

Seeking Justice for Victims of Human Trafficking and Domestic Violence: Civil Remedies and Other Relief

By Charles Song¹ and Robin Thompson²

Human trafficking is best understood as modern-day slavery. Children and adults are trafficked into sweatshops, domestic servitude, commercial sex, farm labor, begging, construction and many other forms of labor. The term “trafficking” encompasses a wide range of criminal activities associated with enslavement, not just the transportation of humans across a border. Federal law, and an increasing number of state laws³, defines the term broadly. In order to meet the statutory definition of a victim of “a severe form of trafficking in persons,”⁴ a survivor must have been the victim of one “of the 12 federal criminal civil rights statutes contained within Chapter 77 of title 18 of the U.S. Code, beginning with section 1581.”⁵

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³ States that have passed laws dealing with human trafficking include: Arizona, California, Colorado, Connecticut, Florida, Idaho, Illinois, Kansas, Missouri, New Jersey, Texas, and Washington.

⁴ Victims of Trafficking and Violence Protection Act of 2000, Pub.L. No 106-386, § 107, 114 Stat 1464, 1478 (2000) (hereinafter TVPA):

(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 an 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 subsection to involuntary servitude, peonage, debt bondage, or slavery.”

⁵ Federal Register: January 31, 2002 (Volume 67, Number 21) 4783, 4786. *See*

- 1581. Peonage; obstructing enforcement.
- 1582. Vessels for slave trade.
- 1583. Enticement into slavery.
- 1584. Sale into involuntary servitude.
- 1585. Seizure, detention, transportation or sale of slaves.
- 1586. Service on vessels in slave trade.
- 1587. Possession of slaves aboard vessel.
- 1588. Transportation of slaves from United States.
- 1589. Forced labor.
- 1590. Trafficking with respect to peonage, slavery,

Around the world, an estimated 27 million people toil under conditions of slavery.⁶ The Department of State estimates that between 14,500 and 17,500 persons are trafficked into the United States annually,⁷ but most experts consider the numbers to be much higher.⁸ Researchers from Free the Slaves and the University of California, Berkeley estimate that at least ten thousand people are currently forced to work in the United States.⁹

Human Trafficking and Domestic Violence

Quite often, trafficked persons suffer multiple victimizations that include domestic, intimate partner, or relational violence. Trafficking victims are raped, kidnapped, beaten, threatened and exploited in extreme and horrific ways. Practitioners who understand domestic violence can then have insights into human trafficking and how to represent and assist trafficked persons. Looking at both domestic violence and human trafficking also reveals other similarities as well as important differences:

Victims

Women and children comprise the majority of victims of both domestic violence and human trafficking; however, more men are victims of human trafficking than of domestic violence. Both kinds of victims are vulnerable, and generally lack access to money, “systems” or those who could help them to escape. Trafficked persons, more than victims of domestic violence, are from outside US borders, although US citizens may also be trafficked. Unlike domestic violence victims, trafficked persons overwhelmingly are seeking work and a way to provide a better life for themselves and their families, thus having a strong economic component to their entrapment and victimization.

Perpetrators

Both domestic violence abusers or batterers and traffickers use “power and control” to dominate their victims. Traffickers and batterers are financially and politically empowered, and consider themselves to be entitled to abuse and to reap the benefits of their acts. They may “pass” as legitimate in society, or society may turn a blind eye to their activities.

Tactics

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- involuntary servitude, or forced labor.
1591. Sex trafficking of children or by force, fraud, or coercion.
1592. Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor.

Chapter 77 of title 18, U.S. Code, §§ 1581 *et seq.*

⁶ KEVIN BALES, DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY 8 – 9 (2000).

⁷ <http://www.state.gov/g/tip/>

⁸ See generally Kathleen Kim and Kusia Hreshchyshyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States*, 16 *Hastings Women’s L.J.* 71 (2004)

⁹ See FREE THE SLAVES & HUMAN RIGHTS CENTER UNIVERSITY OF CALIFORNIA, BERKELEY, HIDDEN SLAVES: FORCED LABOR IN THE UNITED STATES 10 (SEPTEMBER 2004).

The range of tactics used by the perpetrators of trafficking and domestic violence are similar and include: physical and emotional violence; isolation; financial abuse; threats to persons, family and others; withholding of food, sleep, medical care; sexual abuse and exploitation; using children to manipulate and control their victims. Experts also compared victims of human trafficking to torture, so that those who assist torture survivors also have a foundation to be able to assist trafficked persons.

Laws and Justice System Responses

Laws and justice systems responses to domestic violence are more comprehensive and long-standing, although even these are relatively new. While there are increasing numbers of prosecutions of human trafficking, the actual numbers of those who are educated about human trafficking in the various systems (law, prosecution, judiciary, law enforcement, etc.) is extremely low. Most of the trafficking funding and criminal and civil prosecutions have taken place in federal court, under federal laws; domestic violence is just the opposite, with most activity being at the state and local levels. A private right of action for trafficked persons was specifically created by the TVPRA although, just as with domestic violence, numerous other causes of action also lie.

Social Services

Like the justice system, domestic violence services are more available and plentiful, although there are increasing numbers of programs in existence across the US. For example, there is one human trafficking shelter and there are about 1,700 domestic violence shelters.¹⁰

Awareness

The federal government has been active in promoting human trafficking awareness and resources such as the Department of Health & Human Services' Trafficking Information and Referral Hotline (888-373-7888) and has taken a page from the domestic violence movement playbook in reaching out to communities and professionals to promote understanding and awareness of human trafficking. However, trafficking awareness campaigns remain relatively new.

The Trafficking Victims Protection Act of 2000 and the Trafficking Victims Protection Reauthorization Act of 2003

To protect survivors of these violent crimes, the United States enacted the Trafficking Victims Protection Act of 2000 (TVPA),¹¹ amended in 2003 by the Trafficking Victims Protection Reauthorization Act (TVPRA).¹² The TVPA attempts to address the problem

¹⁰ For a description of benefits, see FCADV, Domestic and Sexual Violence Advocate Handbook on Human Trafficking (2004) www.fcadv.org/trafficking.html

¹¹ The Trafficking Victims Protection Act of 2000 (TVPA), Pub. L. No. 106-386, Division A, 114 Stat. 1464 (October 28, 2000). The TVPA attempts to address trafficking through a three-tiered approach of protection, prosecution, and prevention. See 146 Cong. Rec. S10,180 (2000) (statement of Sen. Wellstone).

¹² Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), Pub. L. No. 108-193, 117 Stat. 2875 (December 19, 2003). Among other things, the TVPRA created a new trafficking cause of action that permits trafficking victims to file specific trafficking claims against their traffickers in federal court, made family members of victims of severe forms of trafficking eligible for federal benefits and services, and

of human trafficking by providing survivors comprehensive protections¹³ and benefits,¹⁴ creating new trafficking crimes,¹⁵ requiring restitution for survivors,¹⁶ mandating asset forfeiture against traffickers,¹⁷ and preventing the trafficking of new victims.¹⁸ The legislation dramatically improved the ability of prosecutors to punish traffickers by providing the critical protections survivors need to assist in the investigation and prosecution of their traffickers and by creating new trafficking crimes and increased sentencing requirements.¹⁹

Immigration

Most importantly, the TVPA, recognizing that effective prosecution of human traffickers requires survivors to risk their lives and their family's lives to assist in successful prosecutions, provided essential immigration protections for trafficked persons in the form of Continued Presence²⁰ and a non-immigrant status called "T Nonimmigrant" status, more commonly referred to as a "T visa,"²¹ to protect victims of severe forms of trafficking. Survivors identified as victims of severe forms of trafficking necessary for the prosecution of traffickers are eligible for Continued Presence but only federal law enforcement officials may petition the Department of Homeland Security for Continued Presence.²² Survivors granted Continued Presence are typically permitted to remain in the United States for one year and are issued employment authorization documents valid for one year.²³

requires the Attorney General to report on U.S. efforts to combat trafficking to Congress every year beginning on May 1, 2004. *See id.* The annual report is available on the Department of Justice's trafficking web page, at <http://www.usdoj.gov/trafficking.htm>.

¹³ 22 U.S.C. § 7105(c).

¹⁴ 22 U.S.C. § 7105(b)(1). The TVPA also requires federal officials to be trained to identify survivors and provide them with the protections provided by federal law. 22 U.S.C. § 7105(c)(4).

¹⁵ These new crimes included: forced labor, trafficking with respect to peonage, slavery, or involuntary servitude, sex trafficking by fraud, force or coercion, or sex trafficking of children, unlawful conduct with respect to documents in furtherance of trafficking, and attempts to engage in the above listed behaviors. 18 U.S.C. § 1589 – 1592 (2004).

¹⁶ 18 U.S.C. § 1593 (2004).

¹⁷ 18 U.S.C. § 1594.

¹⁸ *See* 146 Cong. Rec. S10,180 (2000) (statement of Sen. Wellstone).

¹⁹ *See* 146 Cong. Rec. S10,139 (2000) (statement of Sen. Brownback). *See also* TVPA, §§ 111-12, 114 Stat. 1464, 1486-90.

²⁰ 22 U.S.C. § 7105(c)(3).

²¹ 8 U.S.C. § 1101(a)(15)(T).

²² 22 U.S.C. § 7105(c)(3) provides:

Federal law enforcement officials may permit an alien individual's continued presence in the United States, if after an assessment, it is determined that such individual is a victim of a severe form of trafficking and a potential witness to such trafficking, in order to effectuate prosecution of those responsible, and such officials in investigating and prosecuting traffickers shall protect the safety of trafficking victims, including taking measures to protect trafficked persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates.

²³ 28 C.F.R. 1100.35. Continued Presence does not permit survivors to adjust to lawful permanent resident status. 22 U.S.C. § 7105(b)(1)(E)(ii). The TVPA only permits the Department of Homeland Security to adjust the status of T Nonimmigrants. *See* 8 U.S.C. § 1255(l).

Eligibility for T Nonimmigrant status²⁴ extends only to those who: (1) are victims of severe forms of trafficking; (2) are physically present in the United States or port of entry on account of the trafficking; (3) have complied with reasonable requests for assistance in the investigation or prosecution of traffickers;²⁵ and (4) would suffer extreme hardship upon removal.²⁶ A survivor may also petition for

²⁴ 8 U.S.C. § 1101(a)(15)(T). Victims of severe forms of trafficking can self-petition for T Nonimmigrant status. T Nonimmigrant Status is valid for three years. Pursuant to INA § 101(a)(15)(T), 8 U.S.C. 1101(a)(15)(T), the Department of Homeland Security may grant T Nonimmigrant Status to:

(i) subject to section 214(n), an alien who the [Department of Homeland Security] determines--

(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000,

(II) is physically present in the United States ... or at a port of entry ... on account of such trafficking,

(III)(aa) has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, or

(bb) has not attained 18 years of age, and

(IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal; and

(ii) if the Attorney General considers it necessary to avoid extreme hardship-

²⁵ Victims of a severe form of trafficking who have not attained 18 years of age are not required to comply with requests for assistance in the investigation or prosecution of acts of trafficking. 8 U.S.C. § 1101(a)(15)(T)(i)(III)(bb).

²⁶ 8 U.S.C. § 1101(a)(15)(T). Senator Brownback of Kansas, an original sponsor of the Trafficking Act, explained the hardship requirement as follows:

This was raised in conference committee under thorough discussion about this new standard of “extreme hardship involving unusual and severe harm.” There was a fear on the part of some conferees that some judicial interpretations over the term “extreme hardship” might be too expansive; specifically, the conferees objected to an interpretation that the applicant could prove “extreme hardship” by showing he or she would miss American baseball after being deported from the United States. So this language should be interpreted as a higher standard than some of these expansive interpretations of “extreme hardship.” At the same time, however, this language should not exclude bona fide victims who would suffer genuine and serious harm if they were deported. There is no requirement that the harm be physical harm. I repeat, there is no requirement that the harm be physical harm or that it be caused by the trafficking itself. The harm or the hardship does not have to be caused by the trafficking itself. The purpose of inserting the phrase “unusual and severe” is to require a showing that something more than the inconvenience and dislocation that any alien would suffer upon removal might occur. I wish to make it clear in future interpretations of this act, while this is higher than extreme hardship, it doesn't require physical harm; it doesn't require the harm be associated with the trafficking ... to qualify under this new definition within the act.

Trafficking Victims Protection Act Of 2000, Conference Report, CONG. REC. S10179, October 11, 2000 (Senate) (emphasis added).

his or her spouse and children to be granted T Nonimmigrant status.²⁷ If they meet specific requirements, T Nonimmigrants may apply to adjust their status to that of lawful permanent resident of the United States after three years.²⁸

Refugee Benefits

Domestic violence advocates should also be aware that victims of a severe form of trafficking in persons are also eligible for federal and state benefits and services “to the same extent as a person who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act.”²⁹ To be eligible for these benefits, survivors must be identified as victims of severe forms of trafficking³⁰ and have cooperated with federal law enforcement officials or state and local law enforcement officials investigating and/or prosecuting trafficking cases.³¹ Survivors meeting these requirements must be certified by the Secretary of Health and Human Services (HHS), after consultation with the Department of Homeland Security.³²

Rights as Victims of Violent Crimes

The rights and services enumerated in the TVPA for the protection and assistance of victims of human trafficking include the right to not be detained in facilities inappropriate

²⁷ 8 U.S.C. § 1101(a)(15)(T)(ii)(II). If a survivor is under 21 years of age, the survivor may petition for the parents, any unmarried siblings under 18, and his or her children. 8 U.S.C. § 1101(a)(15)(T)(ii)(I). However, family members will only be granted T Nonimmigrant status if the Department of Homeland Security determines that family reunification in the United States is necessary to avoid extreme hardship. 8 U.S.C. § 1101(a)(15)(T)(ii).

²⁸ 8 U.S.C. § 1255(l). To adjust their status, T Nonimmigrants must have:

- been physically present in the United States for a continuous period of at least three years since obtaining T Nonimmigrant status;
- been of good moral character throughout that period; and
- complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, or would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

²⁹ 22 U.S.C. § 7105(b)(1)(A). These benefits include medical, mental health services, food stamps, housing, job training, educational programs, interpretation and translation services, and legal assistance. 28 C.F.R. § 1100.33(a).

³⁰ 22 U.S.C. § 7105(b)(1)(C).

³¹ 22 U.S.C. § 7105(b)(1)(E).

³² 22 U.S.C. § 7105(b)(1)(E)(i). Specifically, HHS must certify that the survivor:

- Is a victim of a severe form of trafficking in persons;
- Is willing to assist in every reasonable way with the investigation and prosecution of severe forms of trafficking in persons; and
- Has made a bona fide application for a visa under section 101(a)(15)(T) of the Immigration and Nationality Act [8 USC § 1101(a)(15)(T)], as added by subsection (e), that has not been denied; or is a person whose continued presence in the United States the Attorney General is ensuring in order to effectuate prosecution of traffickers in persons.

22 U.S.C. § 7105(b)(1)(c).

to their status as crime victims,³³ receive necessary medical care and other assistance,³⁴ be provided protection if a victim's safety is at risk or if there is danger of additional harm by recapture of the victim by a trafficker,³⁵ access information about their rights and translation services,³⁶ mandatory restitution,³⁷ social services and benefits available to refugees,³⁸ and civil action.³⁹ As discussed above, the TVPRA created a civil cause of action that allows victims to file suit for actual and punitive damages, attorney's fees and other litigation costs, if they have been victims of forced labor, peonage, slavery, involuntary servitude or sex trafficking.⁴⁰ Finally, in addition to any other civil or criminal penalties authorized by law, the TVPA mandates courts to order restitution for involuntary servitude offenses.⁴¹

Conclusion

Survivors of domestic violence may also be or have been trafficked and enslaved. Although space considerations prohibited a comprehensive discussion of trafficking, we hope this brief and general introduction to trafficking provides advocates the information needed to identify Survivors of trafficking and help begin the long and arduous process of providing Survivors the legal support they need and deserve to rebuild their lives.

³³ 22 U.S.C. § 7105(c)(1)(A). Federal regulations require that “to the extent practicable and allowed by law, alternatives to formal detention of victims of severe forms of trafficking in persons should be considered in every case,” and, if survivors are detained, efforts must be made not to commingle survivors with common criminals. 28 C.F.R. § 1100.31(b).

³⁴ 2 U.S.C. § 7105(c)(1)(B). Survivors in federal custody are also entitled to a referral to a nongovernmental organization to advise them of their legal rights, and other assistance. 8 U.S.C. § 1101(i)(1).

³⁵ 22 U.S.C. § 7105(c)(1)(C). These protections include:

(i) taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals and reprisals from traffickers and their associates; and

(ii) ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.

22 U.S.C. § 7105(c)(1)(C)(i)-(ii).

³⁶ 22 U.S.C. § 7105(c)(2).

³⁷ 18 U.S.C. § 1593; *see also* 18 U.S.C. § 3663.

³⁸ 22 U.S.C. § 7105(b)(1)(A) (2004).

³⁹ 18 U.S.C. § 1595.

⁴⁰ 18 U.S.C. § 1595 (2004). Individuals who are victims of violations of, Forced Labor, 18 U.S.C. § 1589, Trafficking with Respect to Peonage, Slavery, Involuntary Servitude, or Forced Labor, 18 U.S.C. § 1590, or Sex Trafficking, 18 U.S.C. § 1591, may bring a civil action against the perpetrator. Additionally, Survivors may be entitled to relief under many other federal and state wage and hour, tort, and harassment laws. *See generally* Kathleen Kim and Kusia Hreshchynshyn, *Human trafficking private right of action: civil rights for trafficked persons in the United States*, 16 *Hastings Women's L.J.* 1-36 (2004); Kathleen Kim and Dan Werner, *Civil Litigation on Behalf of Victims of Human Trafficking*, (2005) <http://www.lafla.org/client-services/special-projects/VictimsTrfficking0405.pdf>

⁴¹ 18 U.S.C. § 1593. Pursuant to 18 U.S.C. § 1593, courts must order the defendant to pay the victim the full amount of the victim's losses, which includes medical and psychological assistance, attorney's fees and other losses suffered as a proximate cause of the offense, and “the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act.” 18 U.S.C. § 1593(b)(3).

Resources

Social Services, Legal Resources and General Information

- Coalition to Abolish Slavery and Trafficking: www.castla.org
- Florida Coalition Against Domestic Violence: www.fcadv.org/trafficking.html
- Freedom Network USA: www.freedomnetworkusa.org
- Manual on Civil Litigation on Behalf of Victims of Trafficking: <http://www.lafla.org/clientservices/specialprojects/VictimsTrfficking0405.pdf>
- General information about human trafficking, technical assistance and other resources: <http://www.ncjrs.org/spotlight/trafficking/summary.html>

Federal Government

- Health and Human Services – For general information and social services to assist victims of trafficking: www.acf.hhs.gov/trafficking and the Hotline: 888-3737-888.
- Department of Justice – to report a trafficking crime and for general information: www.usdoj.gov/crt/crim/tpwetf.htm and Complaint line 888-428-7581.
- Department of State – Trafficking in Persons Reports and other information: www.state.gov/g/tip

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