

Hidden Victims: Evaluating Protections for Undocumented Victims of Human Trafficking

by Alexandra Webber and David Shirk*

EXECUTIVE SUMMARY

In the United States, human traffickers most frequently exploit the desperation of undocumented immigrants as a means of obtaining victims. But, until recently, undocumented trafficking victims were precluded by their lack of legal status from receiving government protections typically available to other crime victims and were unable to remain in the United States to assist in the prosecution of their abusers. To address this problem, Congress passed the Trafficking Victims Protection Act of 2000 (TVPA). Under this law, undocumented immigrants who are victims of “severe” forms of human trafficking may be eligible for temporary non-immigration status and a limited number of public benefits. Despite the legal innovations of the TVPA, the number of people who have actually received protection under the law is relatively low, especially when compared to estimates of how many trafficking victims are in the United States. However, ultimately, the main problem is that there is insufficient evidence regarding the actual number of qualifying cases of “severe” human trafficking in the United States.

Among the findings of this report:

- Estimates of the number of trafficking victims vary widely. In 2004 and 2005, the U.S. Department of State calculated that between 14,500 and 17,500 people are trafficked into the United States each year. However, in 2000 the U.S. government estimated that 45,000 to 50,000 women and children alone are trafficked into the country annually.
- A survey of 131 reported incidents of human trafficking in the United States between 1998 and 2003 revealed that 46 percent involved forced sexual exploitation, while the remaining 54 percent involved forced labor exploitation.
- The proportion of forced sexual exploitation cases among all trafficking prosecution cases filed by the Department of Justice grew from 40 percent in Fiscal Year (FY) 2001 to nearly 90 percent in FY 2004.
- More research is needed to properly document distinct forms of human trafficking to test the government’s assumption that sexual exploitation is the predominant type of trafficking in the United States.
- In the four-year period from March 2001 to mid-May 2005, the Office of Refugee Resettlement (ORR) certified a total of only 752 trafficking victims and only 491 received T-visas—the most critical protection provided under the TVPA.
- The large discrepancy between the number of trafficking victims estimated to be present in the United States and the total number of victims receiving protection under the TVPA is the result of several factors: (1) the imperfect nature of trafficking estimates; (2) misidentification of victims by law enforcement; (3) the conditional nature of victim protections; and (4) overly restrictive eligibility requirements for the T-visa.

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INTRODUCTION

Preying on the poor and displaced, human traffickers use coercion and deception to subjugate individuals into forced labor, commercial sex acts, or indentured servitude. In the United States, human traffickers most frequently exploit the desperation of undocumented immigrants as a means of obtaining victims. But, until recently, undocumented trafficking victims were precluded by their lack of legal status from receiving government protections typically available to other crime victims and were unable to remain in the United States to assist in the prosecution of their abusers. To address this problem, Congress passed the Trafficking Victims Protection Act of 2000 (TVPA).¹ Under this law, undocumented immigrants who are victims of “severe” forms of human trafficking may be eligible for temporary non-immigration status, in the form of “continued presence” or a three-year T-visa, as well as a limited number of public benefits.

The TVPA represents an important shift in immigration law because it provides protections that previously were unavailable to undocumented victims of trafficking, who were often misidentified as criminals and deported based on their unlawful presence in the United States. Deportation increased the odds of re-victimization in the victim’s home country and, without a victim to serve as a witness, reduced the likelihood of a successful prosecution against the trafficker. The TVPA, therefore, reflects a new public policy that seeks to end the criminalization of undocumented victims of human trafficking, to provide humanitarian protections for them, and to promote the prosecution of traffickers.

Despite the legal innovations of the TVPA, the number of people who have actually received protection under the law is relatively low, especially when compared to estimates of how many trafficking victims are in the United States. This is the result of several factors, including continued misidentification of victims by law-enforcement authorities and the requirement that victims be allowed to remain in the country only if they co-

operate in trafficking investigations or prosecutions and prove that they will suffer “extreme hardship” if removed from the country. However, ultimately, the main problem is that there is insufficient evidence regarding the actual number of qualifying cases of “severe” human trafficking in the United States.

A PROBLEM OF UNKNOWN SCOPE

Estimates of the number of trafficking victims vary widely. In 2004 and 2005, the U.S. Department of State calculated that approximately 600,000 to 800,000 people cross international borders as victims of human trafficking each year, with between 14,500 and 17,500 entering the United States.² However, in 2000 the U.S. government estimated that 45,000 to 50,000 women and children alone are trafficked into the country annually.³ The government attributes the large difference between the 2000 and 2004 estimates to improvement in its methodology for calculating the flow of trafficking victims and not to an actual reduction in the rate of victimization, although the methodology is not explained.⁴ In fact, based on the limited data collected and published by the government, it is not possible to determine if the rate of human trafficking has increased, decreased, or remained unchanged.

In addition to uncertainty as to the overall number of trafficking victims in the United States, the characteristics of these victims also are unclear. While the government distinguishes among victims by gender and type of forced exploitation (labor or sexual) in its international estimates, no comparable data is provided on victims trafficked into this country. The State Department estimates that 80 percent of victims worldwide are female, with 70 percent of these women and girls experiencing forced commercial sexual exploitation.⁵ But recent research suggests that sexual exploitation may not account for such a large share of trafficking cases in the United States. A survey of 131

¹ Victims of Trafficking and Violence Protection Act of 2000 (TVPA), Pub. L. no. 106-386, 114 Stat 1464 (2000).

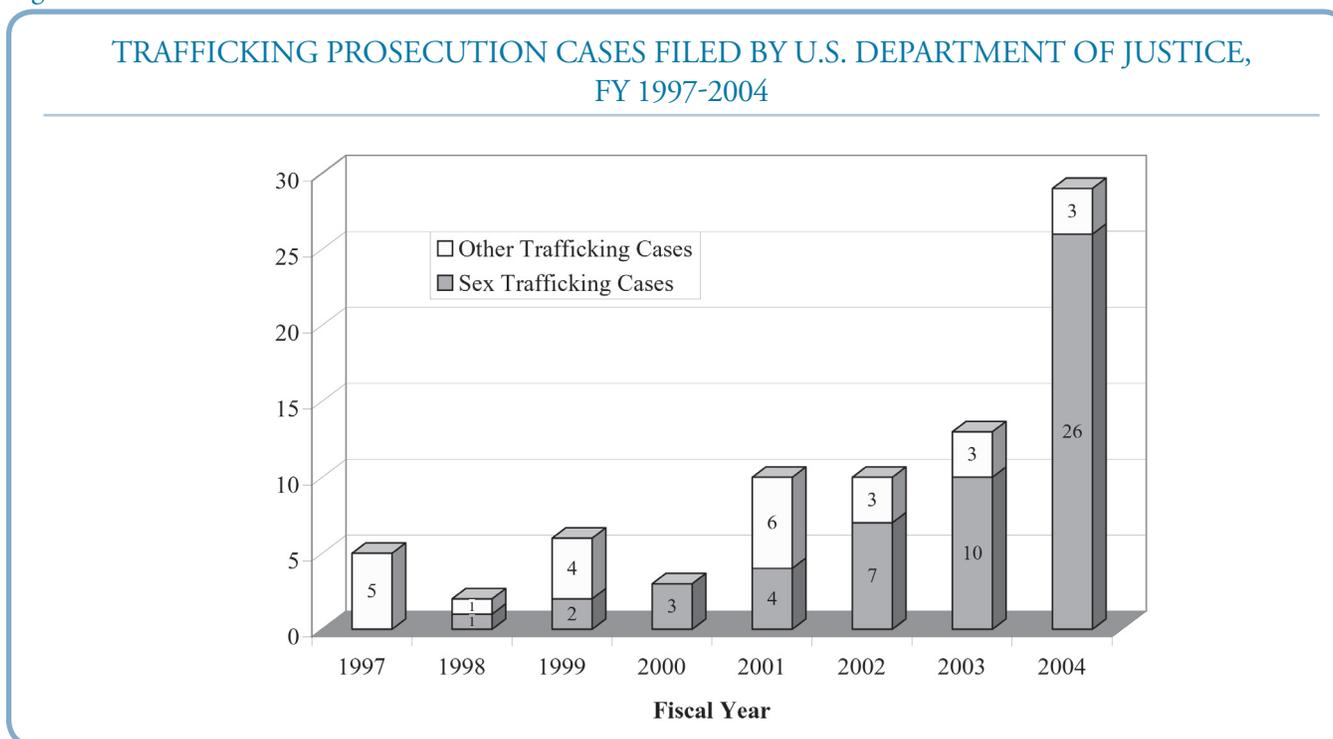
² U.S. Department of State, *Trafficking in Persons Report*, June 2005, p. 6; U.S. Department of State, *Trafficking in Persons Report*, June 2004, p. 23.

³ Amy O’Neill Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*. Washington, DC: Center for the Study of Intelligence, U.S. Central Intelligence Agency, April 2000, p. 3.

⁴ U.S. Department of State, *Trafficking in Persons Report*, June 2004, p. 23.

⁵ U.S. Department of State, *Trafficking in Persons Report*, June 2005, p. 6; U.S. Department of State, *Trafficking in Persons Report*, June 2004, p. 23.

Figure 1:



Source: U.S. Department of Justice, *Report to Congress from Attorney General Alberto R. Gonzales on U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004*, July 2005, p. 20.

reported incidents of human trafficking in the United States between 1998 and 2003 revealed that 46 percent involved forced sexual exploitation, while the remaining 54 percent involved forced labor exploitation.⁶

Despite the ambiguity of the little evidence that is available, there has been a growing emphasis by the U.S. government on combating sex trafficking. The proportion of forced sexual exploitation cases among all trafficking prosecution cases filed by the Department of Justice grew from 40 percent in Fiscal Year (FY) 2001 to nearly 90 percent in FY 2004 (see Figure 1).⁷ In part, this reflects the fact that the

government devotes greater resources to the investigation of sex trafficking cases by the Department of Justice than it does to the investigation of labor trafficking cases by the Department of Labor.⁸ In addition, many forms of labor exploitation that would be prosecutable under new trafficking laws—such as extortion based on undocumented status—are not vigorously pursued by prosecutors given the government’s current emphasis on sexual exploitation cases. More research is needed to properly document distinct forms of human trafficking to test the government’s assumption that sexual exploitation is the predominant type of trafficking in the United States.

⁶ Free the Slaves (Washington, DC) & The Human Rights Center (University of California, Berkeley), *Hidden Slaves: Forced Labor in the United States*, September 2004, p. 58.

⁷ U.S. Department of Justice, *Report to Congress from Attorney General Alberto R. Gonzales on U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004*, July 2005, p. 20.

⁸ Interview with Assistant U.S. Attorney Christopher Tenorio, San Diego, December 5, 2003.

HUMAN TRAFFICKING AS AN IMMIGRATION PROBLEM

While the full dimensions of human trafficking remain unknown, it is clear that within the United States trafficking is a crime primarily perpetrated against undocumented migrants. Human traffickers usually target individuals desperate to migrate to improve their economic situation. Traffickers most often use promises of safe passage to and employment in the United States as a carrot to gain control of their victims, and later exploit them for commercial sex or forced labor.⁹ Thus, human trafficking routes typically follow well-known migrant smuggling routes.¹⁰

Although immigrant smuggling and human trafficking are different, the line between the two is often blurred as traffickers exploit immigrant smuggling operations to find new victims. In general, an immigrant smuggler is paid voluntarily by an individual who wishes to be smuggled into the country, whereas a trafficking victim is subjected to force or coercion by a trafficker for the purpose of exploitation for profit.¹¹ However, some smugglers offer migrants the opportunity to pay their smuggling fees after entry to the United States, while often charging usurious interest rates and costs for room and board. Smugglers may also extort their clients for additional money—or force them to “work off” new debt—before or after smuggling them into the country. Scenarios such as these amount to forms of debt bondage. In addition, once in the United States, smugglers or employers can easily threaten undocumented migrants with exposure to law enforcement and deportation, making them vulnerable to a variety of forms of exploitation. Reports of human trafficking cases provide ample supporting evidence of such abuses.¹²

Recent trends in both immigration to the United States and in U.S. border enforcement suggest that a growing number of undocumented immigrants are at risk of becoming trafficking victims. Women and children, who are particularly vulnerable to trafficking, comprise a greater proportion of undocumented immigrants to the United States than in the past. Moreover, despite high U.S. labor demand, many would-be migrants from less developed countries do not qualify for legal admittance into the United States due to limited country quotas and the prioritization of family reunification over employment-based immigration. Lured by U.S. employers who face little interior enforcement by immigration authorities, and confronted over the past decade with heightened security measures at U.S. ports of entry, undocumented immigrants increasingly rely on smugglers, who are uniquely positioned to engage in both labor and sexual exploitation.¹³

THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000

With the dual intent of providing humanitarian protections to undocumented trafficking victims and enhancing prosecutions of traffickers, Congress passed the Trafficking Victims Protection Act (TVPA) in October of 2000.¹⁴ The TVPA became the first law in the United States to categorize human trafficking as a distinct criminal offense with specific penalties. Furthermore, the law represented a significant shift in U.S. immigration law and policy in that it provided eligibility for temporary non-immigration status and access to some public benefits to undocumented immigrants who are victims of a “severe” form of human trafficking. Under the TVPA, a severe form of trafficking is defined as: (A) *sex trafficking in which a*

⁹ U.S. Department of Justice, Civil Rights Division, *Anti-Trafficking News Bulletin*, Volume 2, Issue 1, April 2005, p. 5, 6 (summarizing *United States v. Carreto* and *United States v. Mubang*).

¹⁰ Amy O’Neill Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*. Washington, DC: Center for the Study of Intelligence, U.S. Central Intelligence Agency, April 2000, p. 9, 17.

¹¹ The Human Smuggling and Trafficking Center, U.S. Department of State, “Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking,” January 2005.

¹² U.S. Department of Justice, *Report to Congress from Attorney General Alberto R. Gonzales on U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004*, July 2005, p. 24-26.

¹³ David Shirk and Alexandra Webber, “Slavery Without Borders: Human Trafficking in the U.S.-Mexican Context,” *Hemisphere Focus*, Volume XII, Issue 5, January 23, 2004, p. 2-3.

¹⁴ TVPA, Pub. L. no.106-386, 114 Stat 1464 (2000).

*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.*¹⁵

Prior to passage of the TVPA, trafficking victims generally were subject to incarceration and removal from the United States based on their unlawful presence in the country. As a result, they were deprived of the opportunity to receive critical aid typically available to crime victims or to assist in the prosecution of their traffickers. Under the TVPA, temporary non-immigration status is available to qualifying victims either through “continued presence” or a “T-visa.” Additionally, even before obtaining continued presence or a T-visa, victims may be eligible for public benefits.

Continued Presence

U.S. Citizenship and Immigration Services (USCIS) may grant continued presence to an undocumented victim of a severe form of human trafficking. To obtain continued presence, a U.S. law-enforcement agency must first request continued presence from USCIS on behalf of a victim. The undocumented victim must be a potential witness able to assist with an actual investigation or prosecution of a human-trafficking case. Victims granted continued presence are eligible to receive public assistance to the same extent as refugees, as well as employment authorization. A victim granted continued presence may remain in the United States until the criminal investigation or prosecution terminates. If a victim obtains continued presence but is not granted alternative immigration status, they must return to their home country upon the termination of the investigation or prosecution.

T-Visa

In recognition of the dangers that trafficking victims may face if returned to their country of origin and the need for victims to testify against traffickers, the T-visa provides a three-year safe haven to remain in the United States. The TVPA permits a maximum of 5,000 T-visas each year for victims of severe forms of human trafficking, as well as opportunities for the victim’s immediate family to apply for derivative T-visas.¹⁶ Moreover, the TVPA allows the possibility for qualifying T-visa recipients to adjust from temporary non-immigrant status to legal permanent resident (LPR) status.¹⁷

To be eligible for a T-visa, undocumented victims of human trafficking must meet *each* of five mandatory conditions:

1. **Severe Form of Trafficking:** Victims must prove they suffered a severe form of human trafficking.¹⁸ As explained by the T-visa regulations, “[e]xcept in instances of sex trafficking involving minors, severe forms of trafficking in persons must involve both a particular means (force, fraud, or coercion) and a particular end (sex trafficking, involuntary servitude, peonage, debt bondage, or slavery).”¹⁹
2. **Physical Presence:** Victims must prove they are “physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port-of-entry thereto, on account of such trafficking.”²⁰ T-visa regulations explain that non-citizen victims who entered the United States either legally or illegally may be considered physically present.²¹
3. **Extreme Hardship:** Victims must prove that, if removed from the United States, they will suffer “extreme hardship involving unusual and severe harm.” This extreme-hardship

¹⁵ TVPA, Pub. L. no.106-386, 114 Stat 1470, Sec 103 (8)(A)(B) (2000).

¹⁶ U.S. Department of Justice, Immigration and Naturalization Service, “T” Visa Regulations,” January 31, 2002, p. 5.

¹⁷ TVPA, Pub. L. no. 106-386, 114 Stat 1479, Sec. 107(f) (2000).

¹⁸ TVPA, Pub. L. no. 106-386, 114 Stat 1475, Sec. 107(b)(1)(A) (2000).

¹⁹ U.S. Department of Justice, Immigration and Naturalization Service, “T” Visa Regulations,” January 31, 2002, p. 7.

²⁰ U.S. Department of Justice, Immigration and Naturalization Service, “T” Visa Regulations,” January 31, 2002, p. 5.

²¹ TVPA, Pub. L. no. 106-386, 114 Stat 1477, Sec. 107(e)(1)(II) (2000).

standard is applied according to the specific circumstances of each case and focuses on the hardship to be suffered by the victim-applicant, but has not yet been challenged in a court of law.²² Consequently, the TVPA and T-visa regulations are the only guides to understanding the legal definition of extreme hardship.²³ It is clear, however, that the extreme hardship required of T-visa applicants sets a higher bar than extreme-hardship standards required for other forms of immigration relief.

4. **Reasonable Requests for Assistance:** Victims must prove that they have complied with reasonable requests for assistance in the investigation or prosecution of a human-trafficking crime.²⁴ At a minimum, to meet this statutory requirement the victim must either report the crime or respond to inquiries made by investigators or prosecutors.²⁵ Minors under the age of 18 are not required to comply with reasonable requests for assistance.²⁶

5. **Admissibility:** Victims must either be admissible to the United States or obtain a waiver of inadmissibility from USCIS. Victims who are present in the United States without having been admitted or paroled are inadmissible, and accordingly have to obtain a waiver of inadmissibility in order to be eligible for T non-immigrant status.

Public Benefits Through Certification

Trafficking victims who receive certification from the Department of Health and Human Services’ Office of Refugee Resettlement (ORR) are eligible for public benefits to the same extent as refugees.²⁷ Certified victims may apply for Temporary Assistance for Needy Families (TANF), food stamps, the State Children’s Health Insurance Program (SCHIP), Medicaid, and public housing, among other benefits.²⁸ ORR automatically certifies a victim of a severe form of human trafficking who has: (1) received continued presence; (2) received a T-visa; or (3) made a *bona fide* application for a T-visa that has not yet been denied.²⁹ Victims under the age of 18 are not required to obtain certification.³⁰

Figure 2:

ORR CERTIFICATIONS OF VICTIMS OF SEVERE FORMS OF HUMAN TRAFFICKING, ADULTS AND MINORS, 2001-2005

	2001	2002	2003	2004	2005*	Total
Adults	198	80	145	144	141	708
Minors	0	19	6	19	0	44
Total	198	99	151	163	141	752

Source: Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

*Note: The most recent data are inclusive up to May 2005.

²² U.S. Department of Justice, Immigration and Naturalization Service, “T” Visa Regulations,” January 31, 2002, p. 4, 5, 8.

²³ Jennifer M. Wetmore, “The New T-Visa: Is the Higher Extreme Hardship Standard Too High For Bona Fide Trafficking Victims?,” *New England International and Comparative Law Annual*, Volume 9, No. 1, 2003, p. 161.

²⁴ TVPA, Pub. L. no. 106-386, 114 Stat 1477, Sec. 107(e)(1)(III) (2000).

²⁵ U.S. Department of Justice, Immigration and Naturalization Service, “T” Visa Regulations,” January 31, 2002, p. 10.

²⁶ The Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA) raised the age of a minor for the purposes of this law from 15 to 18.

²⁷ U.S. Department of Justice, Immigration and Naturalization Service, “T” Visa Regulations,” January 31, 2002, p. 13.

²⁸ U.S. Department of Health and Human Services, Administration for Children and Families, Campaign to Rescue and Restore Victims of Human Trafficking, “Victim Assistance Fact Sheet,” 2004.

²⁹ Steve Wagner, Coordinator, Trafficking in Persons Program, Office of Refugee Resettlement, telephone interview, June 28, 2005.

³⁰ U.S. Department of Justice, Immigration and Naturalization Service, “T” Visa Regulations,” January 31, 2002, p. 13.

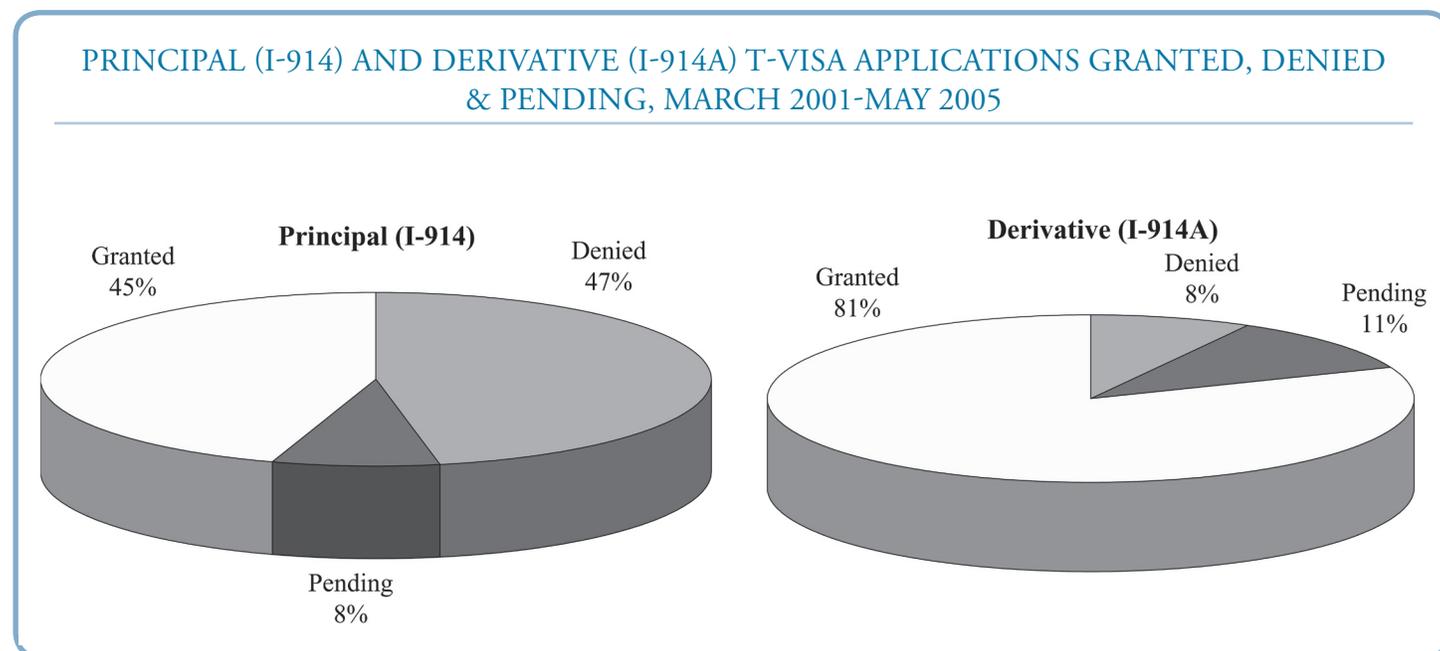
Access to Legal Services

The TVPA extends to trafficking victims the right to access legal aid from the Legal Services Corporation (LSC).³¹ LSC is able to offer legal services to victims of human trafficking as soon as they are identified with no verification of victimization required.³² Identified victims are screened by LSC staff to determine what, if any, immigration relief is available to them (political asylum, a T-visa, a U-visa for crime victims, etc.). LSC can assist victims in filing the I-914 application for a T-visa or derivative applications for family members, in requesting employment authorization, and in obtaining letters of certification from ORR. Since the LSC is otherwise unable to assist unauthorized migrants, access to its services reflects another significant change in immigration law and policy created by the TVPA.

TOO MANY VICTIMS, TOO FEW PROTECTED

Despite the uncertainty inherent in estimates of human trafficking, it is clear that many thousands of victims are trafficked into the United States each year. Yet, in the four-year period from March 2001 to mid-May 2005, ORR certified a total of only 752 trafficking victims and only 491 received T-visas—the most critical protection provided under the TVPA. Annual rates of ORR victim certification have averaged about 150 per year, with the overwhelming majority of certified victims (94 percent) being adults (minors are eligible for benefits without the requirement of certification) (see Figure 2). The rate of T-visa approval has averaged about 45 percent for all principle T-visa applications, although approval rates were much higher for derivative applications filed by family members of the victim (see Figure 3).³³

Figure 3:



Source: Office of Communication, U.S. Citizenship and Immigration Services, Department of Homeland Security, Electronic correspondence with Dan Kane, August 16, 2005.

³¹ U.S. Department of State, *Trafficking in Persons Report*, June 2005, p. 242.

³² Nancy J. Reyes-Rubi, Attorney, Legal Aid Foundation of Los Angeles, email interview, August 8, 2005.

³³ The number of I-914 and I-914A T-visa applications pending (92 I-914/68 I-914A), granted (491 I-914/506 I-914A) and denied (519 I-914/ 53 I-914A) do not equal the total number of T-visa applications received (1,084 I-914/601 I-914A). There are 18 fewer I-914 visas and 26 fewer I-914A visas granted than accounted for across the categories of applied, pending, and denied. The authors questioned USCIS about the discrepancy and were informed that the office is attempting to reconcile these figures.

The large discrepancy between the number of trafficking victims estimated to be present in the United States and the total number of victims receiving protection under the TVPA is the result of several factors: (1) the imperfect nature of trafficking estimates; (2) misidentification of victims by law enforcement; (3) the conditional nature of victim protections; and (4) overly restrictive eligibility requirements for the T-visa.

Trafficking Estimates Are Speculative

One obvious explanation for the gap between government estimates of trafficking victims and the number of T-visas granted is that the government's estimates are imperfect. Human trafficking is an underground, illicit phenomenon that cannot easily be documented. Therefore, it is likely that government figures on the number of victims present in the United States are inaccurate. More research is required to improve the data on trafficking. For instance, surveys could be conducted within undocumented immigrant communities in the United States to learn more about the rate at which various forms of human trafficking occurs.

A second, related problem is that victims who are in fact eligible for T-visas may be only a small fraction of the total number of trafficking victims. That is, the TVPA provides protections only for victims of "severe" forms of trafficking, while government estimates include all forms of human trafficking (including a presumably far greater number of "lesser" forms of trafficking for which there are no special protections under the TVPA). Thus, even if government estimates of the total number of trafficking victims are relatively accurate, these estimates are misleading in that they suggest a far greater number of trafficking victims than those actually targeted by the TVPA. Hence, government estimates must be refined to distinguish the number of victims of *severe*

forms of trafficking (i.e., those who are eligible for T-visas). Moreover, the government should release publicly information on the age, sex, and type of exploitation suffered by victims who have received T-visas and ORR certifications so that these programs can be evaluated more effectively.

Not All Victims Are Identified by Law-Enforcement Agencies

Government and victim service agencies attribute the small number of T-visas issued partly to the misidentification of victims by law-enforcement authorities. According to Steve Wagner, Coordinator of the ORR Trafficking in Persons Program, "We're in good shape with regard to providing services to victims at present levels, but the problem is that we're not finding victims at an acceptable rate... For the most part, local law enforcement is clearly not aware of the phenomenon [of human trafficking] and the fact that it is a federal crime."³⁴

Because human trafficking is a federal crime, federal agencies were the first to be trained to identify victims. State and local law-enforcement agencies have begun only recently to receive such training. In part this is because more states are passing their own laws to criminalize human trafficking, but also because the federal government—understanding that state and local law-enforcement officers often are the first to interact with human-trafficking victims—now provides funding for state and local training.³⁵ However, there is a lack of uniformity in the training provided.³⁶ San Diego Assistant U.S. Attorney Christopher Tenorio notes that differences in regional concerns and the large number of federal agencies involved in the detection and investigation of human trafficking have presented major challenges for efforts by the Justice Department's Trafficking in Persons and Worker Exploitation Task Force to provide uniform training.³⁷

³⁴ International Rescue Committee, "ORR Trafficking in Persons Program," *Trafficking Watch*, Issue No. 3, Winter 2004, p. 1.

³⁵ Sheila Neville, Staff Attorney Los Angeles Legal Aid Foundation, electronic correspondence, August 22, 2005.

³⁶ Karina Kirana, VETA Staff Attorney Boat People SOS, electronic correspondence, August 18, 2005.

³⁷ Christopher Tenorio, Assistant United States Attorney, electronic correspondence, August 12, 2005.

Meanwhile, some non-governmental organizations (NGOs), such as Vital Voices Global Partnership, report that law-enforcement officers continue to ignore victims and instead process them as undocumented migrants.³⁸ From the perspective of law enforcement, the failure to identify victims may be less attributable to “a lack of will” on their part than to the fact that victims themselves often are unwilling to cooperate with law-enforcement officials. In addition, since many prosecutors are inundated by more cases than can be prosecuted, the government must decide how to expend precious resources—prosecuting a criminal caught red-handed or working to convince victims to cooperate.³⁹ While the government attempts to do both, this is not always possible. It is advisable to promote more training and coordination among law-enforcement and victim-assistance professionals as a means of promoting both increased access to TVPA protections and greater victim cooperation in investigations and prosecutions. Additionally, more funding is needed so that the training expertise NGOs have developed over the past few years will not be lost.⁴⁰

Victim Protections Are Conditional

The protection afforded by the T-visa is conditioned on a *quid pro quo* exchange that requires adult trafficking victims to perform as witnesses in trafficking investigations or prosecutions. At a minimum, victims must report the crime and submit secondary evidence to establish their victimization by traffickers. However, victims may not cooperate with U.S. law enforcement officials because of a lack of trust or fear of retribution. On the one hand, police from a victim’s home country sometimes are corrupt and even complicit with human traffickers, and traffickers may even intimidate victims by depicting U.S. law-enforcement officers as corrupt, callous, and dedicated to summarily deporting undocumented immigrants. On the other hand, victims also may refuse to cooperate because they fear retribution by their traffickers in the United States or in their home country against themselves or their families. Lastly, due to

the extreme human-rights abuses suffered, victims of severe forms of trafficking cannot always compose themselves to serve as effective witnesses.

As a result of these barriers, incentives for victims to cooperate with the government may not be sufficient. Consequently, victims may choose voluntary repatriation rather than cooperate with an investigation or prosecution, even if it means foregoing access to the protections provided under the TVPA. The result is that the victim does not receive critical protection and the government does not have a witness to assist in an investigation or prosecution. Therefore, it is important for the government to assess, on a case-by-case basis, why victims choose voluntary repatriation. Moreover, reducing the extent to which victim protections are contingent upon cooperation with government investigations and prosecutions may increase the number of victims eligible for temporary immigration status and other protections. In the long run, this could in turn enhance the extent to which victims are able and willing to assist as witnesses.

T-Visa Eligibility Criteria May Be Too Restrictive

The low number of T-visa certifications relative to government estimates of victimization also may be attributable to excessively restrictive criteria in the qualifications listed above. Naturally, the U.S. government must avoid opening the floodgates to fraudulent applications for continued presence by unauthorized residents. However, easing the requirements for demonstrating extreme hardship, expanding authorization for official identification of victims, and relaxing requirements for assistance to law enforcement likely would increase the number of victims eligible and willing to receive T-visa protections without unduly rewarding undocumented immigrants.

Several bills, including the Violence Against Women Act Reauthorization⁴¹ and Trafficking Victims Protec-

³⁸ Vital Voices Global Partnership, Trafficking Alert, International Edition, August 2005.

³⁹ Christopher Tenorio, Assistant United States Attorney, electronic correspondence, August 12, 2005.

⁴⁰ Sheila Neville, Staff Attorney Los Angeles Legal Aid Foundation, electronic correspondence, August 22, 2005.

⁴¹ Violence Against Women Act Reauthorization, 2005, H.R. 3402/S. 1197.

tion Reauthorization Act,⁴² currently are pending in Congress to amend the eligibility criteria and expand the number of victims accessing legal protections under the TVPA. One change proposed is to permit state and local law-enforcement agencies, rather than exclusively federal law-enforcement officers, to petition for the continued presence of a victim.⁴³ Another proposed change is to allow victims whose state of mind is too fragile to withstand working with investigators and prosecutors to nevertheless remain eligible for a T-visa. Lastly, it is proposed that applicants for derivative T-visas not be required to prove that extreme hardship would result without the visa. This would promote the victim's reunification with family and perhaps improve the victim's ability to recover and cooperate in an investigation or prosecution.

CONCLUSION

The TVPA clearly represents landmark legislation. The United States was one of the first countries in the world to develop a comprehensive legal framework to combat human trafficking by *prosecuting* human trafficking as a crime; *protecting* victims of severe forms of human trafficking with temporary immigration status, access to some public benefits, and the opportunity to adjust to legal permanent residency; and committing to extensive global efforts to *prevent* human trafficking.⁴⁴ Overall, the T-visa reflects the U.S. government's interest in providing humanitarian aid to undocumented victims of severe forms of human trafficking and in enhancing the success of government investigations and prosecutions of human-trafficking cases.

However, domestic protections for undocumented human-trafficking victims still are limited. Despite large estimates of victimization in the United States, fewer than one thousand victims have received temporary immigration status under either the T-visa or continued presence. Yet, providing more resources to combat an ill-defined problem is not the answer. First and foremost, government assessments of human trafficking into the United States need to be seriously re-evaluated, both in terms of the numerical estimates and the type of human trafficking cases (either labor or sex) occurring on U.S. soil.

Once there is a clearer understanding of the dimensions of the problem, it will be easier to determine how best to ensure that victims meet eligibility requirements to receive certification for the T-visa and other TVPA protections. Notably, the government may need to reconsider the terms under which protections are provided. By expanding access to government protection for undocumented human-trafficking victims—such as reducing the strict criteria for demonstrating extreme hardship—the number of successful investigations and prosecutions is likely to increase in the long run.

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⁴² Trafficking Victims Protection Reauthorization Act, 2005, H.R. 972.

⁴³ Violence Against Women Act Reauthorization, Title VIII, sec. 801(a)(2).

⁴⁴ On October 19, 2005, President Bush signed into law the Senate's ratifications of the United Nations' Convention Against Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

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ABOUT THE IPC...

The IPC's mission is to raise the level of informed awareness about the effects of immigration nationally, regionally and locally by providing policymakers, academics, the media, and the general public with access to accurate information on the role of immigrants and immigration policy in all aspects of American life.

ABOUT THE FOUNDATION...

The American Immigration Law Foundation is an IRS-designated 501(c)(3) non-profit, educational, charitable organization dedicated to increasing public understanding of the value of immigration to American society and to advancing fundamental fairness and due process under the law for immigrants.

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Hidden Victims: Evaluating Protections for Undocumented Victims of Human Trafficking

by Alexandra Webber and David Shirk

The Trafficking Victims Protection Act of 2000 (TVPA) provides eligibility for temporary non-immigration status and access to some public benefits to undocumented immigrants who are victims of a “severe” form of human trafficking. Yet the number of people who have actually received protection under the law is relatively low, especially when compared to estimates of how many trafficking victims are in the United States. Ultimately, the main problem is that there is insufficient evidence regarding the actual number of “severe” human trafficking cases in the United States.



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