (2010) (the United States has allocated more resources and written more laws that emphasize sex trafficking and other countries have followed this model to the detriment of slaves who do not fit in this category).
36 Id.
38 Megan Annitto, Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors, 30 YALE L. & POL’Y REV. 1, 7-8 n. 21 (2011). This is the same number of individuals arrested for prostitution each year, though arrest statistics for juveniles charged with prostitution are much lower. Office of Legal Policy, U.S. Dep’t of Justice, DOJ Position on H.R. 3887, 2 (2007), available at
children are survivors of childhood sexual abuse. After running away from family abuse, these children find themselves homeless. They are approached by individuals, usually slightly older men, in the bus stops, subway terminals, malls, group homes, and runaway shelters where they find temporary residence. These men promise to take them in, feed them, clothe them, give them a place to sleep, and may eventually profess love, all the while building trust with the child.

Once that trust is established, the adult begins to manipulate the child through threats, abuse, rape, guilt, or shame in an effort to force the child to have sex with others for money, money that will ultimately be handed over in full. Jennifer, a former victim of sexual exploitation told a congressional panel that "[f]rom the mental abuse, the beatings, everything, I thought I deserved it, you know, I thought it was my fault, I was a bad person. I couldn't leave, you know, because there was nowhere to go, nobody cared."  

Citizen victims, in far greater numbers than their foreign counterparts, suffer from Stockholm syndrome. This syndrome develops when a victim, in an attempt to survive, identifies with her captor (in the case of American victims, most often, pimps) and may even

http://www.justice.gov/olp/pdf/doj-position-on-hr3887.pdf; 2012 TIP Report, supra note 3, at 364 (the FBI reported that 654 American minors were arrested for prostitution in 2010, which is lower than arrests in previous years).
39 Health & Human Services Literature Review, supra note 8, at 9. Other correlations between prostitution and life experiences include substance abuse among parents, domestic violence in the home, school-related problems, criminal problems, or the loss of a parent or a parent’s involvement. Id. at 9-10.
40 Annitto, supra note 38, at 13-14
41 Id. Interestingly, one hundred years ago, young immigrant women arriving at Ellis Island were recruited to become prostitutes in the same way as young women today. Jennifer M. Chacon, Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking, 74 FORDHAM L. REV. 2977, 3013 (2006).
42 Annitto, supra note 38, at 14 (quoting a pimp as saying, “With young girls, you promise them heaven, and they’ll follow you to hell.”).
43 Id.
45 Health & Human Services Literature Review, supra note 8, at 14.
defend or protect him from law enforcement or individuals trying to assist her.\textsuperscript{46} In addition to the manipulation through professions of love and affection\textsuperscript{47} pimps may offer drugs to victims making them more complacent and dependent.\textsuperscript{48} The result is that a trafficked American girl sees herself as her pimp’s girlfriend,\textsuperscript{49} despite his severe exploitation and abuse of her,\textsuperscript{50} and views rescue or acceptance of protection as a betrayal.\textsuperscript{51}

Even if a sexually exploited minor does not suffer from Stockholm syndrome, she may be reluctant to escape her trafficker for other reasons. One former victim said,

Most people don’t understand why we stay with a pimp. Many of us have been exploited by our peers, society, and often by the people that we trust. When we’re the most vulnerable, pimps attack, promising us stability, a family life, a future. They reel us in. He becomes our father, and our boyfriend, until we see what he really wants. Then he intimidates us and reminds us constantly about the consequences if we leave. Most tell us that they’ll find and kill us, no matter where we go. We’re afraid of being afraid. Resources are limited and many of us do not see a way out.\textsuperscript{52}

Many sexually exploited minors come from marginalized populations within the United States. Rachel Lloyd, who is herself a former victim of sexual exploitation and an advocate who

\textsuperscript{46} Id.; Brittle, supra note 34, at 1369-70 (“Employing dissociation techniques to separate themselves from daily trauma can lead to permanent mental health problems.”).

\textsuperscript{47} 22 U.S.C. § 7101(b)(6) (human trafficking involves abuse and psychological manipulation); Brittle, supra note 34, at 1358-59.

\textsuperscript{48} MacKinnon, supra note 23, at 287.

\textsuperscript{49} Smith, supra note 9, at 286.

\textsuperscript{50} 22 U.S.C. § 7101(b)(6) (abuse may include “rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion”); MacKinnon, supra note 23, at 306 (stating that sexual exploitation begins with force, is maintained through force, and that force holds victims captive).

\textsuperscript{51} See In re B.W., 313 S.W.3d 818, 824 (Tex. 2010) (“Most of these children are controlled by their pimps through a combination of emotional and financial security mixed with violence and drugs, and are unaware that the treatment they are receiving is against the law.”).

\textsuperscript{52} Girls Educational & Mentoring Services (GEMS), Empowering Survivors, \url{http://www.gems-girls.org/what-we-do/survivor-voices} (last visited August 10, 2012).
runs Girls Education Mentoring Service (GEMS) in New York City, perhaps the most successful non-governmental organization (NGO) aimed at serving this population,\(^53\) states:

> While commercial sexual exploitation can and does happen to any child, this issue disproportionately affects low-income children, children of color, children who have been in the child welfare system, children who have been in the juvenile justice system, children who do not have a voice in public policy, children who are frequently ignored. Traffickers and exploiters know exactly who to target, who will be featured on the news, who will be seen as a “real” victim.\(^54\)

> Not only are domestic victims disregarded by society, but they, like their foreign counterparts, are isolated by their traffickers.\(^55\) One government account indicated that, “[g]irls and women report going months or even years without talking with anyone outside the sex trade.”\(^56\) Because of their abuse and isolation, it is difficult for domestic victims to have healthy, trusting relationships with anyone, including individuals who offer them help. As a result, serving domestic trafficking victims is sometimes challenging and complicated.\(^57\)


\(^{54}\) In Our Own Backyard: Child Prostitution and Sex Trafficking in the United States: Hearing Before the Subcomm. on Human Rights and the Law of the S. Comm. on the Judiciary, 111th Cong. 17 (2010) [hereinafter Domestic Sex Trafficking Hearing] (statement of Rachel Lloyd, Executive Director and Founder, Girls Educational & Mentoring Services, New York, New York). A large number of arrested females charged with prostitution are members of minority groups. Nesheba Kittling, God Bless the Child: The United States’ Response to Domestic Juvenile Prostitution, 6 NEV. L.J. 913, 919-20 (2006). Despite the fact that the federal government reports that individuals of all races are at risk for sexual exploitation, ninety percent of prostitution arrests and eighty-five percent of people incarcerated for prostitution offenses are women of color. Id. at 920; Health & Human Services Literature Review, supra note 8, at 9. At least one scholar suggests that higher arrest and incarceration rates indicate that law enforcement officers target street prostitutes and arrest individuals in lower socio-economic communities more often. Nesheba Kittling, God Bless the Child: The United States’ Response to Domestic Juvenile Prostitution, 6 NEV. L.J. 913, 920 (2006). Domestic victims of trafficking are also likely to come from impoverished households, to leave home before their primary or secondary education is complete, and to become further impoverished after becoming a trafficked person. Health & Human Services Literature Review, supra note 8, at 8-9; MacKinnon, supra note 23, at 287 (“Everywhere, prostituted people are overwhelmingly poor, indeed normally destitute…. Having gotten in because of poverty, almost no one gets out of poverty through prostituting.”).\(^{55}\)

\(^{56}\) MacKinnon, supra note 23, at 288 (“The abuse that is constant in prostitution, indeed endemic to it, requires dissociation from yourself and the world to survive.”).

\(^{57}\) Health & Human Services Literature Review, supra note 8, at 23.

\(^{57}\) See e.g., Domestic Sex Trafficking Hearing, supra note 54, at 7 (statement of Luis CdeBaca, Ambassador-At-Large, Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, Washington, D.C.) (domestic victims “may not all be saints, may not understand that they are victims, may consider our help to be unwanted interference, and may even be in love with those who abuse them”).
II. The Trafficking Victims Protection Act: Carrots, and Sticks

The Thirteenth Amendment of the United States Constitution prohibits slavery and gives Congress the power to enforce anti-slavery legislation.\(^{58}\) The enactment of the Thirteenth Amendment in 1865 legally abolished slavery as Americans knew it then.\(^{59}\) But slavery, having existed for thousands of years, is persistent and endures today on American soil despite the Constitution’s prohibition against it. Slavery’s newest configuration is human trafficking. While definitions vary,\(^{60}\) human trafficking is generally defined as exploiting the labor of another through force or coercion. In 2000, in an effort to, among other things, protect victims of trafficking in America, Congress passed the Trafficking Victims Protection Act (TVPA).\(^{61}\)

The TVPA and its subsequent reauthorizations aim to prevent the trafficking of persons, increase penalties for traffickers, and protect victims of trafficking worldwide.\(^{62}\) The Act’s enactment was significant: it was a novel piece of legislation not just for the United States, but for the world.\(^{63}\) The Act creates a collaborative network between American law enforcement agencies, other governmental agencies, and NGOs in the fight against slavery.\(^{64}\) It suggests that

---

\(^{58}\) U.S. Const. amend. XIII.


\(^{61}\) 22 U.S.C. § 7101(b)(14) (“Existing legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and bring traffickers to justice”). This is not only true for the United States’ federal government, but also true for states as well. See e.g., Matthew Garber, Chapter 240: Human Trafficking – Combating the Underground Slave Industry in California, 37 MCGEORGE L. REV. 190, 196 (2006) (“[P]rior California law that specifically addressed slavery was written nearly one hundred years ago and has almost never been utilized in the human trafficking context. As a result, legal reforms were necessary to more effectively assist law enforcement in combating human trafficking in California.”).


\(^{63}\) DeStefano, supra note 4, at 14-15, 44-45 (recounting Congress’s frustration with the international community for ignoring trafficking and Congress’s novel law, which was passed two months before the United Nation’s Palermo Protocol). But see Chacon, supra note 41, at 2993 (asserting that the Act is not a “major legislative breakthrough,” but merely a “set of incremental changes” to federal laws that were already in existence).

\(^{64}\) 22 U.S.C. §§ 7103 & 7106.
foreign governments do the same if there is to be an end to human trafficking.\textsuperscript{65} Indeed, the Act creates minimum standards for international governments and sets anti-trafficking policy for the world.\textsuperscript{66}

As Kevin Bales, a noted expert on modern-day slavery has stated, “Governments can be encouraged to enforce their own laws in a number of ways, some involving carrots and some involving sticks.”\textsuperscript{67} For human trafficking, the global carrot-and-stick approach comes via the Trafficking in Persons (TIP) report, which is investigated,\textsuperscript{68} reported, and authorized through the United States government.\textsuperscript{69} The TIP Report is a lengthy document released every June that grades other nations’ efforts to end modern slavery. First released in 2001, a year after the TVPA’s enactment,\textsuperscript{70} it includes victims’ stories, global law enforcement data, international law provisions, the United States’ annual goals in the fight against human trafficking, narratives that explain the trafficking problems, successes, and failures in countries worldwide, and much

\textsuperscript{65}Id.
\textsuperscript{66}Another purpose is to strengthen criminal law in the area of human trafficking and to provide civil remedies for victims who want to sue their trafficker for damages. See e.g., 18 U.S.C. § 1589 (criminalizing forced labor and the profit from it); § 1591 (criminalizing the act of benefit from sex trafficking); § 1593 (requiring full restitution to human trafficking victims); § 1595 (permitting a civil remedy for victims).
\textsuperscript{67}KEVIN BALES, ENDING SLAVERY: HOW WE FREE TODAY’S SLAVES 19 (2007).
\textsuperscript{68}The U.S. State Department employs several individuals who work full-time on investigating and preparing the TIP Report. U.S. Dep’t of State, Office to Monitor and Combat Trafficking in Persons, About Us, http://www.state.gov/j/tip/about/index.htm (last visited August 10, 2012). The State Department also relies on information provided by U.S. embassy staff employees, foreign law enforcement intelligence, foreign government reports, liaison officers, journalists, nongovernmental organizations (NGOs), and victims of human trafficking. DE\textsuperscript{S}TE\textsuperscript{F}ANO, supra note 4, at 119; U.S. Dep’t of State, Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report, 4 (2001), http://www.state.gov/documents/organization/4107.pdf.
\textsuperscript{69}22 U.S.C. § 7107(b)(1) (mandating a globally-focused annual report by the Secretary of State be compiled regarding severe forms of human trafficking); § 7106 (stating that countries of origin, transit, or destination must demonstrate that they are making efforts to reduce and eradicate human trafficking). The office responsible for producing the annual TIP Report is the U.S. Department of State’s Office to Monitor and Combat Trafficking in Persons. Heinrich, supra note 17, at 2.
more.\textsuperscript{71} Its authorization is grounded in sections of the TVPA that define how countries should attempt to end human trafficking and the consequences for their failure to do so.\textsuperscript{72}

The United States is the self-appointed anti-trafficking overseer to the world. This self-appointment came about through international ambivalence regarding human trafficking.\textsuperscript{73} Believing that a lack of international attention and the failure of nations to arrest and prosecute traffickers magnified trafficking,\textsuperscript{74} Congress formulated minimum guidelines regarding international expectations on the fight against human trafficking.\textsuperscript{75} These standards apply to all nations, regardless of whether they act as places of source, transit, or destination for human trafficking.\textsuperscript{76}

Countries are required, at a minimum, to prohibit slavery, punish traffickers, punish severe forms of trafficking more harshly, and attempt to eliminate all forms of modern-day slavery.\textsuperscript{77} The TVPA also sets criteria by which nations’ efforts will be judged; it requires the Secretary of State to collect data to determine whether the number of trafficked persons has increased or decreased in the last year and to determine whether traffickers are being prosecuted and punished for their crimes.\textsuperscript{78} Nations are given guidance and resources to help them meet the

\textsuperscript{71}\textit{See generally, 2012 TIP Report}, \textit{supra} note 3, at 1-396.
\textsuperscript{72} \textit{See e.g.}, 22 U.S.C. § 7106 (allowing the collection of human trafficking information from abroad); § 7107 (creating a mechanism for ranking countries’ performance in the fight against modern-day slavery); § 7109b (recognizing heroes in the fight against human trafficking).
\textsuperscript{73} \textit{DESTEFANO, supra} note 4, at 14 (stating that the proponents of the TVPA believed the international community was ignoring human trafficking).
\textsuperscript{74} \textit{DESTEFANO, supra} note 4, at 14-15.
\textsuperscript{75} 22 U.S.C. § 7103 (permitting the U.S. government to monitor other countries’ progress on the global fight against human trafficking).
\textsuperscript{76} \textit{Id.} at § 7106(a). A source country is the country of origin for the victim. The destination country is the country where the victim ends up – usually where he or she is bought (if that did not occur in the country of origin) and sold. Transit countries are those that victims travel through to reach destination countries.
\textsuperscript{77} \textit{Id.}
\textsuperscript{78} \textit{Id.} at § 7106(b).
minimum requirements. Those who fail to comply, however, face sanctions from the United States government.

Congress instructs the President to withhold “nonhumanitarian, nontrade-related foreign assistance” from countries that fail to meet the minimum standards set by the TVPA. The Act also permits the U.S. to withhold government employees’ participation in educational and exchange programs and to oppose assistance from the International Monetary Fund (IMF) and a number of global banks. These consequences can have devastating effects on countries that


80 According to the TVPA,

[t]he term ‘nonhumanitarian, nontrade-related foreign assistance’ means--

(A) any assistance under the Foreign Assistance Act of 1961 [22 U.S.C. § 2151 et seq.], other than--

(i) assistance under chapter 4 of part II of that Act [22 U.S.C. § 2346 et seq.] in support of programs of nongovernmental organizations that is made available for any program, project, or activity eligible for assistance under chapter 1 of part I of that Act [22 U.S.C. § 2151 et seq.];

(ii) assistance under chapter 8 of part I of that Act [22 U.S.C. § 2291 et seq.];

(iii) any other narcotics-related assistance under part I of that Act [22 U.S.C. § 2151 et seq.] or under chapter 4 or 5 [FN1] part II of that Act [22 U.S.C. §§ 2346 et seq., 2347 et seq.], but any such assistance provided under this clause shall be subject to the prior notification procedures applicable to reprogrammings pursuant to section 634A of that Act [22 U.S.C. § 2394-1];

(iv) disaster relief assistance, including any assistance under chapter 9 of part I of that Act [22 U.S.C. § 2292 et seq.];

(v) antiterrorism assistance under chapter 8 of part II of that Act [22 U.S.C. § 1349aa et seq.];

(vi) assistance for refugees;

(vii) humanitarian and other development assistance in support of programs of nongovernmental organizations under chapters 1 and 10 of that Act;

(viii) programs under title IV of chapter 2 of part I of that Act [22 U.S.C. § 2191 et seq.], relating to the Overseas Private Investment Corporation; and

(ix) other programs involving trade-related or humanitarian assistance; and

(B) sales, or financing on any terms, under the Arms Export Control Act [22 U.S.C. § 2751 et seq.], other than sales or financing provided for narcotics-related purposes following notification in accordance with the prior notification procedures applicable to reprogrammings pursuant to section 634A of the Foreign Assistance Act of 1961 [22 U.S.C. § 2394-1].

81 22 U.S.C. § 7103 (giving the President power to create an executive committee to monitor anti-trafficking measures in other countries); §7102 (defining what types of foreign aid can and cannot be withheld from countries that refuse to meet minimum requirements set by the U.S. Congress); § 7104 (creating economic alternatives to prevent and deter trafficking in other countries); § 7106 (listing the minimum requirements for countries to be in good standing for attempting to combat human trafficking violations); § 7107 (requiring the Secretary of State to provide Congress findings on the compliance of lack thereof of countries’ efforts in ending human trafficking).

82 Id. at § 7107(d)(1)(B) & (d)(6). Other countries were given two years to comply with the minimum standards before they were sanctioned for the first time in 2003. Tiefenbrun, supra note 79, at 268.
rely upon outside monetary support.  The President may, however, waive these sanctions if their implementation adversely affects populations who would consequently be more vulnerable to becoming enslaved. A waiver can also be made once a country comes into compliance with the minimum standards set out in the TVPA.

In order to determine which countries are at risk of losing this monetary aid, Congress established a three-tier system that ranks anti-trafficking efforts abroad. First-tier countries are those that, according to the TVPA, have made efforts to comply with the Act’s minimum requirements. Second-tier countries are those whose governments are not currently, but are attempting to be, in compliance with the TVPA. The second-tier watch list, which was included for the first time in the 2004 TIP Report and later codified in the TVPA, includes countries that have fallen in rank in the past year, those whose trafficking victims have increased, those with decreased prosecutions of traffickers or protections offered to victims, or those who made pledges to comply with minimum standards, but failed to do so over the last year. Finally, third-tier countries are those whose governments are not in compliance or are not making significant efforts to be in compliance with the minimum requirements. Countries in

---

83 The potential economic or resource devastation that innocent citizens of those countries might suffer from government-imposed sanctions is a concern. In fact, one of the sponsors and drafters of the TVPA, Senator Paul Wellstone, was adamantly opposed to the President and Congress attaching any mandatory, sweeping, economic sanctions to countries with lackluster anti-trafficking records. DESTEFANO, supra note 4, at 34-35. This was primarily because he thought poor citizens in underperforming countries would pay a higher price than their sanctioned governments. Id.
85 Id. at § 7107(d)(3).
86 Id. at §§ 7106 & 7107.
87 Id. at § 7107 (b)(1)(A).
88 Id. at § 7107 (b)(1)(B).
89 DESTEFANO, supra note 4, at 124.
91 Id. at § 7107 (b)(3)(A). Countries that have been included on the special watch list for two consecutive years will subsequently be placed on the third-tier list. Id. at § 7107 (b)(3)(D).
92 Id. at § 7107 (b)(1)(C).
This third-tier category are those at risk of losing aid from the U.S. government, the IMF, and global banks.93

This carrot-and-stick approach seems to work.94 The first TIP Report, released in 2001, placed 12 countries in the first tier, 47 in the second tier, and 23 in the third tier.95 The following year, several countries in the second and third tiers moved up in the rankings.96 Over the years, the number of first-tier countries grew and the number of third-tier countries decreased.97 The report’s release appears to have motivated some countries to comply with the TVPA’s minimum standards.98

It should be noted that the TIP Report not only shames countries that are falling short in the global war against human trafficking, but it also praises people and countries for their

---

93 The President of the United States may exercise some grace in this rankings system towards countries that are trying to end human trafficking but are not successful. For example, countries can receive a waiver if they have a written plan to end slavery that would be successful if implemented and are devoting significant resources towards the battle. 22 U.S.C. § 7107 (b)(3)(D)(ii). They may receive this waiver from the President with approval by both the Senate’s Committee on Foreign Relations and the House’s Committee on Foreign Affairs. Id. This type of waiver is evidenced in the 2011 TIP Report by the notation “Special Case” for the following countries: Cote d’Ivoire, Haiti, and Somalia. U.S. Dep’t of State, Tier Placements, http://www.state.gov/j/tip/rls/tiprpt/2011/164228.htm (last visited August 10, 2012).

94 Clinton’s 2012 Opening Remarks, supra note 1 (stating that 29 countries had moved up the tier lists in 2012 from the previous year); Susan W. Tiefenbrun, Sex Slavery in the United States and the Law Enacted to Stop It Here and Abroad, 11 WM. & MARY J. WOMEN & L. 317, 330, 347-48 (2005) (suggesting that before the TVPA’s enactment, human trafficking incidents rose with a low level of prosecutions but after its enactment, prosecutions and protections have steadily increased).

95 U.S. Dep’t of State, Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report, July 2001, 15 http://www.state.gov/documents/organization/4107.pdf. The list included the following countries: Albania, Bahrain, Belarus, Bosnia-Herzegovina, Burma, Democratic Republic of Congo, Gabon, Greece, Indonesia, Israel, Kazakhstan, Lebanon, Malaysia, Pakistan, Qatar, Romania, Russia, Saudi Arabia, South Korea, Sudan, Turkey, United Arab Emirates, and the Federal Republic of Yugoslavia. Id. The first-tier countries numbered 12 while the second-tier countries numbered 47. Id.


97 See e.g., U.S. Dep’t of State, 2006 Trafficking in Persons Report, Tier Placements (June 5, 2006), http://www.state.gov/j/tip/rls/tiprpt/2006/65985.htm (listing 26 countries in the first tier and 12 in the third tier). Some countries in the third tier, usually because they have a hostile relationship with the United States, do not provide information to the United States (e.g., Cuba, Iran, North Korea, Syria, and Venezuela) while others may not need or request any outside monetary aid and are therefore less threatened by sanctions (e.g., Saudi Arabia). Id.

98 Tiefenbrun, supra note 79, at 276 (frequent movement between tiers indicates the sanctions are having an effect on anti-trafficking activity abroad).
admirable efforts in the fight. For example, recent TIP Reports have included a list of individuals dubbed “heroes” who have made amazing strides in the battle against modern-day slavery. 99 Each year, the TIP Report spotlights extraordinary anti-trafficking efforts oftentimes made in countries lacking both resources and support for anti-trafficking measures. 100

The TIP Report and the ranking system have their critics. 101 For example, one observer said, “Throughout its history the United States has not been shy about behaving like a moral leader and using its clout and dollars to set an agenda. After passing the TVPA, the U.S. government used its bully pulpit to influence other nations’ efforts at dealing appropriately with trafficking.” 102 Another critic condemned the United States for taking a decade to include itself in the TIP Report. 103 The United States released nine TIP Reports before evaluating its own anti-trafficking efforts. 104

Some nations’ efforts to end human trafficking may be motivated by fear of losing rank and financial support from the United States. Others may be motivated by the public shaming that comes from apathy. 105 One would hope that countries’ efforts are driven by the altruistic desire to end slavery. Regardless, since the advent of the TIP Report, and possibly because of it,

99 See e.g., 2010 TIP Report, supra note 21, at 42-44.
100 For example, the 2010 report listed heroes in Mauritania, Uzbekistan, Mongolia, and Burundi among others. Id. The 2011 TIP Report listed a different set of heroes in countries like Bosnia and Herzegovina, Guatemala, Namibia, and Nepal, among others. U.S. Dep’t of State, Trafficking in Persons Report, 46-49 (June 2011), available at http://www.state.gov/j/tip/rls/tiprpt/2011/164227.htm [hereinafter 2011 TIP Report].
101 See e.g., Chuang, supra note 35, at 1717-18 (suggesting that the demand for more U.S. dollars has encouraged deceitfulness or manipulation from providers who assist international victims); Kittling, supra note 54, at 926 (“It is shameful that the United States has promulgated objectives for other countries to fight sex trafficking, but has failed to protect its own domestic juvenile prostitutes.”).
102 DeStefano, supra note 4, at 118.
103 Amanda Kloer, 2010 U.S. Trafficking Report Grades Self for First Time Ever, CHANGE.ORG, (June 14, 2010), http://news.change.org/stories/2010-u-s-trafficking-report-grades-self-for-first-time-ever (asserting that the United States’ tier-one ranking is deserving and came about only because NGOs proud of America’s efforts pressured the country to rank itself).
104 2010 TIP Report, supra note 21, at 338-45 (the United States appears in the country narratives for the first time).
105 See e.g., Bales, supra note 67, at 111-13 (detailing Japan’s embarrassment at landing on the Tier-2 watch list in 2004 and its subsequent lukewarm attempts to resume its traditional Tier 2 placement).
more countries have cooperated in the anti-trafficking campaign and have experienced a modicum of success in ending modern slavery. But the TVPA and TIP Report are not merely concerned with rankings. They, along with international provisions, establish global anti-trafficking policy.

A. The 3-P Paradigm

President Bill Clinton, who signed the TVPA into legislation, his administration, and the United Nations created what has been dubbed “the three Ps:” prevention of human trafficking, prosecution of traffickers, and protection of trafficking victims. These three goals are core to the fight against modern slavery and are embedded in human trafficking rhetoric and laws.

Each element of the “3-P paradigm” is essential to virtually every modern, anti-trafficking law in the world. This paradigm has been codified into the TVPA, which was the first piece of neo-slavery legislation. It is part of the U.N’s Palermo Protocol, which was

---


107 DeSTEFANO, supra note 4, at xix.


109 See e.g., 22 U.S.C § 7105 (requiring countries to create programs – through both nongovernmental organizations (NGOs) and through governmental efforts – to protect men, women, and children who have been trafficked after they have been victimized); § 7104(b) (among other efforts to prevent human trafficking, incentivizing countries to create “programs to increase public awareness, particularly among potential victims of trafficking, of the dangers of trafficking”); § 7109 (aimed at strengthening prosecution and punishment of traffickers).

110 DeSTEFANO, supra note 4, at 14-15, 44-45.

111 Convention Against Transnational Organized Crime Convention, supra note 106, at 43.
the first modern-day international anti-trafficking convention and a document that served as a model to other nations drafting their own anti-trafficking legislation. The 3Ps have served foreign countries in need of anti-trafficking plans. And they are heavily relied upon in the TIP Report to evaluate the shortcomings or effectiveness of other countries’ measures to end modern-day slavery. This section will explain in more depth what each element of the paradigm embodies.

1. Prevention

Preventing individuals from becoming trafficking victims is an important goal in the battle against human trafficking. The TVPA suggests a number of methods to prevent trafficking. Since trafficking victims generally come from impoverished groups of people, one proven way to prevent at-risk populations from being trafficked is to tackle the problem from an economic perspective. To accomplish this goal, nations are encouraged to offer microloans, encourage the growth of local business, allow girls to get an education, and

---


113 See e.g., U.S. Dep’t of State, *Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report*, 3 (2001), [http://www.state.gov/documents/organization/4107.pdf](http://www.state.gov/documents/organization/4107.pdf) (“The U.S. has initiated many international anti-trafficking and development programs to assist countries combat this ever-growing phenomenon. These initiatives demonstrate the United States’ commitment to preventing persons from becoming victims of trafficking; protecting the victims of trafficking; and, prosecuting traffickers. Our development programs include disseminating information on the dangers of trafficking, strengthening the capacity of women’s and anti-trafficking organizations to protect those groups from abuse and violence, and outreach and economic opportunity programs for those most at risk of being trafficked. The U.S. has assisted countries to enact anti-trafficking legislation, and train law enforcement, prosecutors and judicial officers.”).

114 See e.g., *2012 TIP Report*, supra note 3, at 60.

encourage women to participate in making financial decisions.\textsuperscript{116} Other non-economic prevention methods include decreasing illegal border crossings and combatting sex tourism.\textsuperscript{117}

Empowering and educating vulnerable populations about the nature and realities of modern-day slavery also helps prevent human trafficking. The TIP Report lists the following prevention efforts: producing public awareness campaigns aimed at vulnerable populations; strengthening and protecting international labor markets; creating identification documents such as birth and marriage certificates in countries where they do not exist; and working with nongovernmental organizations (NGOs) to identify ways to prevent human trafficking.\textsuperscript{118} This list of goals provides no easy or quick solutions for the international community. Nevertheless, the reality is, if these goals were accomplished, trafficking might cease to exist.\textsuperscript{119}

1. \textit{Prosecution}

Protection is the law enforcement and criminal justice element of the paradigm. The minimum standards of the TVPA require that countries create laws to punish traffickers for their actions.\textsuperscript{120} This constitutes the prosecution prong of the 3-P paradigm. The United States Department of State and the United Nations suggest countries punish traffickers with sentences that last between one and four years.\textsuperscript{121} The TVPA suggests that more egregious forms of trafficking be punished with harsher sentences.\textsuperscript{122} Countries that fail to report data on the number of trafficking investigations, criminal trials, convictions, and sentences are presumed not

\\textsuperscript{116} 22 U.S.C. § 7104.
\textsuperscript{117} \textit{Id.}
\textsuperscript{119} \textit{Id.}
\textsuperscript{120} 22 U.S.C. § 7106.
\textsuperscript{121} U.S. Dep’t of State, \textit{Prosecution}, \url{http://www.state.gov/j/tip/4p/prosecute/}, (last visited August 10, 2012).
\textsuperscript{122} 22 U.S.C. § 7106(a)(2).
to be adequately prosecuting traffickers.\textsuperscript{123} Finally, nations are expected to extradite or allow extradition for known traffickers and strictly enforce immigration laws.\textsuperscript{124} In sum, countries must create and administer trafficking and immigration laws and punish offenders to meet the prosecution criteria.

2. Protection

The protection element is the humanitarian aspect of the paradigm. It may apply to a human trafficking victim during several distinct stages during and after her rescue. It can apply at the time of her rescue, during the prosecution of her traffickers, and when she is recovering from the trauma of having been trafficked.\textsuperscript{125}

Foreign victims must be able to safely return to their home countries if desired and victims’ families must be kept safe from threats or violence carried out by those involved in the trafficking scheme.\textsuperscript{126} Protection includes all of the services and resources that both domestic and foreign victims need to heal and recover from the trauma of being trafficked.\textsuperscript{127} The TVPA shields both foreign and domestic individuals from prosecution for criminal acts committed at the command of their traffickers.\textsuperscript{128}

The three goals of prevention, prosecution, and protection affect policy, legislation, and the practical aspects of the fight against modern-day slavery. While the United States has done an admirable job of crafting the 3-P paradigm, practical efforts in carrying it out have resulted in

\textsuperscript{123} Id. at § 7106(b)(1).
\textsuperscript{124} Id. at § 7106(b)(5)-(6).
\textsuperscript{125} U.S. Dep’t of State, Protection, \url{http://www.state.gov/j/tip/4p/protect/}, (last visited August 10, 2012).
\textsuperscript{126} Id.
\textsuperscript{127} Id. The Palermo Protocol identifies housing, medical and psychological care, counseling, living expenses, education, and job training as necessary services trafficking victims need. \textit{Convention against Transnational Organized Crime, supra} note 106, at art. 6(3)-(4), 44.
\textsuperscript{128} 22 U.S.C. § 7105. Criminal and immigration laws may not protect victims from criminal acts committed outside the hands of traffickers or crimes that were committed after the rescue and rehabilitation process.
II. Protecting Human Trafficking Victims in the United States

Human trafficking statistics have always been suspect, but Congress believes there are at least 14,500 foreign human trafficking victims brought into the United States annually. One-third of these foreign victims are believed to be minors. In addition to foreign victims, it is estimated that 100,000 American children and teenagers become victims of sexual exploitation in the United States each year. “Although the U.S. threatens sanctions against nations who fail to combat trafficking, and casts itself as a champion in the crusade against modern slavery, it remains the only industrialized democracy where the majority of trafficking victims are its own citizens.” Yet, America has concentrated on foreigners, not its own citizens, when it comes to protecting human trafficking victims.

The way these two groups have been protected may be affected in part by the government’s historical view of each group. The TVPA presumes trafficked persons are from

---

129 See e.g., DESTEFANO, supra note 4, at 41-42 (illustrating that during the drafting of the TVPA, Congress had a difficult time determining how many trafficking victims existed and how many would ask for a T-Visa); Tiefenbrun, supra note 94, at 318 (“statistics about trafficking are notoriously unreliable”); Chuang, supra note 35, at 1707 (“unsubstantiated figures [are] often recycled and accepted as true, as if sheer repetition guarantees veracity”).

130 Mariconda, supra note 20, at 154. See also, Samuel Vincent Jones, Human Trafficking Victim Identification: Should Consent Matter?, 45 IND. L. REV. 483, 485 (2012) (stating that while some human trafficking scholars simply state that the number of victims is unknown, others estimate as few as 14,500 victims exist or possibly as many as 100,000); Patel, supra note 26, at 822 n. 41 (arriving at 175,000 victims in America by multiplying the number of known victims by ten due to the underground nature of human trafficking).


132 Richard J. Estes & Neil Alan Weiner, The Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico: Executive Summary, 11-13 (2001) (estimating that at least 100,000 American children are at risk for exploitation in the areas of child pornography, juvenile prostitution, and sexual human trafficking). But see Health & Human Services Literature Review, supra note 8, at 5 (warning that “there are huge gaps between estimates of “prevalence” or populations “at risk” and individuals actually identified as trafficking victims or enrolled in government programs”).

133 Moira Heiges, From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad, 94 MINN. L. REV. 428, 429 (2009).
other countries.\textsuperscript{134} This presumption is understandable in some ways. The media and reports from abroad in the late 1990s, just before the TVPA was enacted, indicated that it was foreigners who were being sold into slavery and smuggled across borders.\textsuperscript{135} American citizens began to be recognized for the first time in 2005 by human rights activists and the federal government.\textsuperscript{136}

Though the government now recognizes both groups of individuals as human trafficking victims,\textsuperscript{137} citizen victims have lagged behind their international counterparts in several ways. American citizens receive fewer protections, may have to deal with greater bureaucracy to access assistance, and are sometimes prosecuted for sexual criminal offenses like prostitution in greater numbers than their foreign counterparts. Furthermore, the federal government spends the bulk of protection-assistance funds on foreign and international victims, not American victims. This section attempts to compare the resources available and treatment given to human trafficking victims in America.

\textbf{A. TVPA-Funded Protections to Foreign, Adult Victims}

Before the TVPA’s enactment, international human trafficking victims were barred from receiving federal benefits.\textsuperscript{138} The enactment of the TVPA changed that. Now foreign victims

\textsuperscript{134} See e.g., 22 U.S.C. § 7101 (b)(1) (stating that 50,000 people are trafficked into the United States); § 7104(a) (establishing prevention efforts abroad to assist potential human trafficking victims); § 7104(d) (stating that persons at risk live overseas); § 7105(b)(1)(A) (describing individuals that qualify to receive assistance as “aliens”).
\textsuperscript{135} DE\textsc{stefano}, supra note 4, at 13-14 (detailing media reports in the 1990s about sex slaves from abroad that “capture[d] public attention”).
\textsuperscript{136} Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 §2(3)-(6) (stating that America focused on international trafficking in the past and recognizing, for the first time legislatively, that domestic trafficking was also a problem in the United States). DE\textsc{stefano}, supra note 4, at 12.
\textsuperscript{137} See e.g., 2012 TIP Report, supra note 3, at 359 (“The United States is a source, transit, and destination country for men, women, and children – both U.S. citizens and foreign nationals – subjected to forced labor, debt bondage, involuntary servitude, and sex trafficking.”).
\textsuperscript{138} 2010 Attorney General’s Report, supra note 6, at 28.
who meet the TVPA’s requirements for human trafficking victim status qualify for the same benefits the United States gives refugees. These benefits apply regardless of immigration status.

International victims receive assigned case managers who help them navigate legal, medical, dental, and mental health services. Foreign victims of human trafficking receive housing, clothing, food stamps, cash assistance, and transportation services. They are taught English and can receive a General Education Diploma (G.E.D.) if they wish. Before they are proficient in English, they are provided with translators to help them understand their rights under the TVPA and any services and programs that are available to them. Through assistance from the Department of Labor, they receive career counseling, job skills training, and help finding a job. The goal of these services is to restore victims and help them become self-sufficient.

---

139 According to the TVPA, a victim of human trafficking must be a victim of a “severe form[] of trafficking” to receive the benefits offered pursuant to the Act. 22 U.S.C. § 7105(b)(1)(A). The TVPA defines the phrase as follows:

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

Id. at § 7102(8). This standard has been criticized for not being inclusive enough and inconsistent with human rights. See e.g., Theodore R. Sangalis, Elusive Empowerment: Compensating the Sex Trafficked Person under the Trafficking Victims Protection Act, 80 FORDHAM L. REV. 403, 427-28 n. 251 (2011) (noting criticisms that the standard is an unreasonably high standard and that it favors law enforcement officers, not victims).

141 Id. at § 7105(b)(1)(A)-(B).
142 2007 Attorney General’s Report, supra note 6, at 20; 2010 Attorney General’s Report, supra note 6, at 29.
143 Id.
144 Id.
146 2007 Attorney General’s Report, supra note 6, at 20; 2010 Attorney General’s Report, supra note 6, at 29.
147 Tiefenbrun, supra note 79, at 261.
If victims want to remain in the United States, they may stay temporarily, provided they cooperate with law enforcement officials investigating their case. They are given a temporary visa available to human trafficking victims called a T-Visa, which allows them to stay in America for four years. They may request a “continued presence” stay or apply for permanent residency. And they may petition for family members, particularly those who are at risk of being harmed by traffickers in their home country, to join them in the United States. Finally, they are provided with pro-bono legal assistance to help with immigration issues that arise.

Not all victims want to remain in America, however. Foreign victims may return to their home countries if they choose. The TVPA ensures their safe repatriation and mandates that

---

148 § 8 U.S.C. § 1101(a)(15)(T). Other countries do not make this a requirement to stay remain in the destination country. For instance, Italy’s assistance to foreign human trafficking victims is based upon the social needs of the victim, not his or her cooperation with law enforcement officials. See e.g., United Nations Office on Drugs & Crime, Toolkit to Combat Trafficking in Persons 123 (2006), available at http://www.unodc.org/pdf/Trafficking_toolkit_Oct06.pdf (“Italy grants protection to victims independently of their readiness to testify. This approach focuses upon the victim’s need for protection, rather than on the victim’s contribution to the State’s prosecution efforts. From a human rights perspective, this approach, which also includes the right of trafficked persons to work and to reintegrate into society, is the most effective response.”). America’s cooperation requirement has been described by critics as a “‘you help us and we will help you’” approach. Valerie S. Payne, On the Road to Victory in America’s War on Human Trafficking: Landmarks, Landmines, and the Need for Centralized Strategy, 21 REGENT U. L. REV. 435, 448-49 (2009).

149 The T-Visa is available to victims of a severe form of human trafficking who are present in the United States, have assisted in the investigation or prosecution of their traffickers, and demonstrate that return to their home country would result in a severe hardship. 8 U.S.C. § 1101(a)(15)(T)(i). There are exceptions to the assistance requirement for victims under the age of 18 and for those that are unable psychologically to give assistance. 2010 Attorney General’s Report, supra note 6, at 53. This standard has been criticized as being too exclusive. See e.g., Jones, supra note 16, at 1152, 1160-61. Congress has approved the granting of up to 5,000 T-Visas per year, but far fewer have been applied for and granted than Congress at first anticipated. DeSTEFANO, supra note 4, at 41; Alison Siskin & Liana Sun Wyler, Trafficking in Persons: U.S. Policy and Issues for Congress, 27 (December 23, 2010), available at http://www.fas.org/sgp/crs/misc/RL34317.pdf (hereinafter Issues for Congress] (stating that between 2002 and 2010, there were 2,968 applications for T-Visas; of those, only 1,862 were approved).


152 22 U.S.C. § 7105(a)(1)(B) (providing legal support to victims in detention facilities); § 7105(b)(1)(B) (offering legal assistance to those with nonimmigrant status).

153 The United States has always supported effortless, voluntary repatriation for human trafficking victims, even when other countries did not. DeSTEFANO, supra note 4, at 24-27 (stating that the United States fought with the
they not be prosecuted for breaking immigration or criminal laws upon return. However, the majority of international victims decide to remain in the United States rather than return home.  

B. TVPA-Funded Protections to Underage Foreign Victims

Foreign child trafficking victims are also treated generously by the United States government. Unaccompanied child trafficking victims receive the same benefits as child refugees. They are provided with food, clothing, housing in a foster home, an education, an attorney, a caseworker, medical care, therapy, English classes, recreational opportunities, social integration training, and support to help them maintain culture and religion. If they are unaccompanied minors, they may qualify for the Unaccompanied Refugee Minor (URM) Program, which “ensure[s] that unaccompanied children receive the full range of assistance, care, and services available to all foster children in the State.” This program works with them into adulthood by helping them with living expenses, food, housing, medical care, life skills training, college and career training, and job counseling if they choose to remain in the United States and want to pursue permanent residency.

C. Foreign Victims Ineligible to Receive Protections

international community on the right of victims to repatriate). There are dangers in involuntary repatriation. For example, victims may be returned to families who sold them into slavery or be returned only to be trafficked again. Rieger, supra note 28, at 243-44 (stating that some studies suggest that involuntary repatriation (i.e. deportation) puts the victim at risk of re-trafficking fifty percent of the time). Id.

22 U.S.C.A. § 7105(a)(1)(D)-(F). Foreign trafficking victims sometimes must forge immigration documents, create fraudulent identification documents, bribe officials, or commit other infractions to escape from their own country.

2011 TIP Report, supra note 100, at 376 (stating that only three of 165 victims reunified with family members returned to their home countries).

2010 Attorney General’s Report, supra note 6, at 32-33.


2010 Attorney General’s Report, supra note 6, at 32-33.

Id.; Carr, supra note 158, at 190-91. Unlike their adult counterparts, human trafficking victims under the age of eighteen are not required to cooperate with law enforcement officials in order to obtain a T-Visa. Id. at 202.
Not all foreign trafficking victims are eligible for the full range of TVPA protections. Several categories of victims do not qualify. The first category of ineligible victims includes adults who fail to demonstrate that they labored under “force, fraud or coercion.” If these victims fail to qualify for T-Visas because they are unable to meet the “severe forms of trafficking” standard, they may apply for U-Visas, which are available to some crime victims, or S-Visas, which allow them to remain in the country because they possess reliable information on criminal organizations. However, if they do not meet these visa qualifications, they risk deportation. This standard, in theory and practice, has been criticized by NGOs and scholars.

The second category of ineligible victims consists of people who agree to work in the commercial sex trade or in other illegal markets. However, not all people who agree to engage in illicit work abroad fully appreciate the reality of their living conditions or work experience at the time they acquiesce. Some live a slave-like existence and work in conditions they would not have agreed to had they known what awaited them. For this reason, some scholars and feminists have argued that those who enter the United States willingly to work in the commercial sex trade should qualify for benefits, provided there is indicium of coercion present.

---

161 22 U.S.C. § 7102(8) (defining “severe forms of trafficking,” to include exploited labor by “force, fraud, or coercion”); § 7105(b)(1)(A) (offering protections to victims who meet the “severe form of trafficking” definition).
164 See e.g., 2012 TIP Report, supra note 3, at 362 (stating that NGOs who work with foreign victims complain that far fewer immigration protections are offered than the number of trafficking victims identified in the United States each year); Nam, supra note 163, at 1685-87 (complaining, among other things, that prosecutors must refer trafficking victims to immigration officials to start the process of applying for protections and due to prosecutorial bias on behalf of the Department of Justice, an inordinate number of sex trafficking victims make up the referrals).
165 Rieger, supra note 28, at 248-49; Jones, supra note 130, at 500 (recognizing the difference between agreeing to migrate illegally and consenting to perform illegal work).
166 See e.g., Rieger, supra note 28, at 248-49.
The third category of ineligible victims are those who refuse to cooperate with law enforcement officials investigating their case or who refuse to aid in the prosecution of their traffickers. Fear of retaliation and trauma may be reasons why victims choose to or are unable to aid law enforcement officials. Regardless, the TVPA treats the cooperative foreign victim “not as a criminal, but as a victim worthy of services and enhanced benefits.” As one scholar noted, “[t]his approach recognizes that victims who assist in the subsequent prosecution of their captors deserve the full support of the government.” The fact that the TVPA excludes many “uncooperative” victims, who would otherwise qualify for benefits, has been widely criticized.

There are other criticisms when it comes to protecting foreign victims. The processes of getting certified to receive protection and obtaining residency are difficult and do not follow a humanitarian or victim-centered approach. Sometimes the goal of protecting foreign victims clashes with the law-enforcement goal of prosecuting traffickers. Fewer victims qualify to receive protections than those who apply. Finally, advocates complain that victims escape poverty in their own countries only to be trapped in minimum wage jobs here, which produces poverty.

---

167 22 U.S.C. § 7105(b)(1)(E). Individuals who are unable to cooperate due to psychological trauma are excused from cooperating with law enforcement yet may still remain in the United States. Id. at § 7105(b)(1)(E)(i).
168 Rieger, supra note 28, at 248-49 (the fear of retaliation may be the largest barrier to cooperation with law enforcement); Nam, supra note 163, at 1683 (suggesting that the trauma of enduring the trafficker’s trial, inability particularly traumatized victims have in assisting investigators, and the complexity of the victim certification process are all barriers to victim cooperation with law enforcement).
169 Tiefenbrun, supra note 94, at 335.
171 See e.g., Patel, supra note 26, at 823 (“Conditioning protection on the victim’s cooperation with investigation and prosecution efforts forces them to work with law enforcement, which they may or may not be ready to do.”); Rieger, supra note 28, at 250-51 (complaining, among other things, about the TVPA’s basing benefits upon a victim’s cooperation with law enforcement).
174 Id. at 351.
“new members of the working poor.”175 This article does not seek to minimize the many challenges and hurdles that foreign victims face in qualifying and receiving protections, but the United States is “benevolent” to foreign victims who qualify for protections.176 The same generosity is not extended to American citizens who find themselves victimized in their own country.

D. American Trafficking Victims’ Protections

Though the United States has offered an admirable array of protections to international victims who qualify to receive them, it has never made domestic human trafficking protections a legal or policy priority. This may be due to the fact that domestic trafficking was scarcely considered by Congress in the drafting of the TVPA.177

Before the Act’s enactment, Senators focused on the international brand of trafficking, most often sex trafficking, and its effects bleeding onto America soil.178 Senator Sam Brownback stated “[V]ictims are routinely forced against their will into the sex trade, transported across international borders, and left defenseless in a foreign country.”179 Senator Paul Wellstone stated, when he introduced the Act, trafficked person were “brought into the United States” by force, that some of these individuals came from collapsed political regimes in the former Soviet Union, and that corrupt officials overseas were complicit in the international

175 Brennan, supra note 32, at 1600.
176 Birckhead, supra note 8, at 1115.
177 When the TVPA was reauthorized five years later, Congress did hear from an American citizen human trafficking victim. Exploiting Americans on American Soil: Domestic Trafficking Exposed: Hearing on H.R. 972 Before the Commission on Security and Cooperation in Europe, 109th Cong. 22-23 (2005).
178 See e.g., DESTEFANO, supra note 4, at 32-41 (Congress was concerned about people being trafficked into the United States); Chacon, supra note 41, at 3029-30 nn. 311-12 (recounting some of the many characterizations of sex trafficking scenarios on the Senate floor). Some have suggested the Act protects the “‘iconic victim,’ … described and perceived to be a female of European descent, trafficked for sex, waiting helplessly for law enforcement officials to rescue her.” Jones, supra note 16, at 1143.
trafficking problem.\textsuperscript{180} While all of these statements are true, they indicate that Congress’ focus was on international victims, not citizen victims. Indeed, few remarks suggest legislators recognized that victims could be Americans.\textsuperscript{181}

Not only was international trafficking the primary concern in Congressional hearings, but it took center stage in the drafting of the TVPA as well.\textsuperscript{182} Congress focused on the idea that foreign women were being kidnapped to be sexual slaves in the United States and abroad.\textsuperscript{183} In the first few subsections of the TVPA, which detail the Act’s purpose and Congressional findings, phrases like “throughout the world,” “international sex trade,” and “transnational crime” appear, making it clear that Congress was attempting to protect the international sex slave.\textsuperscript{184} This international focus has adversely affected adult male victims of human trafficking\textsuperscript{185} and labor trafficking victims,\textsuperscript{186} but it has also harmed adolescent citizen victims.\textsuperscript{187}

While the Act’s definition of human trafficking victim has never expressly excluded domestic victims, American victims were and still are, in both policy and practice, an afterthought. In fact, American citizen victims were largely ignored until the TVPA was reauthorized in 2005.\textsuperscript{188} As a result, “the bulk of [the United States’] attention and resources has

\textsuperscript{180} 146 CONG. REC. S2414 (daily ed. April 12, 2000) (statement of Sen. Wellstone).
\textsuperscript{181} Birckhead, supra note 8, at 1079 (highlighting two comments made – one by New York Representative Christopher Smith and the other by Minnesota Congressman Paul Wellstone – about domestic trafficking victims).
\textsuperscript{182} See e.g., 22 U.S.C. § 7101(b)(1) (emphasizing human trafficking as a global phenomenon crossing international borders that results in approximately 50,000 people being trafficked into the United States annually); § 7101(b)(5) (stating that traffickers often transport victims from their home countries to foreign countries); § 7101(b)(20) (“victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked”).
\textsuperscript{183} DE Stefano, supra note 4, at 38.
\textsuperscript{184} 22 U.S.C. § 7101(a)(1)-(3).
\textsuperscript{185} Jones, supra note 16, at 1143 (asserting that the neglect of boys and men in the human trafficking discussion and battle have had devastating effects on male victims).
\textsuperscript{186} See e.g., Cavalieri, supra note 16, at 502 (arguing that though American trafficking laws are neutral towards human trafficking in the agricultural sector, law enforcement has often overlooked victims in this area).
\textsuperscript{187} See infra notes 267-70 and accompanying text.
\textsuperscript{188} Health & Human Services Literature Review, supra note 8, at 3 (“While most of the anti-trafficking efforts within the United States have historically focused on trafficking foreign nationals into the country, the 2005
been directed at the international sex trafficking of adults and children, rather than the growing numbers of preteens and adolescents who are prostituted within its borders.”¹⁸⁹ TVPA-funded protections are not funded by the federal government for American victims. Moreover, federal grants that provide protections to domestic victims of trafficking are few in number as are grants and donations to NGOs serving this population. State protections are also finite. The following sections will examine the dearth of protections and funding available to domestic trafficking victims’ protections.

1. Exclusion from TVPA-Funded Protections

In his 2010 annual Congressional human trafficking report, United States Attorney General Eric Holder, who oversees the Department of Justice, expressly excluded Americans from receiving TVPA-financed protections.¹⁹⁰ He stated that “[t]he funds provided under the TVPA by the federal government for direct services to victims are dedicated to assist non-U.S. citizen victims and may not be used to assist U.S. citizen victims.”¹⁹¹ Attorney General Holder stated instead that domestic trafficking victims might legally qualify for other general, publically available crime victim benefits or other programs.¹⁹² This sentiment is echoed in Congress as well. Since it first legally recognized that Americans were being trafficked in 2005, Congress

---

¹⁹⁰ 2010 Attorney General’s Report, supra note 6, at 28.
¹⁹¹ Id.
¹⁹² Id.
has limited TVPA protection to international victims. Promised allocations directed at services for domestic victims in subsequent reauthorizations of the Act have not materialized.

Recent attempts at passing legislation to extend TVPA-style protections to domestic victims failed twice – once in 2010 and again in 2011 – in Congress. Because federal legislation focuses so heavily on foreign victims, service providers have reported “service gaps and questions about the identity of U.S. citizen victims,” which results in difficulties securing social services for domestic victims. Paradoxically, the United States is both the global watchdog on trafficking and yet, fails to fund protections to its own citizens.

As a Nation, we have graded and rated other countries on how they address trafficking within their borders and yet have effectively ignored the sale of our own children within our own borders. We have created a dichotomy of acceptable and unacceptable victims, wherein Katya from the Ukraine will be seen as a real victim and provided with services and support, but Keisha from the Bronx will be seen as a “willing participant,” someone who is out there because she “likes it” and who is criminalized and thrown in detention or jail.

Not only do domestic victims have problems receiving protections funded by the TVPA, but services funded through federal grants are limited to domestic victims living in just a few areas of the country.

2. Limitations on Other Federal Protections of Domestic Victims

---

194 *Domestic Sex Trafficking Hearing, supra* note 54, at 16 (statement of Rachel Lloyd, Executive Director and Founder, Girls Educational & Mentoring Services, New York, New York).
195 GovTrack.Us, *H.R. 5575 (111th): Domestic Minor Sex Trafficking Deterrence and Victims Support Act of 2010* (last visited August 10, 2012), available at http://www.govtrack.us/congress/bills/111/hr5575 (Act designed to “establish a grant program to benefit domestic minor victims of sex trafficking” died and was referred back to the committee); *Domestic Sex Trafficking Hearing, supra* note 54, at 5 (statement of Sen. Ron Wyden) (with this Act, domestic victims would have received housing, mental and medical care, drug abuse treatment, sexual abuse counseling, food, clothing, necessities and other services); GovTrack.US, *S. 596: Domestic Minor Sex Trafficking Deterrence and Victims Support Act of 2011*, available at http://www.govtrack.us/congress/bills/112/s596 (“A bill to establish a grant program to benefit victims of sex trafficking.”).
Due to the TVPA’s funding exclusion, if domestic victims are to receive federal protections,\(^\text{198}\) they must qualify for a program that is supported by federal grants. However, the United States protects only a handful of victims with temporary grants or other funding measures. The 2012 TIP Report stated that Department of Justice grants assisted merely 107 minor victims in 2010 and 2011 combined.\(^\text{199}\) In other words, a little more than 50 victims are served by non-TVPA funded federal grants. This is a fraction of the number of foreign victims assisted during a similar period\(^\text{200}\) and a small percentage of the number of youth arrested for prostitution each year in America.\(^\text{201}\)

It took years for the federal government to start assisting American victims through federal grants. After spending three years determining what services domestic victims needed,\(^\text{202}\) the federal government awarded a handful of American cities grants that were used to assist both foreign and domestic victims.\(^\text{203}\) In 2010, Attorney General Holder reported to Congress for the first time that a total of seven cities in the United States received federal grants targeted at prosecuting traffickers and protecting and providing services to American victims.\(^\text{204}\)

Federal grants are often awarded to service providers that are located in large, metropolitan areas like New York City, Chicago, and Houston.\(^\text{205}\) This is a problem for American victims living outside the geographical areas served by these grants. Though urban

\(^{198}\) Global Monitoring Report, supra note 131, at 12 (“While much attention has been paid to the problem by federal law enforcement, in general less effort has been invested by the Government in fighting within the country.”)

\(^{199}\) 2012 TIP Report, supra note 3, at 363.

\(^{200}\) Issues for Congress, supra note 149, at 27 (617 foreign victims received T-Visas in fiscal years 2009 and 2010). The number of foreign victims who received services from 2003 to 2010 was 3,221. 2010 Attorney General’s Report, supra note 6, at 42.

\(^{201}\) 2012 TIP Report, supra note 3, at 363 (according to FBI reports, states reported there were 654 youth arrested for prostitution in 2010 and 791 youth arrested for prostitution nationwide in 2009).


\(^{203}\) 2010 Attorney General’s Report, supra note 6, at 42.

\(^{204}\) Id. at 42-44 (cities include New York City, Chicago, Houston, San Francisco, Anaheim, Seattle, and Portland).

\(^{205}\) Id.
areas may have larger populations of sexually exploited minors living in working in them, the federally-funded programs available in those cities are unable to provide services to all of the victims who qualify for them. Mid-sized and smaller cities in the United States are often left without any federally-funded grants despite the fact that sexual exploitation occurs there too. This practice contradicts the TVPA directive that other nations make services available through mobile service centers that “extend beyond large cities.”

Other federally-funded protections available to domestic victims are shared with foreign victims and are in short supply. The United States has served both foreign and domestic human trafficking victims through special federal prosecution task forces. Three United States Attorney’s Offices in Chicago, Houston, and Anaheim received grants from 2010 to 2012 that allowed them to investigate and prosecute human trafficking cases. These offices work with local law enforcement agencies and NGOs to rescue and protect victims. Six victim service organizations working with these task forces received a total of $2,812,330 in grants to provide protections to both foreign and domestic trafficking victims. The protections and services provided to domestic victims by these task force grants equal those offered to international

---

206 Annitto, supra note 38, at 53.
207 See e.g., CNN, Rescuing Child Sex Slaves in Minnesota (June 19, 2012), available at http://www.cnn.com/video/?hpt=hp_t2#/video/us/2012/06/19/cfp-feyerick-us-midwest-trafficking.cnn (stating that Midwestern girls are trafficked out of Minnesota on nearby interstates); Micheel, supra note 9, at 4 (identifying a disparity in resources between urban and rural areas in Washington and concluding that “there is a limited understanding of how this problem is manifesting in rural areas, as almost all of the trainings and materials have approached the topic from an urban context”).
209 See e.g., United States Attorney’s Office, South District of Texas, Houston’s Success Story: Working Together for Human Trafficking Victims, 17-12 (January 17, 2012) [hereinafter Houston’s Success Story] (stating that from 2004 to 2011, 192 international victims of human trafficking were identified, 187 domestic victims were rescued, and several human traffickers of both foreign and domestic victims were prosecuted).
210 2010 Attorney General’s Report, supra note 6, at 42.
211 Id.
212 Id.
victims, but there are currently only three task force units in the nation. These cities with federal task forces may be the only areas in the nation where domestic and international victims are given equal protections and services. Unfortunately, their grants expire in 2012. Whether the federal government will renew these grants remains unclear.

Other federal programs’ protections to American citizens are more ambiguous. For example, the FBI’s Innocence Lost National Initiative, has rescued 2,100 children from sexual exploitation since it began in 2003. The FBI works with local law enforcement agencies to rescue victims and convict traffickers, but it is unclear whether victims receive TVPA-style services and protections through the Initiative. During congressional hearings, Ernie Allen, the President & CEO of the National Center for Missing and Exploited Children stated that “[i]n some communities when victims were rescued as a result of Innocence Lost operations, the choices were stark: either send them to juvenile detention facilities or release them with no services or support.” Allen’s statement demonstrates that the goal of the Innocence Lost Initiative is to rescue minors and prosecute traffickers, not to protect and serve victims after their

---

213 The United States Attorney’s Office for the Southern District of Texas, with offices located in Houston, is one of the three federally-funded task force units designed to combat both foreign and domestic human trafficking. The task force, called the Human Trafficking Rescue Alliance (HTRA), enlists three NGOs as its “core training group” and 14 service providers in an effort to provide comprehensive services to domestic trafficking victims. Human Trafficking Rescue Alliance – HTRA, Southern District of Texas, 2 (June 2012) (on file with author); Houston’s Success Story, supra note 209, at 17-12.

214 2010 Attorney General’s Report, supra note 6, at 42.

215 Houston’s Success Story, supra note 209, at 11-12 (explaining that the future of federal task force funding that began in 2004 and continued until 2012 is uncertain).


217 Id. U.S. Attorney Beth Williams stated before Congress that the Initiative “employ[s] a multi-faceted, victim-centered strategy designed to identify … child victims, provide them the services they need, and … prosecute the offenders.” Domestic Sex Trafficking Hearing, supra note 54, at 76-78 (statement of U.S. Attorney Beth Williams, Western District of Missouri). However, while her testimony was detailed about the value of assets seized in sting operations, how many defendants were arrested, how many victims were rescued, and how many law enforcement agencies participated in the sting, she was vague about what, if any, protections were given to the victims after they were rescued. Id.

218 Domestic Sex Trafficking Hearing, supra note 54, at 44 (statement of Ernie Allen, President & CEO, The National Center for Missing and Exploited Children).
Where there are no local services for domestic victims, there are no post-rescue protections available.

A few federal grants have been earmarked for domestic victims only. Beginning in 2009, the Department of Justice’s Office for Victims of Crime began a pilot program in New York City, Chicago, and San Francisco designed to serve American human trafficking victims. The three programs offer a variety of services to domestic human trafficking victims, including “intensive case management; safety planning; crisis intervention; medical and dental care; mental health treatment; transportation; life skills training; and educational assistance.” However, the number of victims served was small; a reported 45 youth were served by these grants. Moreover, these protections do not equal those given to foreign victims through the TVPA’s appropriations.

Recession stimulus funds have also been used to assist American victims of human trafficking. Pursuant to the American Recovery and Reinvestment Act of 2009 (a stimulus bill), the Department of Justice’s Office for Victims of Crime gave funds to local government organizations and NGOs working with domestic victims in three cities: New York City, Seattle, and Portland. The funds were used in a variety of ways. The New York grant was used to investigate and develop a program for the rehabilitation of teenage victims of sexual slavery that

---

219 In the same way, the TVPA has been criticized for its overemphasis on prosecution and its under emphasis on protection. Chacon, supra note 41, at 3024 (“Yet another reason the TVPA has been such an ineffective tool in aiding trafficking victims is that it overemphasizes prosecution, while underemphasizing protection and prevention.”).

220 2010 Attorney General’s Report, supra note 6, at 42.

221 Id. at 42-43. The pilot programs also conduct research into domestic trafficking, educate the community about the prevalence of human trafficking, and attempt to collaborate with local agencies working with youths to determine best practices in treating domestic victims. Id. at 43.

222 Id. at 43.


224 2010 Attorney General’s Report, supra note 6, at 43-44.
could be replicated elsewhere.\(^{225}\) The Seattle grant funded a program to help victims access existing benefits.\(^{226}\) And the Portland grant was used to provide services to victims that included “crisis intervention, safe and secure housing, age-appropriate victim advocacy during the criminal justice process, physical/wellness treatment, mental health treatment, education, child protection, and other support services.”\(^{227}\) While all of these programs appear to be beneficial, only the Portland grant was used to create benefits for American victims that may not have already existed.

The federal government’s approach of awarding grants to only a few cities in the nation fails to deliver uniform protection to all victims. Federally-funded protections are sporadically offered. In a 2004 congressional hearing, Jessica, a former victim of sexual exploitation remarked that few cities are equipped to serve domestic victims: "Basically, there is a location in Chicago; there is a location in New York; there's one in Minnesota and California, but what about Colorado? What about Arkansas? What about Florida? What about New Mexico?"\(^{228}\)

Not having services available to more victims is a problem caused in part by a lack of funding for domestic victims’ services. Even when the United States has provided greater federal funds towards domestic anti-trafficking efforts, the dollars spent on domestic trafficking pale in comparison to those offered to international causes and foreign victims.

The United States has favored funding for the international anti-trafficking campaign whilst underfunding the domestic anti-trafficking campaign. The United States pledged a maximum of $8 million dollars in grants per year from 2008 to 2011 to both governmental and

\(^{225}\) Id.
\(^{226}\) Id. at 44.
\(^{227}\) Id.
\(^{228}\) Lobe, supra note 44.
nongovernmental organizations that assisted citizen and permanent resident human trafficking victims.\textsuperscript{229} In comparison, it has set aside hundreds of millions of dollars to fund the TVPA\textsuperscript{230} and more than half a billion dollars to other countries with human trafficking problems.\textsuperscript{231} In 2010 alone, the Department of State spent nearly half a million dollars to reunite eligible family members with international victims of trafficking living in the United States.\textsuperscript{232} Meanwhile, several sections of the TVPA and subsequent reauthorizations of the Act meant to fund domestic anti-trafficking efforts are still unfunded.\textsuperscript{233} These unsubsidized sections included provisions to serve and protect domestic victims.\textsuperscript{234}

In the 2012 TIP Report, the United States recognized that because of the structure of federal funding and available grants, it has not been able to serve all victims of human trafficking, it has treated victims disparately, and it has failed to provide “comprehensive care options for all types of victims.”\textsuperscript{235} The failure of the federal government to provide services to domestic trafficking victims has left many of them without the types of protections that their international counterparts receive. In fact, in the past year, funding for victims services at the federal level has decreased.\textsuperscript{236} Leaving this responsibility to NGOs serving domestic victims of trafficking, however, is not a viable option.

3. \textit{Limitations on NGO Protections of Domestic Victims}

\begin{itemize}
\item \textsuperscript{229} 42 U.S.C. § 14044a(a)-(d) (2008).
\item \textsuperscript{231} Chuang, \textit{supra} note 35, at 1723-24.
\item \textsuperscript{232} \textit{2010 Attorney General’s Report, supra} note 6, at 47.
\item \textsuperscript{233} Johnson, \textit{supra} note 8, at 694-95.
\item \textsuperscript{234} \textit{Id}.
\item \textsuperscript{235} \textit{2012 TIP Report, supra} note 3, at 363.
\item \textsuperscript{236} \textit{Id}. at 362.
\end{itemize}
While the bulk of NGO grants appear to favor organizations working with international victims, some benefit domestic victims. The federal government began offering limited protections to domestic victims in 2009 by granting funds to NGOs and state and local law enforcement agencies. These protections came nine years after the United States offered protections to foreign victims of human trafficking.

Before these grants were made available, a small number of NGOs nationwide served domestic victims of human trafficking without the help of federal assistance. In 2007, a federal study reported that the only programs rendering TVPA-like protections to domestic victims were offered through NGOs. Four programs located in four American cities – New York City, Atlanta, San Francisco, and Van Nuys (California) – offered 45 domestic trafficking victims housing and services. While programs targeting this population may exist in greater numbers now than five years ago, no more than 100 placements for domestic victims are currently offered by nonprofit organizations. If you add these victims to the 50 victims helped by the federal government each year, approximately 150 American victims of human trafficking receive federal and NGO protections annually. In contrast, the federal government served 707

---

237 See e.g., Chuang, supra note 35, at 1715 (four million dollars given to International Justice Mission, a faith-based organization engaged in anti-trafficking efforts abroad); Houston’s Success Story, supra note 209, at 18-19 (listing a total of 45 service providers receiving federal grants with only 14 of those serving domestic victims of trafficking).
238 2010 Attorney General’s Report, supra note 6, at 42-44 (stimulus and grant money supporting programs for domestic trafficking began in 2009).
240 Id.
241 Birckhead, supra note 8, at 1110; Domestic Sex Trafficking Hearing, supra note 54, at 4 (statement of Sen. Ron Wyden) (only 70 placements available nationwide in 2010).
242 2012 TIP Report, supra note 3, at 363 (stating that a mere 107 domestic trafficking victims were assisted in fiscal years 2010 and 2011 combined).
international victims in the United States last year alone, which actually was a thirty percent decrease from international victims served the previous year.\footnote{Id. at 364.}

NGO assistance to domestic victims is limited in additional ways. First, though some NGOs are comprehensive in the protections they offer Americans, many are limited in the number of victims they can serve or the quantity of protections they can offer due to inadequate funding. NGOs serving domestic victims lack donations and resources to make up the federal assistance deficit.

[F]ew, if any, NGOs [are] able to assist victims outside of the parameters of DOJ funding: they cannot hire advocates and service providers because there are no funds to assist them…. The result is that only a very narrow group of trafficking victims is ever served: those identified and referred by the federal government.\footnote{Haynes, supra note 173, at 346–47.}

Second, some NGOs decide that the hurdles they face in obtaining grant assistance are too great and therefore make a conscious choice not to apply for them.\footnote{Johnson, supra note 8, at 646.} Third, NGOs that engage in speech that contradicts federal policies and faith-based NGOs providing services to trafficking victims have expressed fears that grants might disappear based upon attacks made by political adversaries.\footnote{See e.g., Janet Halley, et al., From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism, 29 Harv. J. L. & Gender 335, 370-71 (2006) (“NGOs perceived to advocate the legalization of sex work have been visited with swift sanctions through the loss of international funding.”); Nathan Godsey, The Next Step: Why Non-Governmental Organizations Must Take a Growing Role in the New Global Anti-Trafficking Framework, 8 Regent J. Intl’l L. 27, 54 (2011) (expressing concern over the continued funding offered to faith-based NGOs serving trafficking victims in light of recent controversy over federal grants to such organizations).} As a result, NGOs are not currently in a position to bridge the service gap to domestic victims left by limited federal grants. Nor should they be, given the fact that the
United States, through the TIP Report, holds governments, not NGOs, responsible for protecting human trafficking victims.  

4. Limitations on State Protections of Domestic Victims

Due to a lack of federal funds and the inability of NGOs to provide protections without grants, states, by default, are expected to provide the bulk of protections for domestic trafficking victims. However, most state governments either do not make domestic victims’ protections a priority or are otherwise unable or unwilling to serve them. States’ inability to protect domestic victims begins with the failure to identify sexually exploited minors as victims in need of protection and the inability to offer the protections and services this population needs.

a. Failure to Identify Trafficking Victims

In order to obtain the crime victim benefits that Attorney General Holder suggested domestic victims may qualify to receive, citizen victims must be viewed as crime victims worthy of receiving protection. Before a person can qualify as a victim of human trafficking, she must be identified as one. Identification is a particularly hard task for local law enforcement officers for several reasons.

---

247 See e.g., 2011 TIP Report, supra note 100, at 131-32 (sanctioning the Democratic Republic of the Congo for the fact that NGOs, not the Republic’s government, provided the bulk of protections to victims).

248 Domestic Sex Trafficking Hearing, supra note 54, at 2 (statement of Sen. Richard Durbin, Chairman, Subcomm. on Human Rights and the Law) (asserting that state governments are on the “front line” and thus need to take a more aggressive approach to domestic trafficking).

249 2012 TIP Report, supra note 3, at 363 (“Victim protection frameworks and principles were not codified in most state laws.”); Domestic Sex Trafficking Hearing, supra note 54, at 16 (statement of Rachel Lloyd, Executive Director and Founder, Girls Educational & Mentoring Services, New York, New York) (few states have the resources necessary to serve domestic victims).

250 2010 Attorney General’s Report, supra note 6, at 28.
First, victims are often unable to identify themselves as modern slaves. Human trafficking is an extremely unusual category of major crime in which the victims will not report to law enforcement what is being perpetrated against them. As a result, human trafficking defies traditional law enforcement methods [of identifying victims]. Indeed, many domestic victims are young, fearful, and conditioned to be loyal to their traffickers through abuse and mistreatment. They do not recognize that they are being exploited. Moreover, legislation has shaped how this population identifies itself. One federal study reported that legal definitions and interpretations of laws aid foreign victims in identifying themselves as victims of human trafficking yet cause domestic victims to view themselves as criminals. As a result, it is crucial that individuals who come into contact with this population be trained to identify them.

Though mandatory identification training came later to state and local law enforcement agents than federal agents, the TVPA mandates that both federal and local authorities be trained on human trafficking victim identification. However, a study funded by the United States Department of Health and Human Services determined that the foremost challenge in serving domestic victims was identifying them. The study found there was a “lack of standard

---

251 While this is true for both international and domestic victims, the situation is particularly problematic for domestic victims because the public’s attention has focused so heavily on international victims of human trafficking. As a result, domestic victims, law enforcement, and service providers sometimes believe only foreign persons can be human trafficking victims.

252 Wagner, supra note 37, at 4. Steve Wagner is the former Director of the Human Trafficking Program at the U.S. Department of Health and Human Services. Id.

253 Brittle, supra note 34, at 1345, 1350.

254 Birckhead, supra note 8, at 1057-58.


256 Id.

257 Heinrich, supra note 17, at 2 (“NGOs are replete with examples of missed opportunities for victim identification in emergency rooms, immigration detention centers, at border entry points, and during labor inspections.”).

258 Jones, supra note 16, at 1152, 1185; Tiefenbrun, supra note 79, at 260 (federal identification training extends to numerous federal agencies and law enforcement personnel).


protocol” among law enforcement officials for identifying this population. Law enforcement agencies’ failure to identify victims is still a problem in 2012. Because much has already been written by academics on the failure of law enforcement officers to identify trafficking victims, this section will focus more specifically on the problem misidentification presents in guarantying protections to domestic victims.

Not only is it imperative that local and state police agencies be able to identify exploited Americans as modern slaves, but it is also vital that service providers recognize them as victims of human trafficking. Service providers may be better equipped at identifying victims and getting them the protections they need, but they, like law enforcement officers, lack training and standard procedures for identifying human trafficking victims. Recently, the federal government has begun to provide identification training to non-law enforcement personnel.

Just as biases and misconceptions exist in law enforcement regarding sexually exploited minors, they also exist with service providers. For example, one federal study found that “child protective services workers, and shelter providers believed that [sexually exploited minors] had ‘chosen’ to become involved in prostitution and therefore should be held accountable for their ‘criminal’ actions.” These same service providers expressed a belief that

---

261 Id.
262 2012 TIP Report, supra note 3, at 363.
263 See e.g., Rieger, supra note 28, at 247 (“Agencies need to implement regular, systematic programs to ensure that officials both understand the definition of sex trafficking and are faithfully applying that definition to all potential victims with whom they come into contact.”); Jones, supra note 16, at 1152, 1185-86 (describing first responders’ identification of victims as “vital,” especially when the victim is not the iconic victim).
264 Patel, supra note 26, at 827.
265 Micheel et al., supra note 9, at 1 (over half of surveyed service providers in Washington had not developed any protocols for identifying trafficked youth and only 34 percent of them knew that trafficked youth were seeking services from their agencies).
266 2012 TIP Report, supra note 3, at 363 (in 2012, the federal government offered identification training to local law enforcement agencies, federal agencies, NGOs, and schools).
267 Jones, supra note 16, at 1152, 1166-67 (stating that male victims are often not perceived by law enforcement officers as trafficking victims).
268 Health & Human Services Residential Facilities Study, supra note 239, at 2.
human trafficking only happens to foreigners and immigrants.²⁶⁹ This bias had a dual affect: it resulted in a failure to provide services and protections to domestic victims and it affected the victims’ own ability to recognize their need for protection.²⁷⁰ When domestic victims are not viewed as victims, they are treated like criminals.

b. Arresting and Prosecuting American Trafficking Victims

The TVPA mandates that human trafficking victims “shall not be detained in facilities inappropriate to their status as crime victims.”²⁷¹ The federal government asserts they should not be fined, jailed, or punished for criminal acts they committed at the time they were enslaved.²⁷² This non-arrest federal policy is in accord with international human rights principles²⁷³ and the Palermo Protocol.²⁷⁴ Protection from arrest and prosecution may be considered the most important protection.²⁷⁵ However, the most recent TIP Report suggests that the TVPA’s mandate to treat trafficked persons like victims of crime may not apply to American victims of human trafficking.²⁷⁶

²⁶⁹ Id.  But see Mischeel et al., supra note 9, at 5 (even though only a third of service providers knew that trafficked minors were accessing services they provided, some programs were “adaptive and innovative” in providing services “despite existing resource and knowledge gaps”).
²⁷⁰ Health & Human Services Residential Facilities Study, supra note 239, at 2.
²⁷² 2012 TIP Report, supra note 3, at 363.
²⁷⁴ Britta S. Loftus, Coordinating U.S. Law on Immigration and Human Trafficking: Lifting the Lamp to Victims, 43 COLUM. HUM. RTS. L. REV. 143, 186 (2011) (tracing this principle to the hearings that preceded the Palermo Protocol). Though the Palermo Protocol never specifically grants immunity from prosecution, it does imply in various provisions that trafficked persons are to be treated like victims, not criminals. Alice Edwards, Traffic in Human Beings: At the Intersection of Criminal Justice, Human Rights, Asylum/Migration and Labor, 36 DENV. J. INT’L L. & POL’Y 9, 22 (2007). The Palermo Protocol also encourages states to adopt its provisions, but adoption is discretionary. Id. at 20-21.
²⁷⁵ Garber, supra note 61, at 196 (“[T]rafficking legislation that exclusively criminalizes trafficking activities may effectively ignore the problem of protecting victims’ human rights.”).
²⁷⁶ 2012 TIP Report, supra note 3, at 364.
Arresting sexually exploited youth for prostitution has been a problem for years. Arrests for juvenile prostitution significantly increased throughout the late 1990s and earlier part of the 2000s. In 2008, approximately 1,500 American minors were prosecuted for prostitution or sexually-related offenses in the United States. The Internet is partially to blame for the increase in juvenile sexual exploitation; many teens are bought and sold online. Some media outlets have profited by the tens of millions from this explosion in online sexual exploitation even after they were made aware that minors were among the individuals marketed for sex on their website.

Most American victims are identified as trafficking victims through their arrest. In recent years, the FBI reported that between 650 and 1500 youths were arrested for prostitution or other sexually-related criminal offenses. The fact that minors are still being arrested for prostitution is disturbing, given the fact that the TVPA protects prostituted minors, unlike adult human trafficking victims, even if they have not been coerced, forced, or defrauded into sexual
exploitation. Nevertheless, finding a case where force or coercion does not exist in the trafficking of minors is rare.

America has had difficulty responding to juvenile sex trafficking appropriately. The federal government has reproached states for non-uniform responses to prosecuting American victims but it also has been inconsistent in its own views about charging minors with prostitution. The federal government and most state governments are unwilling to decriminalize the actions of sexually exploited minors. As a result, these children are viewed as criminals by those in the justice system and society as a whole. Labeled as criminals or delinquents, they are less likely to be treated like victims of crime in need of protection.

---

282 22 U.S.C. § 7102(8)(a) (excluding victims of sexual exploitation who are younger than 18 years of age from the “force, fraud, and coercion” element of the definition of “severe form of human trafficking”).
283 Kristof, supra note 79 (A New York City prosecutor stated that the majority of cases involving the sexual exploitation of minors involve coercion by “pretty vicious pimps.”).
284 Domestic Sex Trafficking Hearing, supra note 54, at 2 (statement of Sen. Richard Durbin, Chairman, Subcomm. on Human Rights and the Law) (“We have created a legal dichotomy in America in which the Federal Government views prostituted children as victims, yet most States treat them as criminals.”); 2012 TIP Report, supra note 3, at 364 (“[O]nly eight states had passed laws that prevent charging children with prostitution, although under the TVPA minors induced to perform commercial sex acts regardless of force, fraud, or coercion are considered victims of trafficking.”).
285 Kittling, supra note 54, at 924-25 (detailing the government’s reservations, expressed at an international anti-trafficking meeting, about decriminalizing prostitution for minors).
286 U.S. Dep’t of Justice, Office of Legal Policy, DOJ Position on H.R. 3887, 2 (2007), available at http://www.justice.gov/olp/pdf/doj-position-on-hr3887.pdf (“Pimping, pandering, and other prostitution-related offenses are reprehensible crimes. But, along with other serious crimes, they have always been prosecuted at the state or local level unless some federal interest was present. Indeed, the nation's more than 3,000 local district attorneys and 17,000 local police departments effect [sic] 100,000 prostitution arrests annually. Nothing suggests that federal intervention is necessary or would be more effective.”).
287 See e.g., In re B.W., 313 S.W.3d 818, 825 (Tex. 2010) (stating that the dissent “emphasizes B.W.’s ‘long and sad history of delinquent behavior,’ presumably suggesting that her bad behavior is indicative of her mental capacity to commit this crime.”).
288 The United States criminal justice system has historically viewed girls who engage in sex, whether consensual or nonconsensual, as delinquents in need of reformation. See generally Lisa Pasko, Damaged Daughters: The History of Girls’ Sexuality and the Juvenile Justice System, 100 J. CRIM. L. & CRIMINOLOGY 1099, 1101-02 (2010) (detailing the history of how girls’ sexuality has been viewed by the juvenile justice system).
289 But see Adelson, supra note 189, at 116 (expressing an alternative argument that “only when the juvenile justice system views prostituted children as delinquent will sufficient services flow to assist these children”).
Federal policymakers also fail to agree whether child prostitution should be
decriminalized.\textsuperscript{290} Some within the legal community have opposed legislation that would offer
greater protections to domestic victims.\textsuperscript{291} As a result, the legal framework often allows children
to be prosecuted for prostitution.\textsuperscript{292} The attitudes of their first line of defense – police officers,
judges, attorneys, social service providers – shapes the way the rest of society views them.\textsuperscript{293}
When sexually exploited children are treated like criminals, the community views them similarly. Few state governments have treated them otherwise, though several states have recently begun to pass laws recognizing trafficked minors as victims.\textsuperscript{294} The District Attorney of Chicago, Anita Alvarez, expressed growing disillusionment with the established practice of prosecuting juveniles for prostitution in a 2010 hearing before Congress:

As a career prosecutor and newly elected State’s Attorney, it has occurred to me that the traditional approach we have taken with juvenile prostitution has simply not been effective on many levels. We are not convicting pimps or Johns. Even more importantly, we are not able to effectively offer the services that these young women need to help them, keep them safe, and empower them to leave the sex trade once and for all. It seems to me that the premise of removing one child from the situation only to have another step in and fill her place is not a good one.\textsuperscript{295}

\textsuperscript{290} Birckhead, supra note 8, at 1065 n. 41 (stating that a federal administrator who serves in the Office of Juvenile Justice and Delinquency Prevention said that though child sexual exploitation is “rape,” it should not be legalized because teenagers need to be warned “that they are doing something that’s wrong.”); Kittling, supra note 54, at 913 (“America cannot make up its mind: Are juvenile girls who have sex victims or criminals? Do they need protection or prosecution? The laws surrounding this issue reflect the country’s internal strife, as the United States takes two very distinct positions with respect to juvenile prostitution.”); Adelson, supra note 189, at 119-20 (one Florida official commented that “she might consider children as young as nine or ten years old as trafficking victims, but that young women who had reached sixteen years of age were prostitutes, not victims of trafficking”); Health & Human Services Residential Facilities Study, supra note 239, at 9 (the United States has historically criminalized prostitution).

\textsuperscript{291} Annitto, supra note 38, at 47 (stating that New York’s Safe Harbor Act, which protects trafficked children from prosecution, was opposed by the District Attorneys Association of New York State).

\textsuperscript{292} Birckhead, supra note 8, at 1059.

\textsuperscript{293} See Commercial Sexual Exploitation Study, supra note 13, at 4 (definitions and labels assigned to domestic victims shaped the way prosecutors viewed them, with federal prosecutors believing that foreign victims of human trafficking were victims whereas domestic victims were prostitutes).

\textsuperscript{294} See infra notes 345-36 and accompanying text.

\textsuperscript{295} Domestic Sex Trafficking Hearing, supra note 54, at 12-13 (statement of Anita Alvarez, State’s Attorney, Cook County, Chicago, Illinois).
Not all elected district attorneys feel the same way as Alvarez. States are reluctant to recognize the TVPA’s anti-incarceration right granted to all victims of human trafficking. Law enforcement groups around the country have insisted that the federal government should not obstruct their enforcement of prostitution laws. States have asserted that, according to the United States Constitution, they should be in charge of regulating prostitution laws without interference or restrictions from the United States government. “Unfortunately, there are substantial inconsistencies between victim-centered federal policies on the one hand, and prostitute-targeted local enforcement practices on the other.”

Arrest and prosecution have sometimes been used by States to justify protection for domestic victims. Judges have stated that they must send domestic trafficking victims to juvenile detention centers because treatment alternatives in the community do not exist. Others rationalize the incarceration-for-rehabilitation ideology by stating that without the threat of jail, some American victims will refuse protections offered by the State. This argument has been rejected by scholars and at least one court.

In In Re B.W., the Texas Supreme Court held that a minor cannot legally consent to sex and thus cannot be charged with prostitution. In response to the argument that decriminalizing prostitution for minors would result in the complete inability to provide protections, the Court

---

296 Heiges, supra note 133, at 455.
297 Id.
298 Id. at 440.
299 Birckhead, supra note 8, at 1059 (some officers prosecute minors in an effort to help them stay off the streets).
300 Annitto, supra note 38, at 65.
301 See e.g., In re B.W., 313 S.W.3d 818, 825 (Tex. 2010) (“The dissent suggests that our decision bars the State from providing treatment, confinement, probation, counseling, or any other rehabilitation, implying that the juvenile justice system is the only portal to such services for [domestic trafficking victims]. That is simply not true.”).
302 See e.g., Birckhead, supra note 8, at 1082-83 (asserting that this argument is not used on victims of other crimes, much less criminals, to justify protection).
303 B.W., 313 S.W.3d at 825.
304 Id. at 819.
stated that the juvenile justice system is not “the only portal” to protections for domestic victims.\textsuperscript{305} Incarcerating and creating criminal records for child victims on the belief that they will be forced to get help hurts victims more than it helps them.\textsuperscript{306} No one suggests jail for individuals who have had similar life experiences, like domestic violence victims, rape victims, or combat veterans with PTSD who refuse to accept assistance from government services available to them.

There are societal and personal expenses involved in arresting and prosecuting domestic victims. Arresting, prosecuting, and incarcerating victims have costs: economic costs for governments\textsuperscript{307} and personal costs for victims.\textsuperscript{308} Eighty percent of people who are arrested for prostitution are rearrested.\textsuperscript{309} Therefore, these economic and personal costs are magnified many times over. Unfortunately, “law, policy, and popular culture just wait for [trafficked minors] to live long enough to be written off as consenting adults.”\textsuperscript{310}

At the end of last year, only eight states had passed laws that prevent police officers and prosecutors from charging children with prostitution.\textsuperscript{311} Recently enacted state human trafficking laws do not help victims avoid prosecution either. Many of these laws are merely

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{305} MacKinnon, supra note 23, at 283 (suggesting that the money pimps spend on bailing out women and paying fees and fines associated with arrest make trafficking victims fall deeper into debt and saddle them with criminal records too).
\item \textsuperscript{306} The average cost of incarceration in 2008 was approximately $24,000 per year per inmate. See e.g., N.C. Aizenman, The High Cost of Incarceration, The Denver Post (February 29, 2008), available at http://www.denverpost.com/ci_8400051#ixzz21YnnkicL. This estimate does not include the costs associated with the investigation, arrest, and prosecution of individuals charged with criminal acts. Economic costs also include lost taxes, societal contributions, and human capital.
\item \textsuperscript{307} Birckhead, supra note 8, at 1186 (arresting domestic victims increases their levels of trauma and their “sense of powerlessness”); Shay-Ann M. Heiser Singh, The Predator Accountability Act: Empowering Women in Prostitution to Pursue Their Own Justice, 56 DePaul L. Rev. 1035, 1060 n. 184 (2007) (citing a study that demonstrated that women who were sexually exploited left jail with fewer or no resources for addressing problems like homelessness, abuse, drug addictions, or trauma).
\item \textsuperscript{308} Norma Hotaling et al., The Commercial Sexual Exploitation of Women and Girls: A Survivor Service Provider's Perspective, 18 Yale J.L. & Feminism 181, 184 n. 7 (2006).
\item \textsuperscript{309} MacKinnon, supra note 23, at 298-99.
\item \textsuperscript{310} 2012 TIP Report, supra note 3, at 364.
\end{itemize}
\end{footnotesize}
“‘expressive’ legislation,” designed to express the legislature’s sentiment that human trafficking is evil.\textsuperscript{312} Many anti-trafficking state laws lack funded protection provisions because though legislators have made it clear that they do not like trafficking, they are unwilling to spend any money on anti-trafficking protections.\textsuperscript{313} As a result, even though the majority of states have passed anti-trafficking legislation,\textsuperscript{314} few provisions within the various states’ legislation address the prosecution of sexually exploited minors or other available protections.\textsuperscript{315}

A recent survey of anti-trafficking legislation gave only five states a C- grade or better; thirty-five states received failing grades when it came to making victims whole.\textsuperscript{316} Though fourteen states recognize that sexually exploited children are victims of human trafficking, no state has protected minors in all age groups from being charged with prostitution.\textsuperscript{317} Only five states give trafficking victims an affirmative defense to criminal acts they were forced to commit while they were under the control of traffickers.\textsuperscript{318} And only two states explicitly mandate that victims be treated like crime victims, not like criminals.\textsuperscript{319} The study concluded that “[n]o state is adequately protecting juvenile victims of sex trafficking.”\textsuperscript{320}

\begin{itemize}
\item \textsuperscript{312} Mark Sidel, \textit{New Directions in the Struggle Against Human Trafficking}, 17 J. TRANSNAT’L L. & POL’Y 187, 201-02 (2008).
\item \textsuperscript{313} \textit{Id.}
\item \textsuperscript{315} Wagner, \textit{supra} note 37, at 2.
\item \textsuperscript{316} \textit{Id.} at 2, 5-6.
\item \textsuperscript{317} \textit{Id.} at 2. Though Texas has recognized that children under the age of 14 cannot consent to sexual intercourse and therefore cannot be charged with prostitution, older children have not yet received this protection. \textit{In re B.W.}, 313 S.W.3d 818, 826 (Tex. 2010).
\item \textsuperscript{318} Wagner, \textit{supra} note 37, at 2-3 (Oregon provides an affirmative defense to all crimes committed by victims, New Jersey allows an affirmative defense for trafficking and prostitution crimes committed by victims, Connecticut and Minnesota provide a defense for prostitution, whereas Iowa shields crimes committed under the threat of serious, imminent injury.)
\item \textsuperscript{319} \textit{Id.} at 3 (identifying Indiana and Kentucky as states that treat American slaves as victims).
\item \textsuperscript{320} \textit{Id.} at 2.
\end{itemize}
Recently, states like New York, Washington, and Illinois have tried to create statutory alternatives to incarceration for minors engaged in commercial sexual exploitation.\footnote{Smith, supra note 9, at 292-93.} These statutes approach domestic trafficking victims more humanely. Another recent legal development is that some states are enacting expungement laws to allow victims of sex trafficking to clear their criminal records of prostitution for minors, but some of these laws are not victim friendly because they are difficult to access or the burden of proof rests on the victim.\footnote{Carrie N. Baker, The Influence of International Human Trafficking on United States Prostitution Laws: The Case of Expungement Laws, 62 SYRACUSE L. REV. 171, 179-80 (2012).} Other states are enacting affirmative human trafficking defenses to prostitution, but these defenses often require victims to prove they were trafficked at the time of their arrest.\footnote{Id. at 180-81.} In sum, diversions to incarceration and new expungement and affirmative defense laws do not yet offer meaningful victim protections.

It is important for states to recognize that American victims are worthy of the TVPA’s compassionate protections.\footnote{Health & Human Services Residential Facilities Study, supra note 239, at 9.} Treating victims otherwise – arresting them for legal infractions that traffickers forced them to commit and jailing them alongside those who profited from their forced labor – fails to recognize what they have been through and what they need in order to recover from their trafficking experiences.\footnote{Heinrich, supra note 17, at 2.}

c. Inadequate Housing for American Victims

Even when trafficked youth are properly identified and protected from arrest and prosecution, they may encounter challenges in receiving housing and services.\footnote{Micheel et al., supra note 9, at 4 (service providers who are able to identify victims may have problems providing housing and services to them due in part to funding and available community resources).} Unlike foreign victims of human trafficking, American victims often have fewer short-term and long-term
housing options available to them after they have been identified. Once a foreign-born victim has been certified, he obtains the same benefits that a refugee receives. These benefits include housing and living expenses. Unaccompanied foreign child victims are placed in foster homes. Domestic victims’ housing options are much more limited.

American minors who are able to escape their traffickers and leave sexual exploitation have stated that having a place to call home is critical to a life of freedom. However, many minors who are rescued or who run away from their traffickers have limited options about where they can go. They may come from families where they were physically or sexually abused and cannot return home, if they still have a home to call their own. Many victims find themselves living in a shelter or center that serves runaway youth, but not all shelters are equipped to deal with the special needs victims of trafficking present. There are also entry conditions that may prevent them from living in shelters.

If domestic victims are minors, many homeless shelters and run-away facilities refuse to house them because of their age. Even facilities that admit minor residents may have “exclusion criteria” that prevent them from remaining there. Exclusion criteria include drug addictions, violent behavior, or mental health conditions, all of which are common for victims of

328 2007 Attorney General’s Report, supra note 6, at 20; 2010 Attorney General’s Report, supra note 6, at 29.
329 2010 Attorney General’s Report, supra note 6, at 32-33.
330 Health & Human Services Literature Review, supra note 8, at 13.
331 Health & Human Services Residential Facilities Study, supra note 239, at 8 (many trafficked girls have “extensive abuse histories” and NGOs working with them must make sure they reconnect only with non-abusive family members); Health & Human Services Literature Review, supra note 8, at 11 (“when minors leave their homes, it is to protect themselves, often because they view living on the streets as either less dangerous or no more dangerous than staying at home”).
332 Wagner, supra note 8, at 3 (estimating that 57,000 youth are permanently abandoned each year).
333 See e.g., Micheel et al., supra note 9, at 3 (several service providers in Washington stated they are unable to accommodate unaccompanied minors and of those that are able to do so, the number of beds for children is limited).
human trafficking to experience. Other factors that may prevent a domestic victim from receiving assistance include geographical restrictions (e.g., proof of residence in a specific county or state), a lack of insurance, policies that prevent residents from running away and returning, prior criminal convictions, or rules relating to length of stay.

Service providers who work closely with domestic victims suggest that they need a minimum 18-month stay at a facility with a specialized staff in order to be rehabilitated. However, many homeless shelters that assist run-aways are forced to limit housing and services to days or weeks due to inadequate funding and do not employ individuals who are trained to work with trafficked persons. Due to inadequate training, trafficking victims may come and go from shelters without the staff realizing they have been or are still being trafficked.

Teens who are fortunate enough to be placed in foster homes may also suffer from “untrained” foster parents. One federal study found that foster parents of sexually exploited minors were often unable to recognize them as human trafficking victims and were therefore

335 Id.
337 Health & Human Services Residential Facilities Study, supra note 239, at 2 (“In some runaway and homeless youth shelter programs, the time restrictions on the length of stay imposed by funding sources made it impossible to build trust with the girls, let alone begin meaningful treatment.”).
338 Id. at 2, 4, 9; Health & Human Services Needs of Victims Report, supra note 336, at 8.
339 Health & Human Services Residential Facilities Study, supra note 239, at 3.
unable to help them recover from the trauma of being trafficked. Many domestic victims were trafficked after running away from failed state child protective systems.

Another housing option for trafficking victims is to seek shelter in a domestic violence center. While many sexually exploited victims have what they might describe as a romantic relationship with a pimp who assaults them, they may be excluded from receiving assistance from domestic violence shelters because their pimp does not qualify as a boyfriend or spouse, they are not viewed as a “real” domestic violence victim, or the shelter is fearful the trafficker will come to the shelter after making contact with the victim, which could have devastating consequences for the victim, the staff, and other women at the shelter whose location must remain secret.

Housing facilities with staff trained to recognize and treat American human trafficking victims are in short supply. In 2007, a Health and Human Services study identified only four residential facilities catering to American human trafficking victims; all of them were sponsored by NGOs. These facilities borrow from the domestic violence “safe house” concept, which involves housing and therapeutically treating traumatized and abused victims in one residential

---

340 Id. at 2; Domestic Sex Trafficking Hearing, supra note 54, at 25-26 (statement of Luis CdeBaca, Ambassador-At-Large, Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, Washington, D.C.) (“The things that happen to a child in prostitution are so grave that it is not necessarily something that a good-hearted person who has got a couple of foster kids in [the] house can really even fathom as to what that child needs. … [The] system is not designed for that child.”).

341 Brittle, supra note 34, at 1345, 1369; Domestic Sex Trafficking Hearing, supra note 54, at 25 (statement of Rachel Lloyd, Executive Director and Founder, Girls Educational & Mentoring Services, New York, New York) (over seventy percent of domestic victims served by one New York NGO have been in the child welfare system at one point in time).

342 Health & Human Services Needs of Victims Report, supra note 336, at 6; Domestic Sex Trafficking Hearing, supra note 54, at 29 (statement of Rachel Lloyd, Executive Director and Founder, Girls Educational & Mentoring Services, New York, New York).

343 Health & Human Services Residential Facilities Study, supra note 239, at 3.
setting. These all-inclusive residential facilities are still few in number. Most are supported by NGOs, not government funding.

Of the few states that have recently enacted laws that offer greater protections to domestic victims, commonly known as “Safe Harbor” laws, few have funded them. For example, New York’s Safe Harbor Act requires local governments to create short-term safe houses, but only “to the extent that funds are available.” While safe houses are not the only housing option available to sexually exploited minors, they more adequately address domestic victims’ needs because they are located in a secure (usually rural) location and provide a therapeutic setting for traumatized minors. As one victim stated, “It was really nice to be away from urban noise… the country is really therapeutic. [It was] nice to be home at night and not

344 See Njeri Mathis Rutledge, Looking A Gift Horse In The Mouth—The Underutilization Of Crime Victim Compensation Funds By Domestic Violence Victims, 19 DUKE J. GENDER L. & POL’Y 223, 251 (2011). See also Domestic Sex Trafficking Hearing, supra note 54, at 29 (statement of Rachel Lloyd, Executive Director and Founder, Girls Educational & Mentoring Services, New York, New York) (suggesting that domestic violence and sexual assault advocacy groups need to work with domestic trafficking victims groups since domestic victims are often victims of both domestic assault and sexual assault criminal acts).

345 The locations of safe houses are kept secret so victims are protected from their traffickers. Many more websites ask for donations for safe houses without revealing whether they are equipped to house victims. Therefore, it is challenging to determine how many safe houses are currently in operation.

346 Most safe houses are funded by public donations or faith-based organizations that work with foreign and domestic human trafficking victims. See e.g., Amanda Kloer, New Safehouses for Trafficking Survivors Open in California, (March 29, 2010) available at http://news.change.org/stories/new-safehouses-for-trafficking-survivors-open-in-california (two safe houses in California were opened to foreign and domestic adult victims of human trafficking in 2010); Free the Captives, Safe Homes in the Houston Area (last visited August 10, 2012) (listing four safe houses available to trafficking victims in the greater Houston area).

347 States like Oklahoma and New Mexico have created standards for the protection of trafficking victims, but funding for these protections is not clear. OKLA. STAT. ANN. tit. 21, § 748.2 (West 2011) (stating that housing should be provided as soon as it is “practicable” and that a hotline should be set up as soon as funds are available); N.M. STAT. ANN. § 30-52-2 (2012) (stating that protections are only available until federal protections apply and that victims “may” qualify for some state services).

348 N.Y. SOC. SERV. LAW § 447-b(1) (McKinney 2007). Another criticism of New York’s Safe Harbor statute is that victims can be diverted from prosecution and arrest only if this is the first time they have been charged with prostitution. Toolsi Gowin Meisner, Shifting the Paradigm from Prosecution to Protection of Child Victims of Prostitution, 43 PROSECUTOR 22, 24 (June 2009).

349 One problem with urban homeless and runaway is that pimps are aware of their location, unlike the whereabouts of a safe house. Health & Human Services Residential Facilities Study, supra note 239, at 2-3. Pimps and other traffickers have been known to find trafficking victims and even recruit new victims at centers that house runaways and homeless teens. Id. These centers and their staff members have to adopt numerous measures and provide constant security in order to avoid this common problem. Id. at 5.
worry that I will bump into the pimp. You stay in the mindset of hustling in the city.”

Governments need to provide short-term and long-term housing options for domestic victims.

d. Inadequate Services Available to American Victims

Before the TVPA was enacted, Congress found that “adequate services and facilities [did] not exist to meet victims’ needs regarding health care, housing, education, and legal assistance.” While this finding was made about other nations’ provisions and protections, it currently applies to the United States’ protections for Americans. Aside from English and culture training, the need to obtain identification documents, and residency, most of the services offered to foreign victims are services that should be offered to domestic victims. The number of required protections and services needed by domestic and international victims is the same.

Yet, the services provided to American victims are in short supply and are unevenly offered.

Housing may be the foremost protection victims need, but it is not the only one they need. Like their foreign counterparts, domestic victims need clothing, food, financial assistance, medical treatment, mental health treatment, legal assistance, substance abuse treatment, transportation, life skills training, education, work skills training, employment, and where appropriate, reunification with loving, supportive family members. However, the services

350 Health & Human Services Residential Facilities Study, supra note 239, at 5.
352 Id.
353 Health & Human Services Needs of Victims Report, supra note 336, at 2-3. The only differences in suggested services were that domestic victims did not need translators whereas international victims did not need substance abuse treatment. Id. While some foreign victims do have substance abuse issues, they are less likely to seek help for them out of shame or fear. Id. American victims often have much more serious alcohol and drug addictions and are willing to seek help for them. Id.
354 Id. at 2; Health & Human Services Residential Facilities Study, supra note 239, at 6-8. Medical care is a critical need for sexually exploited victims. They may have sexually transmitted diseases that need immediate attention; many have experienced torture and severe abuse by their traffickers and those who buy their labor. Brittle, supra note 34, at 1369.
offered to citizen victims have been described by experts as inadequate.\textsuperscript{355} One federal study reported that “there is an assumption that U.S. citizen … victims have access to specialized services simply because of their citizenship status but … this is not really the case.”\textsuperscript{356}

The disparity between services offered to domestic victims may start with the fact that they are rarely provided with case managers.\textsuperscript{357} After all, in order to receive services, victims must have the help of individuals who know how to access government protections. The Department of Health and Human Services is responsible for getting foreign victims certified to receive federal assistance and paying for the services they receive.\textsuperscript{358} The federally funded Per-Capita Victim Services Contract “is designed to centralize services while maintaining a high level of care for victims of human trafficking through ‘anytime, anywhere’ case management.”\textsuperscript{359} This federal program provides accessible protection services to foreign victims.\textsuperscript{360} It is good policy. Given what victims of human trafficking have experienced on American soil, the United States should make the process of rehabilitation as effortless and comfortable as possible.

Accessing government services is often a much greater challenge for domestic victims. The federal government has been apathetic towards state services for domestic victims in general.\textsuperscript{361} Domestic victims do not receive the centralized customer-service approach that the Department of Health and Human Services and the Per-Capita Victim Services Contract provide. Government funding does not exist to give them case managers,\textsuperscript{362} which is yet another fact that

\textsuperscript{355} Health & Human Services \textit{Residential Facilities Study}, \textit{supra} note 239, at 2.
\textsuperscript{356} Coldwell \textit{Commercial Sexual Exploitation Study}, \textit{supra} note 13, at 7.
\textsuperscript{357} Health & Human Services \textit{Needs of Victims Report}, \textit{supra} note 336, at 9.
\textsuperscript{358} \textit{Id.} at 3-4.
\textsuperscript{359} \textit{Id.}
\textsuperscript{360} \textit{Id.} at 4.
\textsuperscript{361} Health & Human Services \textit{Literature Review}, \textit{supra} note 8, at 32 (suggesting that the criminal justice system provides case managers in the form of probation officers, who help victims access all of the services they need).
\textsuperscript{362} Health & Human Services \textit{Needs of Victims Report}, \textit{supra} note 336, at 9.
sets them apart from their foreign-born counterparts. They must seek assistance from a myriad of potential service providers on their own or with the help of an adult who may not have the training or wherewithal to know who to call or how to find available services. One service provider who works with domestic victims described the daunting nature of dealing with government bureaucracy when it comes to accessing services for victims:

> There is a general lack of knowledge and understanding of human trafficking and not enough service providers in the healthcare profession, local Social Security Administration offices, department of motor vehicles, and other key agencies are trained on this issue and know they can serve these clients. We are constantly having to take our clients to appointments because they are turned away when they try on their own.

Domestic victims apply to receive benefits through their state of residence. They must meet the qualifications for each type of benefit for which they apply. In order to qualify for protections, victims may have to obtain identification documents (birth certificates or identification cards), enroll in school, and then go through one agency for housing and basic necessities, another for counseling, and many more for any additional services they need. One federal report recognized that State application and documentation requirements make it difficult for citizen victims to retrieve State-offered protections. The government bureaucracy involved in locating and applying for services acts as a barrier to the TVPA-style protections promised to domestic trafficking victims.

---

363 2010 Attorney General’s Report, supra note 6, at 29 (foreign victims of trafficking receive case managers who help them navigate “through a network of service providers across the U.S.”).
364 Health & Human Services Needs of Victims Report, supra note 336, at 5.
365 Health & Human Services Literature Review, supra note 8, at 16.
366 Id.
367 Id. See also 2012 TIP Report, supra note 3, at 363 (“NGOs reported that identified child trafficking victims faced difficulties accessing needed services.”).
368 Bureaucracy has been cited as a problem for international victims’ protections as well. Payne, supra note 148, at 447-48 (the federal government took seven years to grant the first U-Visa).
Navigating through service providers is difficult for those in the know, much less victims. One service provider said, “If you look at what domestic victims are eligible for on paper, it seems promising. However, trying to access those services is another story.”

Determining which services are available to victims is confusing and filling out the necessary paperwork, arriving at the location where the services are provided, and obtaining those services is vexing. One service provider concluded, “I can barely navigate through all of these systems myself, so how can we expect [human trafficking victims] to take this on?” Yet this is exactly what domestic victims may have to do if they want the kind of protections granted under the TVPA.

Biases and misconceptions about the definition of human trafficking victims among service providers further complicate matters. Untrained government employees have denied benefits to victims who qualify for them because they are unaware that the legal definition of human trafficking victim encompasses males and Americans. Service providers have mistakenly returned minor victims to an abusive home or back into the hands of their traffickers. The federal government is beginning to realize this problem and train service providers to better recognize domestic trafficking victims.

Even if domestic victims are recognized as such, states still struggle to provide victims with adequate services. Few states offer benefits to victims of human trafficking. If services are offered at all, they generally include benefits capable of meeting only

370 Id.
371 Id.
372 Id.
373 Id. at 5.
374 Id. at 6. Another government report stated that some shelters where escaped victims were living were known to the trafficker and that some traffickers attempted to recruit or sent young, female workers to recruit shelter inhabitants. Health & Human Services Residential Facilities Study, supra note 239, at 2-3.
375 2012 TIP Report, supra note 3, at 363.
short-term needs. Whereas international victims can receive federal assistance throughout childhood and into adulthood, domestic victims are accessing services designed to meet immediate, not long-term, needs. One service provider stated,

When working with a domestic victim, I just need more time. I can’t stabilize a client with an extensive trauma history within 90 days or transition them to permanent housing within 18-months. Many of my clients struggle to get [sober], get an education (or GED), learn life skills, obtain employable skills, and get employed. This is especially true if they have not begun to work on trauma recovery and this can take years.377

States that want to help trafficking victims have recently admitted their limitations in offering the kinds of services victims need. Texas was one of the first states to enact anti-trafficking legislation.378 The Texas Supreme Court is the first Court in the nation to recognize the duplicity between statutory rape laws, that declare minors are incapable of consenting to sex, and prostitution laws, which are used to charge minors with consensual sex for a fee.379 These anti-trafficking legal milestones reflect Texas’ desire to protect victims. Yet, the State lacks the necessary funds and resources to appropriately serve victims. In a 2011 report to the federal government, Texas concluded that throughout the State,

there are few resources devoted to combating human trafficking. Although there are some 350 local law enforcement agencies in Texas, there are active and engaged anti-trafficking task forces in just four jurisdictions. In addition to limited law enforcement resources in the state to combat human trafficking, there are few social service agencies equipped to provide treatment for the victims.380

---

376 See infra note 160 and accompanying text.
377 Health & Human Services Needs of Victims Report, supra note 336, at 8; Rami S. Badawy, Shifting the Paradigm from Prosecution to Protection of Child Victims of Prostitution — Part Two of Three, 44 PROSECUTOR 40, 41 (June 2010) (quoting a Dallas law enforcement official as stating, “[i]t’s impossible for us to try to solve 15 years of problems in 30 days”); Domestic Sex Trafficking Hearing, supra note 54, at 39 (Questions and Answers: Responses from Cook County State’s Attorney Anita Alvarez) (stating that “there is nowhere to send these children where they can be safe and receive long term, therapeutic services”).
378 Annitto, supra note 38, at 38 (citing Washington and Texas as the first two states to pass anti-trafficking legislation in 2003).
379 See infra notes 304-05 and accompanying text.
380 Tex. Advisory Comm. to the U.S. Comm’n on Civil Rights, Human Trafficking in Texas: More Resources and Resolve Needed to Stem Surge of Modern Day Slavery, 11 (August 2011), available at
Other states share Texas’ problem. Washington, which passed anti-trafficking legislation in 2003, has also struggled to fund services for domestic victims. At one time, Washington had merely one 15-bed facility serving domestic trafficking victims, which was “the only place, other than a jail cell” where victims could “find respite, albeit brief.”

With the recent passage of a safe-harbor law for domestic victims, the State hopes to fund increased services with impounded vehicle fees. Whether these siphoned fees actually pay for greater services, which include housing, medical and psychological treatment, an education, vocational training, substance abuse therapy, and parenting classes, remains to be seen.

The fact that one or two states have promised or have begun to budget services for domestic victims is a positive move in the right direction for state governments. But it is not enough. As long as there is inequality in the way victims are protected, inconsistency between what is practiced and what is mandated by federal law, and distinctions between other nations’ standards and our own, there will be difficult implications for the United States at home and abroad.

**IV. Implications of the United States’ Two-Tier Protection System**

The United States conceptualized the legal protection of human trafficking victims by creating victims’ rights and humanitarian responses through the TVPA. Protection has both conceptual and practical applications. It is one thing to express an ideology that governments...
should act on behalf of all human trafficking victims; it is another to demonstrate a commitment to this belief through action. Though the United States has recognized Americans as trafficking victims since at least 2005, it has yet to prove it by providing systematic and equal protections to this group.

The United States’ current two-tier approach to protection contradicts several American ideologies or legal principles that if not remedied, may have negative consequences not only for unprotected domestic victims, but also for the United States’ reputation as anti-trafficking world leader. This section will analyze the contradictions in policy and practice when it comes to the foreign and domestic goals of partnerships, inclusiveness, and purposes for protections.

The first contradiction between policy and practice involves the concept of partnerships. Nine years after the United States introduced the 3-P paradigm, it introduced the fourth P: partnerships.386 Congress recognized that effective protection and rehabilitation requires coordination between government agencies, law enforcement groups, and NGOs.387 Not a single section in the TVPA is exclusively devoted to partnerships, unlike prevention, prosecution, and protection, which have all been codified.388 However, various parts of the Act include the common refrain that governments, police agencies, and NGOs must work together in the fight against modern-day slavery.389 The U.S. Department of State recognizes that, “[c]ombating

387 See e.g., 22 U.S.C. § 7105(1)(A) (stating that NGOs work to create networks that help victims); § 7105(1)(B) (stating that NGOs, legal advocates, and foreign governments should work together to assist victims, particularly incarcerated victims of human trafficking); and § 7105(1)(F) (international refugee organizations must assist displaced victims).
388 22 U.S.C. §7104 (prevention); §7105 (protection); §7106 (prosecution).
389 Id. at § 7105 (b)(24) (“The United States must work bilaterally and multilaterally to abolish the trafficking industry by taking steps to promote cooperation among countries linked together by international trafficking routes. The United States must also urge the international community to take strong action in multilateral to engage
human trafficking requires the expertise, resources and efforts of many individuals and entities.\textsuperscript{390} Not only is the idea of partnerships a thread woven through the Act, but the United States government has taken action to promote partnerships through federal grants.\textsuperscript{391} Without partnerships, the other Ps in the paradigm could not be realized.

While partnerships have been emphasized rhetorically, the United States has yet to create an effective partnership between the federal and state government systems. Human trafficking law has been, until recently, solely under the jurisdiction of the federal government whereas state governments are charged with keeping child welfare systems designed to protect abandoned or mistreated children. Domestic trafficking victims, based upon their characteristics and experiences, must receive help from both the federal government and state governments. Instead of the federal government and state governments working together to resolve how both systems can partner to protect and serve domestic victims, each has waited for the other to act. This stalemate has gone on for years.

States have been unable or unwilling to fund services for American trafficking victims. This is unlikely to change given that the recession has resulted in drastic cuts to state-funded social services. The federal government, on the other hand, has granted rights to domestic victims under federal law but has not funded federal protections or subsidized state protections to the extent that all domestic victims in the country receive protections similar to those offered to international victims.


\textsuperscript{391} 2010 TIP Report, supra note 21, at 341.
The practice of the federal government contradicts its foreign anti-trafficking policy. The United States has sanctioned foreign governments that have not resolved intergovernmental problems with the funding or delivery of human trafficking protections. For example, Equatorial Guinea was criticized for one governmental agency’s failure to fund another’s proposal for victim housing.\textsuperscript{392} Lebanon’s governmental agencies were cited for contradicting each other’s policies and practices when it comes to victim identification.\textsuperscript{393} And the Sudanese government was condemned for failing to fund a governmental committee devoted to safely returning trafficked persons.\textsuperscript{394}

While the Department of State has publically shamed and sanctioned foreign governments through the TIP Report for failed partnerships, it has been locked in a standstill with states over who will fund protections to domestic trafficking victims. States believe the federal government is better equipped to protect trafficking victims.\textsuperscript{395} The federal government has accused states of not doing enough.\textsuperscript{396} Considering the dearth of protections available to domestic victims on both the federal and state levels, both governments have shortcomings and are in no position to judge. This finger pointing has yet to solve the protections problem. If the United States wants to emphasize the importance of partnerships abroad, it must begin a meaningful and productive partnership at home.

The second contradiction relates to the inclusive nature of protection. One of the purposes served by having anti-trafficking legislation is guaranteeing the humanitarian treatment

\textsuperscript{392} 2011 TIP Report, supra note 100, at 154.  
\textsuperscript{393} Id. at 228-29.  
\textsuperscript{394} Id. at 338.  
\textsuperscript{395} Michelle Crawford Rickert, \textit{Through the Looking Glass: Finding and Freeing Modern-Day Slaves at the State Level}, 4 LIBERTY U.L. REV. 211, 245 (2010) (citing a survey where the majority of local law enforcement officers reported that trafficking was not a state problem and that it was best handled by the federal government).  
\textsuperscript{396} Child Prostitution Hearing, supra note 52, at 2 (statement of Sen. Richard Durbin, Chairman, Subcomm. on Human Rights and the Law) ("State and local governments will have to take the lead role in changing the way we look at child sex trafficking, because they are on the front line").
of all human trafficking victims. The United States has reiterated the fact that protections should be available to all victims of human trafficking, regardless of their form of trafficking, their citizenship status, or whether they are men, women, boys, girls, heterosexual, transgendered, or homosexual persons. Yet the United States’ two-tiered system of protection has contradicted this all-inclusive definition by offering generous protections to one category of victims and ignoring or only partly protecting other groups. Furthermore, the United States undermines the TVPA’s inclusive definition of victim by categorizing victims and distinguishing available services offered to them. In this way, the United States fails to uphold the policy of inclusive protections it helped create.

The United States’ policy of including all victims within the definition of human trafficking victim and its contradictory practice of excluding groups of victims from federal protection has consequences at home and abroad. Because the United States was a frontrunner in drafting the world’s first anti-trafficking legislation, many countries have followed its lead. This has produced mixed legislative outcomes. Positively, countries have borrowed from legislation that was well-intentioned and comprehensive in its protections for international victims of human trafficking. Negatively, the emphasis on sex trafficking to the exclusion of labor trafficking, on women and girl victims to the exclusion of men and boy victims, and on international victims to the exclusion of domestic victims have been perpetuated worldwide. In sum, other countries

397 See e.g., 2011 TIP Report, supra note 100, at 240, 312 (Madagascar sanctioned, in part, for failing to eradicate child sex tourism and Saudi Arabia reproached for failing to protect victims of sex trafficking).
398 See e.g., id. at 196, 240, 253 (Iran and Mauritania condemned for detaining foreign victims of trafficking and Madagascar criticized for failing to recognize citizen victims as worthy of protection).
399 See e.g., id. at 106, 154, 216, 222 (Burma and Kuwait criticized for failing to protect male victims of human trafficking. Equatorial Guinea cited for failing to protect adult victims of trafficking and North Korea condemned for abusing and jailing women trafficking victims).
400 See e.g., id. at 154, 180, 229 (Equatorial Guinea sanctioned in part for its failure to protect and fund services for adult victims of human trafficking, Guinea-Bissau sanctioned in part for its failure to adequately identify victims, and Lebanon sanctioned in part for its inability to fund protections for trafficking victims); Chuang, supra note 35, at 1706 (“Other countries have followed suit, more likely to adopt domestic laws on sex-sector trafficking than on
have done what the United States has done, which has resulted in inadequate protections to
certain categories of victims in other parts of the world.

Finally, the purposes of offering protections to victims are undermined by inconsistent
policies and practices. Protections are offered to victims based upon two premises. The first
premise is that governments must protect trafficked persons who are otherwise unable to protect
themselves. Human trafficking victims, regardless of their place of birth, are historically
members of marginalized populations. When it drafted the TVPA, Congress focused on the
protection of women and children worldwide, presumably because women and children
needed greater protections against exploitation in places where men held more power. Traffickers focus on finding vulnerable people to exploit and keeping them vulnerable. Traffickers are able to keep international victims complicit in the trafficking scheme by bringing
them to another country, stripping them of travel documents, and threatening them with criminal
consequences or worse if they stop working. Through the TVPA, the United States has made it a
policy to protect vulnerable foreign nationals in America and abroad.

Though the United States has taken great lengths in protecting powerless, vulnerable
populations abroad, it has not done the same for its own defenseless at-risk populations at home.
The United States has attempted to protect foreign nationals on foreign soil who are at greater
risk of imprisonment or deportation. Algeria was cited for failing to operate government-funded
shelters and for arresting foreign trafficking victims for acts their traffickers forced them to

402 Chacon, supra note 41, at 3027 (stating that women and children are most vulnerable to becoming trafficking
victims because they lack economic resources and are politically and socially marginalized in nations worldwide).
403 Haynes, supra note 173, at 358.
Kuwait treated trafficking victims differently based upon citizenship; foreign victims’ cases were referred to federal officials for investigation before they faced deportation whereas citizen victims were excluded from this provision and were instead imprisoned while their cases pended investigation. The United States has acted similarly to the Algerian and Kuwaiti governments. It has failed to protect its own trafficked persons who are unable to protect themselves.

Domestic victims are no less vulnerable. They are often children who “live miles away from home and family and may have no immediate means of survival.” They lack any meaningful authority or power. They are threatened with arrest and prosecution for the acts their traffickers force them to commit. In other words, they need as much protection as their foreign counterparts. Yet, protection has eluded them. “Issues of race, class, and prior victimization have ensured that these children are frequently invisible in our National dialog.” The United States undervalues this population.

The second purpose for offering protections is that governments have a duty to protect and restore victims of crime. Under federal law, all trafficking victims are given the right to be treated like crime victims. That the United States has been apathetic about treating its own citizens as victims of crime reflects the inherent contradictions between federal and state policies. One scholar described the country’s legal conflict as follows: “On one hand, the country has taken a strong stance against those who traffic juveniles across international borders.

---

404 2011 TIP Report, supra note 100, at 66.
405 Id. at 222.
406 Adelson, supra note 189, at 122.
407 Child Prostitution Hearing, supra note 52, at 17 (statement of Rachel Lloyd, Executive Director and Founder, Girls Educational & Mentoring Services, New York, New York).
On the other hand, the Government criminalizes domestic juvenile prostitutes. In this way, the United States is developing a “do-as-I-say-not-as-I-do” reputation abroad.

The United States has sanctioned foreign governments for failing to treat trafficking persons as crime victims or failing to fund protections. The Burmese government inadequately served victims because it failed to fund long-term services. Madagascar failed to offer systematic care to victims of trafficking. Iran has been criticized for prosecuting sex trafficking victims for the acts of prostitution their traffickers forced them to commit. All of these actions have also been committed by the United States against citizen victims. Yet, all of the aforementioned countries received a third-tier ranking while the United States received a first-tier ranking (from itself).

That the United States asks other countries to fund services for victim protection while it has failed to fund services for American trafficking victims is amazing. Foreign countries have expressed astonishment regarding the United States’ criticism of anti-trafficking failures abroad. This incredulity is justifiable. The United States’ hypocrisy is not. Accepting responsibility for policing the world’s anti-trafficking efforts is noble. America’s efforts have produced good fruit. But it must get the plank out of its own eye before judging others for the speck in theirs.

V. Conclusion

409 Kittling, supra note 54, at 913.
410 2011 TIP Report, supra note 100, at 106.
411 Id. at 240.
412 Id. at 196.
413 151 Cong. Rec. H11,570 (daily ed. Dec. 14, 2005) (statement of Rep. Bobby Scott) (“When we try to get cooperation of other countries to go after sex trafficking in their country, some point to our toleration of [domestic] prostitution in our country to suggest that we have no moral authority to criticize them.”).
Domestic victims of trafficking have always been and continue to be an afterthought in America. There is a procedure of neglect that began in Congressional hearings, remained throughout the drafting and enactment of the TVPA, and continues in the current failure to subsidize human trafficking protections for domestic victims. Without funding, the government’s protections are no more than empty promises. The federal government, by failing to equally fund protections, “sends a clear message that the Government finds [them] … unworthy of protection. In the Government’s eyes, these individuals are not victims.”414

The federal government must demonstrate through actions that it cares enough about its own citizens to protect them from the effects of trafficking. Placing the blame on state governments does not solve the problem. The two-tier system approach, whereby qualifying foreign victims receive all-inclusive federal services and citizen victims are excluded from receiving the same is deeply flawed. Federal and state governments must be held accountable for their failure to work together to achieve a national protection plan for domestic victims of human trafficking. They cannot approach protections with the notion that someone else will provide them, especially given the fact that domestic services are lacking in both the federal and states government systems.

Domestic victims need to be identified as victims, receive immunity from arrest and prosecution, and be eligible for all of the short-term and long-term housing and services foreign victims in America may qualify to receive. The United States government needs to begin allocating more international human trafficking aid to its own citizens. Charity begins at home. By doing more for its own citizens, the United States will send a message to the world and to all victims that human trafficking protections are not promises meant to go unfulfilled.

414 Kittling, supra note 54, at 920.
Just before the United States Congress rejected federal legislation aimed at equalizing protections for domestic victims in 2010 and again in 2011, Senator Dick Durbin had this to say:

[Laws] need to be more than just abstract legal documents. They protect America’s children from the horrific abuse and exploitation which have been described here today. As we lead the fight for human rights around the world and against human trafficking, we have a legal and moral obligation to protect our own children right here in America.\textsuperscript{415}

It is time for America to get to work on the legal and rhetorical promises it has made to domestic victims of human trafficking. American victims are waiting and the world is watching to see whether the protection standards the federal government has set for other nations will be adopted and applied to domestic trafficking victims here in the United States.

\textsuperscript{415} Child Prostitution Hearing, supra note 52, at 31 (statement of Sen. Richard Durbin, Chairman, Subcomm. on Human Rights and the Law).