

IV. Tools for Investigating and Prosecuting Human Trafficking

The Department's successful efforts in combating human trafficking would not be possible without the enactment of several statutes by Congress. Prior to 2001, trafficking cases were prosecuted under a number of federal criminal statutes, including the involuntary servitude statutes,²⁷ the Mann Act,²⁸ and labor laws concerning workplace conditions and compensation.²⁹ Prior to the TVPA, these statutes did not always treat the workers involved as victims and enforcement authority for each of these possible anti-trafficking tools was scattered across the United States government, leading to differing outcomes depending on which charges were brought or which agency learned of the allegations of abuse. The Mann Act was formerly thought of as the primary federal anti-trafficking tool, when "trafficking" was perceived as interstate transportation for prostitution, as opposed to the modern definition, which focuses on compelled service. The involuntary servitude statutes set forth a variety of substantive crimes covering the slave trade, involuntary servitude, and peonage, but the Supreme Court narrowed their scope in 1988, restricting their use to cases involving force, threats of force, or threats of legal coercion, as opposed to psychological coercion, a tactic which is often used by traffickers today.³⁰ Sections 1584 and 1581 of Title 18 of the United States Code, which respectively criminalize involuntary servitude and peonage, were the primary statutes prosecutors used in involuntary servitude and traf-

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Asset Forfeiture
 Fraudulent Document Offenses
 Immigration Offenses
 Involuntary Servitude Statutes
 Labor Violations
 Mann Act
 Money Laundering
 PROTECT Act
 RICO
 Trafficking Victims
 Protection Act of 2000
 Trafficking Victims Protection
 Reauthorization Act of 2003
 Trafficking Victims Protection
 Reauthorization Act of 2005

ficking prosecutions. Section 1583, which criminalizes kidnaping victims into slavery, likewise remains a useful tool in modern federal prosecutions.

Today, the centerpiece of United States government efforts is the TVPA.³¹ The TVPA provided for a range of new protections and assistance for victims of trafficking who cooperate with law enforcement investigations; it expanded the crimes and enhanced the penalties available to federal investigators and prosecutors pursuing traffickers; and it expanded United States activities internationally to prevent victims from being trafficked in the first place.

²⁷ See 18 U.S.C. §§ 1581-1588. These statutes are still used when appropriate and were updated and supplemented by the restitution, forfeiture, and attempt provisions enacted in the TVPA.

²⁸ See 18 U.S.C. §§ 2421-2424.

²⁹ *E.g.*, Migrant and Seasonal Agricultural Worker Protection Act, Pub. L. No. 97-470, 96 Stat. 2583 (1983) (codified as amended at 29 U.S.C. § 1851).

³⁰ See *United States v. Kozminski*, 487 U.S. 931 (1988).

³¹ TVPA, Pub. L. No. 106-386.

A. Protections and Assistance for Victims

The TVPA authorized funding for victim services and provided for immigration relief for severe forms of trafficking.³² Under the TVPA, a victim is certified by the Department of Health and Human Services as eligible for services funded by any federal or state program or activity, such as the Departments of Agriculture, Health and Human Services, or Labor, or the Legal Services Corporation. Department of Health and Human Services certification is granted after consultation with the Department's law enforcement officials, including investigators and prosecutors, after finding that the victim meets the statutory definition of a "victim of a severe form of trafficking" and is cooperating with the federal law enforcement investigation. The TVPA also authorized the Department to fund and provide training and technical assistance to law enforcement agencies and victim services providers.

The Department's Office for Victims of Crime directs its funding to support services for pre-certified victims and may, in special circumstances, fund organizations that provide limited services to certified victims. Pre-certified victims are those victims who have been identified by law enforcement in connection with an investigation and are awaiting Department of Health and Human Services certification that they are a victim of a severe form of trafficking and assisting law enforcement. This is significant because pre-certified victims are not entitled to the same publicly-funded benefits to which certified victims are, yet the need for services is most

acute at the pre-certified stage. Secondly, providing those services enables pre-certified victims, in most instances, to cooperate with law enforcement to investigate and prosecute their human traffickers. A safe and healthy victim is better able to articulate to investigators and in a court what has happened to him or her. Indeed, a survivor of trafficking can often be an effective anti-trafficking advocate.

The emptiness I felt was just overwhelming. The pain was too much. To know that I would do nothing. No one was even allowed to come to the house to visit us. She didn't want anyone to visit us or anyone to talk to us. Maybe because she still wanted to pull the blindfold over our eyes.... She was mistreating my children. She would send other people to lock my children up in the room. She instructed them not to give them food. They had a dog that they paid a lot more attention to than they did to my children. As a mother this was such a an [sic] horrible pain. There was nothing to do, just to feel emptiness.

– C.R.V., a victim in United States v. Zavala.

B. Defined Crimes and Enhanced Penalties

The TVPA³³ provided a clear definition of human trafficking as a crime, created stiffer sentences, and provided prosecutors with definitions of terms used to describe the offense, such as "coercion" and "commercial sex act."³⁴ Traffickers who use force, fraud, or coercion, or who exploit children under 14 years of age for commercial sex acts, may be sentenced to a term of up to life imprisonment.³⁵

³² A more detailed discussion about victim services programs administered by the Department of Justice is below in Part VI "The Department's Full-Scale Attack on Human Traffickers," Section B, "Restoring a Victim's Dignity."

³³ See 18 U.S.C. §§ 1589-1594.

³⁴ 22 U.S.C. § 7102.

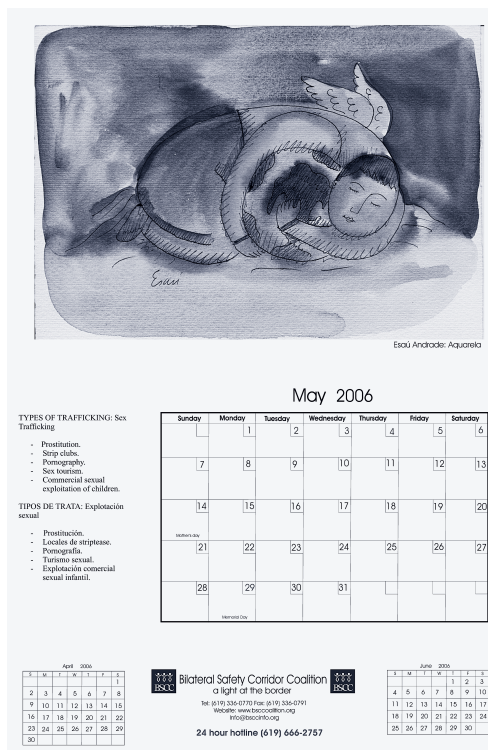
³⁵ See 18 U.S.C. § 1591. Traffickers in other cases are subject to a term of imprisonment of up to 40 years.



Kil Soo Lee, a former owner of the Daewoosa factory in American Samoa, was sentenced in June 2005 to 40 years of incarceration for trafficking over 200 victims.

C. Prevention

As discussed above,³⁶ the TVPA has provided for victim services in connection with a victim's aiding in the government's prosecution of traffickers. This approach is essential to prevention. The TVPA has also given the Department the tools needed to increase public awareness within our communities, particularly among law enforcement and social services agencies, as well as internationally. The Department's activities through the Civil Rights and Criminal Divisions as well as non-governmental organizations that receive grants from the Office for Victims of Crime, aim to prevent victimization here and abroad through public awareness and outreach. These activities are discussed below in Part VI, "The Department's Full-Scale Attack on Human Traffickers."



The Bilateral Safety Corridor Coalition, a grantee of the Office for Victims of Crime, developed a calendar to increase public awareness about human trafficking.

In 2003, Congress, with the President's support, re-authorized the TVPA in the TVPRA.³⁷ The TVPRA further enhanced penalties and added tools to the United

³⁶ See Part III, "Scope of the Problem," Section B, "The Department Takes a Victim-Centered Approach to This Crime" above for a discussion about the importance of victim services in the Department's victim-centered approach to human trafficking.

³⁷ Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003) (signed into law by President Bush on December 19, 2003).

States government's anti-trafficking portfolio, such as new public awareness campaigns to combat sex tourism and refinements to the federal criminal law. Significantly, Congress included trafficking as a predicate for money laundering and racketeering under the RICO Act. Prosecutors have used these effective tools to dismantle trafficking syndicates. Going forward, the Department will continue to place a keen emphasis on the use of forfeiture tools to better attack traffickers and their networks. In conjunction with the mandatory restitution provisions of the TVPA, these criminal provisions work together to ensure that defendants convicted of trafficking in persons receive sentences that reflect the seriousness of their crimes. The TVPA and the TVPRA have produced tangible results in the field, yielding penalties three and four times those obtained under smuggling or harboring statutes and under historical servitude and trafficking statutes.

The TVPRA also codified the requirement that victims cooperate with law enforcement. Specifically, the Department of Health and Human Services, as part of its certification process, may now consider statements from state and local law enforcement that the victim has "been willing to assist in the investigation and prosecution of state and local crimes" in connection with the victim's application for a T visa. The TVPRA also relieved victims under the age of 18 from having to show a willingness to assist in the investigation in order to be eligible for the T visa.

Finally, Congress created a new civil action that allows trafficking victims to sue their traffickers in federal district court, thus

complementing the criminal prosecution of traffickers. Specifically, the TVPRA of 2003 gave victims of human trafficking the right to bring federal civil suits against their traffickers for actual and punitive damages. For example, nine of the victims in the *Reddy*³⁸ case and the mother of another victim sued the Reddy family, seeking \$100 million in damages. The Reddy family settled the case before going to trial.³⁹

In Addition to the TVPRA, the President in 2003 signed into law the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, known as the PROTECT Act. The PROTECT Act, developed with the assistance of experts in the Child Exploitation and Obscenity Section of the Department's Criminal Division, has given the Department's prosecutors several new tools to combat sex trafficking and child prostitution. The Act makes it a crime for a United States citizen to travel in foreign commerce and engage in illicit sexual activity with minors,⁴⁰ and includes an attempt provision.⁴¹ Moreover, the Act facilitated prosecutions by eliminating the requirement that the Department prove that the traveler-predator intended to have sex with a child prior to traveling. As discussed in the next section, the Child Exploitation and Obscenity Section and the United States Attorneys' Offices have used this new tool to aggressively combat child sex trafficking.

In addition to adding important new tools in the prosecution of child sex tourism cases, the PROTECT Act supplemented the TVPA by raising the statutory maximum sentences for violations of 18 U.S.C. § 1591 involv-

³⁸ See Part I, "An Introduction to Human Trafficking," above for a discussion about *United States v. Reddy*.

³⁹ *Doe v. Reddy*, 2003 WL 23853010 (N.D. Cal. 2003).

⁴⁰ Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today ("PROTECT") Act of 2003, Pub. L. No. 108-21, 117 Stat. 650.

⁴¹ PROTECT Act, Pub. L. No. 108-21, 117 Stat. 650 (codified as amended at 18 U.S.C. § 2423(c)).

ing children. The PROTECT Act also abolished the statute of limitations for crimes involving the abduction or physical or sexual abuse of a child in virtually all cases. Under previous law, the statute of limitations expired when the child turned 25, potentially allowing child abusers to go free if law enforcement could not solve the crime in time.

On January 10, 2006, President Bush signed into law the Trafficking Victims' Protection Reauthorization Act of 2005 ("TVPRA of 2005"). In addition to reauthorizing the TVPRA, the law enhances our ability to combat trafficking in persons by extending our prosecutorial tools and providing new protections for victims. In important enhancements to prosecutorial tools, the law establishes extra-territorial authority for prosecution of trafficking

in persons offenses committed by federal contractors abroad or persons accompanying them, and adds trafficking in persons as a predicate for the offense of document servitude, where one's identity papers, such as a foreign birth certificate, a passport, or immigration documents, are withheld by the trafficker and used to coerce or compel the trafficking victim. The TVPRA of 2005 also promotes efforts to fight domestic trafficking in

persons. It requires a comprehensive research and statistical review and analysis of incidents of trafficking and commercial sex acts within the United States and annual conferences, to be conducted by the Department for the benefit of state and local law enforcement, other governmental agencies, and non-governmental organizations, on domestic trafficking in fiscal years 2006, 2007, and 2008, and biennially thereafter.



The bill I sign today will help us to continue to investigate and prosecute traffickers and provide new grants to state and local law enforcement. Yet, we cannot put the criminals out of business until we also confront the problem of demand. Those who pay for the chance to sexually abuse children and teenage girls must be held to account. So we'll investigate and prosecute the customers, the unscrupulous adults who prey on the young and the innocent.

– President George Bush, January 10, 2005.

ficking. It also creates a new grant program for state and local law enforcement authorities to investigate and prosecute trafficking of U.S. citizens and permanent residents, including efforts to reduce demand for commercial sex acts. Furthermore, the TVPRA of 2005 contains new requirements for collection of intelligence data that will promote effective responses to trafficking. These include a study by the Human Smuggling

and Trafficking Center, an interagency program discussed in more detail below,⁴² of the relationship between trafficking and terrorism, the abduction and enslavement of children as soldiers, and development of a mechanism for quantifying the number of victims of trafficking.

⁴² See Part V, "Halting Human Trafficking With a Record Number of Successful Investigations and Prosecutions," Section E, "Interagency Coordination," for a discussion of the Human Smuggling and Trafficking Center.