

WOMEN ENSLAVING WOMEN

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I. INTRODUCTION

Women enslaving women does not comport with the ideals of feminism. Reality, however, tells us that some women disregard this perspective.¹ The rejection is, much to the surprise of many, a common practice here in the United States.² Women controlling slaves has strong

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¹ See LINDA BRENT, INCIDENTS IN THE LIFE OF A SLAVE GIRL 29–35 (1859) (describing how a subjugated wife of a slave owner from the South felt about her husband having sexual intercourse with his favorite sex slave, as told from the by Harriet Jacob, also known as Linda Brent, a freed slave who committed to writing about her experiences as a slave girl two years prior to the American Civil War), *available at* <http://wps.ablongman.com/wps/media/objects/1510/1546451/pdfs/incidents.pdf>.

² E.g., KEVIN BALES & RON SOODALTER, THE SLAVE NEXT DOOR: HUMAN TRAFFICKING AND SLAVERY IN AMERICA TODAY 3–17 (2009).

historical roots.³ While it was not possible for a married woman to own slaves prior to the Civil War,⁴ slave narratives are permeated with women controlling slaves, particularly house slaves. This Article focuses on how and why this came to be. In Part II, the Article gives a brief overview of the psychosocial and sociological forces at work that underpin why women enslave other women, followed by a sample of the narratives of female house slaves who were enslaved prior to the Civil War. Part III will showcase the narratives of women who have been enslaved in more recent times. These narratives will be explained in Parts IV and V by how power and privilege are the driving forces behind women enslaving other women. The internalized reactions that helped women survive their enslavement will be detailed in Part VI. Then, Part VII will explore the law surrounding current house slavery. There will be a focus on the B-1 visa which most enslaved women have, along with a comparison to au pairs who come and work in households without ever becoming slaves because they have a different visa. The Article will then offer insight as to what changes in the administration of visas are needed to make it more difficult for women to enslave other women. Finally, the Article will examine the rationale behind the federal government's unwillingness to give qualified ex-slaves a visa under the Trafficking Victims Protection Act ("TVPA"),⁵ and why the traffickers, when prosecuted, receive very light sentences.

II. POWER AND PRIVILEGE IN SLAVERY

"The simple truth is that humans keep slaves; we always have."⁶ Recognizing this fact, in October 2000, the TVPA⁷ was passed. It is comprehensive legislation unparalleled in scope since 1865.⁸ Human

³ *Id.* at 5.

⁴ William N. Eskridge, Jr., *Sexual and Gender Variation in American Public Law: From Malignant to Benign to Productive*, 57 UCLA L. REV. 1333, 1338 (2010) (explaining how married women in the United States could not own property prior to 1861). A single woman, however, could own property but, in doing so, could not reproduce or share intimate sexual relations with a man, which was deemed a serious criminal felony. A single woman was able to perform such sexual and reproductive functions only when assuming the protective cloak of marriage due to the fact that she was covered by her husband's legal right to procreate. *Id.*

⁵ TVPA of 2000, 22 U.S.C. §§ 7101–10 (2000).

⁶ BALES & SOODALTER, *supra* note 2, at 5.

⁷ 22 U.S.C. §§ 7101–7110.

⁸ Hussein Sadruddin, Natalia Walter & Jose Hidalgo, *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL'Y REV. 379, 380 (2005); *see also* 22 U.S.C. §§ 7101–10, 2151n, 2152d; H.R. REP. NO. 106-939, at 88

trafficking includes, but is not limited to, “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.”⁹ There has been a proliferation of literature about the nature of human trafficking, the organized commercial forces behind the orchestration of such trade, and the estimated scope of the issue.¹⁰ A global problem, human trafficking is propelled by what has been referred to in some circles as “push factors,” which is when poverty, political instability, and marginalization in poorer countries create a ready supply of humans for trafficking.¹¹ Such factors include high rates of poverty and economic hardship.¹² More recently, attention has been directed to more invisible slaves, such as domestic laborers, who are hidden in plain sight.¹³ At the opposite end of the spectrum of initiating human trafficking are those who pay for and demand such services. The ordinary citizen and sometimes victims of trafficking themselves serve as invisible complementary forces that keep the flow of victims going. One might think of these forces as “pull factors.”¹⁴ Such concepts go beyond the economics of supply and demand to incorporate sociopolitical dynamics.

A question of particular interest for this discussion is how seemingly

(2000) (Conf. Rep.), *reprinted in* 2000 U.S.C.C.A.N. 1380, 1380 (“[A]n Act to combat trafficking of persons, especially into the sex trade, slavery, and slavery-like conditions, in the United States and countries around the world through prevention, through prosecution and enforcement against traffickers, and through protection and assistance to victims of trafficking . . .”).

⁹ 22 U.S.C. § 7102(8)(B).

¹⁰ David R. Hodge, *Sexual Trafficking in the United States: A Domestic Problem with Transnational Dimensions*, 53 SOC. WORK 143, 152 (2008).

¹¹ *Id.* at 150; Kemi Asiwaju, *The Challenges of Combating Trafficking in Women and Children in Nigeria*, in GLOBAL TRAFFICKING IN WOMEN AND CHILDREN 175, 181 (Obi N. I. Ebbe & Dilip K. Das eds., 2008). (“[P]ush factors can be said to be the situations or circumstances that make women and children vulnerable targets for human traffickers.”).

¹² *Id.*

¹³ BALES & SOODALTER, *supra* note 2, at 53 (demonstrating how growers, buyers, and consumers of agricultural slavery feign ignorance or remain in the dark regarding slavery in the United States).

¹⁴ Asiwaju, *supra* note 11, at 182. Pull Factors “are other factors at work to attract people to the countries of destination – mainly Western European countries”:

1. The desire of women and children to have a better and brighter future which they believe to be obtainable in the country of destination.
2. The success of people who had been lured into the exploitative process. . . .
3. The hope for a better life, good pay, and good living conditions, and a hope that these women and children will be able to escape from their victimization.

Id.

ordinary people—invisible pull factors—can participate in the enslavement of other individuals. Another pull factor that appears to receive little attention are the victims of trafficking themselves, who in their own efforts to survive and through a complex psychological transformation in their own captivity, become recruiters of others for a similar fate. Such factors raise questions for this discussion because they are not frequently examined. Two major forces—power and privilege—combine to create a formidable web of entrapment for victims and also perpetuate human trafficking. Thus, power and privilege need to be examined to explain the invisible pull factors that support human trafficking. While some pull factors did not exist in slavery prior to the Civil War, the main components of power and privilege did. The narratives of former slaves shed light on the historical roots of slavery, particularly how power and privilege have contributed to the perpetuation of slavery.

A. PRE-CIVIL WAR HOUSE SLAVE NARRATIVES

Contrary to what might be expected, the slave narratives that have been published describe a slightly less de-humanizing circumstance for the house slave when you compare her to either the sex slave or the field slave. For instance, Linda Brent remembers her grandmother telling her that her grandmother's owners discovered that she was so adept at cooking, cleaning, and being a wet nurse and a seamstress that they considered her a valuable piece of property.¹⁵ As a result, she was given leave to work after she had finished all her daily chores.¹⁶ At night, her grandmother would bake and then sell her goods.¹⁷ She intended to buy her five children with the profits she saved.¹⁸ Unfortunately, her master died before she was able to collect enough money, and her children were divided among his heirs.¹⁹

After her master's death, Linda's grandmother continued as a house slave to her mistress, who ran a hotel.²⁰ Once, her mistress was in need of

¹⁵ BRENT, *supra* note 1, at 7.

¹⁶ *Id.*

¹⁷ *Id.* ("[H]er nice crackers became so famous in the neighborhood that many people were desirous of obtaining them [so] . . . she asked permission of her mistress to bake crackers at night, after all the hard work was done . . .").

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

money and asked her for a loan.²¹ By doing overtime work, Linda's grandmother had saved approximately \$300.²² Of course, her grandmother had no legal rights to enforce against the mistress if she reneged on the loan, but she decided to loan her the money anyway.²³ The loan was never repaid.²⁴

Other disparities between slaves and their masters were also not uncommon. As a wet nurse, an enslaved woman would be expected to wean her master's children so that the children would be able to nurse longer.²⁵ Linda, herself, remembers that food was a scarce commodity in the household where she was a slave.²⁶ She was threatened with punishment if she went to her grandmother's place for food.²⁷

Slaves were frequently resold during the first day of the year.²⁸ For mothers who were slaves, this meant that all their children could be sold to separate slave owners.²⁹ Naturally, the potential of the auction block was a powerful tool to wield control. Also, as one might expect, young female house slaves were frequently the target of sexual demands, which proved to be an additional tool of control. As Linda described, "He peopled my young mind with unclean images, such as only a vile monster could think of."³⁰ It might seem that the mistress would protect the young female house slave, but instead the mistress's response was "jealousy and rage."³¹ Since masters had the final decision making powers of how slaves were to be treated and which ones would be singled out for sexual villainy, mistresses were frequently cruel to their young house slaves.³² Of course,

²¹ BRENT, *supra* note 1, at 7.

²² *Id.*

²³ *Id.* Slaves had no legal rights in pre-Civil war society since slaves were property and thus could not hold other property. *Id.*

²⁴ *Id.* at 11.

²⁵ *Id.* at 8.

²⁶ *Id.* at 11. Linda became a slave to the young niece of her grandmother's mistress after her mistress's sister married a doctor in the neighborhood. *Id.* at 9.

²⁷ *Id.* at 11.

²⁸ *Id.* at 14–15.

²⁹ *Id.* at 15–16 ("She sits on her cold cabin floor, watching the children who may all be torn from her the next morning; and often does she wish that she and they might die before the day dawns. She may be an ignorant creature, degraded by the system that has brutalized her from childhood; but she has a mother's instincts, and is capable of feeling a mother's agonies.").

³⁰ *Id.* at 27 ("I was compelled to live under the same roof with him—where I saw a man forty years my senior daily violating the most sacred commandments of nature.").

³¹ *Id.*

³² *Id.* at 27–35.

when the house slave had children, often fathered by the master, the control was even harsher.³³ As Linda explained, the master could then threaten to sell the children unless the house slave complied with his wishes.³⁴

Mistresses could be harsh for very little reason. For instance, Delia Garlic remembered watching her mistress apply black smut to her eyebrows and then admiring herself in the mirror.³⁵ Delia decided to mimic her mistress and did the same to her eyebrows.³⁶ When the mistress saw what Delia did, the mistress “kotched” her.³⁷ She hollered at Delia, “You black devil, I’ll show you how to mock your betters.”³⁸ Her mistress then grabbed a piece of firewood and swung it at Delia knocking her out.³⁹ Not only did the mistress object to slaves emulating her lifestyle, but the mistress frequently could be extraordinarily cruel for just slight infractions. One young house slave took a piece of candy that was not hers.⁴⁰ Her mistress tried to whip her, but she fidgeted so much that the whip never laid contact.⁴¹ Then, her mistress, with the aid of her daughter, got the young house slave’s head under the rocker runner.⁴² The mistress sat on the rocker while her daughter whipped her.⁴³ Later a doctor found that the rocker had crushed all the bones in the young slave’s face.⁴⁴ The mistress’s outrage resulted in the slave being unable to open her mouth.⁴⁵

³³ *Id.* at 72.

³⁴ *Id.*

³⁵ IRA BERLIN, MARC FAVREAU & STEVEN F. MILLER, REMEMBERING SLAVERY: AFRICAN AMERICANS TALK ABOUT THEIR PERSONAL EXPERIENCES OF SLAVERY AND EMANCIPATION 10 (1998).

³⁶ *Id.*

³⁷ *Id.* The term “kotched” was a word used commonly by slaves in the South and incorporated as slang by African Americans, combining the words “catch” and “caught” to indicate that the declarant had been “kotched” having done something bad. In the context of slavery, “kotched” usually referred to something done contrary to the wills of masters or mistresses. *See, e.g., Kotched*, WORDNIK, <http://www.wordnik.com/words/kotched> (last visited June 18, 2011).

³⁸ BERLIN, FAVREAU & MILLER, *supra* note 35, at 10.

³⁹ *Id.*

⁴⁰ *Id.* at 20.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

III. HOUSE SLAVES TODAY

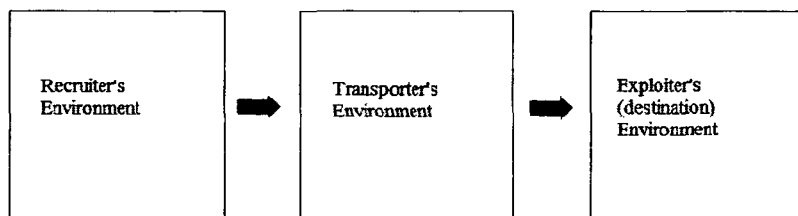
Today, current slavery has changed to some degree. House slaves prior to the Civil War were expensive.⁴⁶ Now, house slaves may be purchased at a cheap price.⁴⁷ In today's dollars, a healthy adult slave would have cost approximately \$50,000 pre-Civil War, while the cost for a slave today may be as low as \$50 to \$60.⁴⁸ Thus, an economic incentive exists to purchase and keep slaves.⁴⁹ One of the problems of owning a slave is to not draw attention to this ownership. Because of this necessity, there will be certain precautions a slave owner must follow. Control,

⁴⁶ In 1859, Linda Brent described her ten-year-old uncle, who was more of a brother than an uncle due to their similar age, as having been sold for \$720. Brent, *supra* note 1, at 7. Adjusted for inflation, \$720 in 1850 translated to \$18,633.89 in 2010. See, e.g., S. Morgan Friedman, *The Inflation Calculator*, WESTEGG.COM, <http://www.westegg.com/inflation/> (last visited June 18, 2011). This example is much lower than the cost of the average slave due to the fact that the ten-year-old boy was hardly a seasoned laborer. See Brent, *supra* note 1, at 7 (describing the sale as a fetching price for such a young slave). Strong labor slaves usually sold for about \$50,000. *BBC-Ethics-Slavery: Modern Slavery*, BBC, http://www.bbc.co.uk/ethics/slavery/modern/modern_1.shtml (last visited Apr. 1, 2012) (citing Kevin Bales, President of Free the Slaves, a non-governmental organization).

⁴⁷ See BALES & SOODALTER, *supra* note 2, at 49. Antonio Martinez, a Mexican tomato picker in Florida, was sold like an animal by "el Chacal" to "Abel and Basilio Cuello" for somewhere between \$350 and \$500 in 2003. *Id.* Adjusting for inflation, this was between \$413.77 and \$591.10 in 2010. See, e.g., Friedman, *supra* note 46. That is a high estimate, according to Kevin Bales, who believes that in today's dollars, a slave will sell for anywhere between \$50 and \$60. *BBC-Ethics-Slavery*, *supra* note 46.

⁴⁸ *BBC-Ethics-Slavery*, *supra* note 46.

⁴⁹ Sex slaves can provide "buyers" and "recruiters" with as much of a return as 800% of the original investment. *Id.* Generally speaking, slaves are faced with three separate stages, or environments, in the network or enterprise approach to criminal slavery. Jay Albanese, *A Criminal Network Approach to Understanding and Measuring Trafficking in Human Beings*, in MEASURING HUMAN TRAFFICKING: COMPLEXITIES AND PITFALLS 55, 62–65 (Ernesto U. Savona & Sonia Stefanizzi eds., 2007). In the first stage, professionals recruit and procure slaves through coercive and fraudulent means. See *id.* In the second and third stages, slaves are transported by a second group of professional criminals who break down the will of the slaves so that exploiters or buyers whom receive the slaves can continuously apply and maintain the process of coercive subjugation to the exploiters' satisfaction. See *id.*



Human Trafficking: A Three-Stage Criminal Network

Id. at 63.

secrecy, and complicity by friends, family, and those who should be ferreting out this heinous activity, all form part of the web that makes current slavery possible.⁵⁰ This Section of the Article will explore: (A) how the process of enslavement begins; (B) the steps through which the trafficker and victim must go; (C) the conditions once they arrive in the United States; and (D) why many victims do not escape and how others manage to do so.

A. HOW THE PROCESS OF ENSLAVEMENT BEGINS

Many slaves knew, or had relatives who knew, traffickers before coming to the United States.⁵¹ For instance, a sixty-eight-year-old Nigerian woman who cooked, cleaned, and cared for children was sought out by a Nigerian couple who lived in Staten Island, New York.⁵² In 1988, the couple contacted her through a relative in Nigeria with a promise of work.⁵³ Since she had been recently widowed with two children to support, she found the offer to work in the United States attractive and decided to accept the offer.⁵⁴ Another African woman, Alice, was employed in Kenya as an all-purpose maid with duties ranging from cleaning to childcare for a woman who was a well-respected journalist.⁵⁵ Alice was bought by Njuguna-Githinji, a CNN African Journalist of the Year and John S. Knight Fellowship recipient who had also come to the

⁵⁰ See BALES & SOODALTER, *supra* note 2, at 43–77 (describing issues such as: (1) corporations turning a blind eye to agricultural slavery, (2) uninformed consumers of slave grown products, (3) honor-bound “debt and threat” controlled immigrant slaves, and (4) governments often shielded from the truth by labor foremen/slaves).

⁵¹ See SIDDARTH KARA, SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY 6–9 (2009) (“Acquisition of [labor and] sex slaves primarily occurs in one of five ways: deceit, sale by family, abduction, seduction or romance, or recruitment by former slaves.”); see also COMM’N OF THE EUROPEAN CMTYS. DG JUSTICE & HOME AFFAIRS HIPPOKRATES, RESEARCH BASED ON CASE STUDIES OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN 3 EU MEMBER STATES, I.E. BELGIUM, ITALY, AND THE NETHERLANDS 26–27 (2001) (describing the motivations and promises for slave recruiters result, in a majority of cases, from a onetime visit from an unknown recruiter).

⁵² David Gonzalez, *When American Dream Leads to Servitude*, N.Y. TIMES, Apr. 24, 2007, at B1, available at <http://www.nytimes.com/2007/04/24/nyregion/24citywide.html?sq=When American Dream Leads to Servitude&st=cse&adxnnl=1&scp=1&adxnnlx=1308423684-tWdvAp0aOMBpRhjRzTYCag>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Bernice Yeung, *Enslaved in Palo Alto: A Domestic Worker from Kenya has Accused her Employer—a Prominent African Journalist—of Human Trafficking*, 23 S.F. WEEKLY., Feb. 18, 2004, available at <http://www.sfweekly.com/content/printVersion/316482/>.

United States to study at Stanford University.⁵⁶ Githinji persuaded Alice to go to the United States with her where she would, according to the journalist, get better pay, easier work, and a chance to continue her education.⁵⁷ Githinji even promised that she would bring Alice's child if they stayed more than a year.⁵⁸ However, Githinji did not follow through on any of her promises.⁵⁹

Milagros's story is similar.⁶⁰ Milagros is from South America.⁶¹ Her sister knew the trafficker who was from an upper economic class and frequently went to South America to see family and conduct business.⁶² The trafficker flew back and forth between South America and Florida where she, her husband, and son primarily resided.⁶³ The trafficker convinced Milagros's sister that Milagros could come to the United States and work for her in her business.⁶⁴ Since the trafficker knew Milagros was a diabetic, she promised healthcare as an extra enticement.⁶⁵ As is true in most trafficking cases, Milagros signed an employment contract, providing limited work hours, a place to live, and a set amount of pay per month that would be equal to the minimum wage.⁶⁶

B. THE RESULTS OF STATE DEPARTMENT COMPLICITY

There are several types of visas for potential workers who want to come to the United States.⁶⁷ Most of the trafficking victims considered in this Article are given a B-1 visa by the embassy in their country of origin.⁶⁸ Unlike in the case of other types of visas, once a trafficked victim

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ First Amended Complaint (case citation redacted) (on file with author). Milagros is a pseudonym for the names of two plaintiffs currently involved in a suit against their traffickers. Since the suit combined the two plaintiffs in the same suit, their story will be told as one. Florida Immigration Advocacy Center, legal counsel for Milagros, requested that the authors keep the identities and information of both plaintiffs confidential. The court documents are available from author Charlene L. Smith who interviewed one of the two slaves.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ BALES & SOODALTER, *supra* note 2, at 33.

⁶⁸ *Id.* Not every victim of human trafficking enters the United States under the color of a B-

enters the United States on a B-1 visa, no record or follow up is made.⁶⁹

The contract submitted by the trafficking victim to the trafficker is commonly not followed. For instance, Milagros signed a contract that was presented to the United States Embassy in a South American country.⁷⁰ The contract specified how much she would get paid per hour and how many hours per day she would have to work, including her specific duties.⁷¹ Contrary to what was in the contract, Milagros did not receive minimum wage and worked far more hours than was specified in the contract.⁷² The trafficker frequently failed to pay Milagros.⁷³ The traffickers demanded that Milagros turn over her passports as part of getting the visa.⁷⁴ The traffickers then refused to return the passports.⁷⁵

1 business visa or a B-2 tourism visa. *See, e.g., In re Anonymous Applicant No. 5352734*, 2007 WL 5352734, at *1, *6 (I.N.S. Sept. 6, 2007) (involving a woman from the Philippines serving as a “live-in domestic worker” under a B-1 and B-2 visa). Even if individuals are victims of human trafficking, this does not mean that they are victims of severe human trafficking to qualify for a T-1 visa, as defined by the Trafficking Victims Protection Act. *See, e.g., id.* at *9. Another commonly used visa is the H-1B which is used to temporarily employ foreign workers in the United States in specialty occupations that require at least a bachelor’s degree and the “theoretical and practical application of a body of highly specialized knowledge,” 8 U.S.C. § 1184(i)(1)(A)–(B); *see, e.g., In re Anonymous Applicant No. 5360721*, 2007 WL 5360721, at *1, *10–11 (I.N.S. Nov. 26, 2007) (involving a man from the Philippines recruited for “a teaching position” that did not exist, and was forced to perform manual labor for his recruiter in order to pay off substantial debt for food and housing controlled by the recruiter); *In re Anonymous Applicant No. 5360730*, 2007 WL 5360730, at *1 (I.N.S. Nov. 26, 2007) (involving a woman recruited for “a teaching position” that did not exist and was forced to perform manual labor for her recruiters in order to pay off substantial debts for food and housing controlled by the recruiters); *In re Anonymous Applicant No. 5328555*, 2007 WL 5328555, at *1, *5 (I.N.S. Feb. 21, 2007) (involving a woman recruited for “a teaching position” that did not exist but was forced to obey the agents of Omni Corporation, a recruitment company convicted of “aiding and abetting” the “entry of alien at improper time or place” with a rising debt for food and shelter looming over her resulting in collections). Other victims of human trafficking enter under H-2A visas for agricultural jobs or H-2B visas for seafood, landscaping, and construction jobs. *See, e.g., In re Anonymous Applicant No. 5360868*, 2007 WL 5360868, at *1, *6, *10–11 (I.N.S. Nov. 29, 2007) (involving man from Chile hired to work as a Range Calver under an H-2A visa on a ranch for less than \$2.00 per hour to work twelve to fifteen hour days for seven days a week without rest and fearing employers who threatened the Calver’s family); *In re Anonymous Applicant No. 5576212*, 2007 WL 5576212, *1, *3–4 (involving a man from India who was recruited to work in the United States using an H-2B visa and subject to debt bondage and, despite having “suffered greatly” and having “experienced much discrimination and unfair treatment” was denied access to the T-1 visa).

⁶⁹ BALES & SOODALTER, *supra* note 2, at 33, at 262.

⁷⁰ First Amended Complaint, *supra* note 60, at 3.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 4.

⁷⁴ *Id.*

⁷⁵ *Id.*

The refusal was reinforced by the traffickers' threat that the slaves would be deported if they sought to escape.⁷⁶

C. CONDITIONS IN THE UNITED STATES

Milagros was offered a closet with a makeshift bed as a place to sleep.⁷⁷ In addition to the cramped conditions, the room was located next to the garbage chute, from which she could smell its odor.⁷⁸ Contrary to the contract, child care became a full-time job, including feeding and cooking for the children, taking them to school, and performing regular nighttime chores.⁷⁹ While she was told that childcare would be her only duty, Milagros regularly cooked, cleaned, and washed clothes for the entire family.⁸⁰ The traffickers sometimes refused to allow Milagros to use the indoor toilet and shower facilities and insisted that she use a makeshift shower outside which had one wall and no overhead covering.⁸¹ The traffickers also went so far as to demand that Milagros not use the same dishes as the family.⁸² When she was promised health care, she arrived to find out that was not the case.⁸³ Medical attention was provided only in an emergency; Milagros collapsed from diabetes complications before she received medical attention.⁸⁴ Even worse for Milagros, her trafficker refused to allow her follow up appointments.⁸⁵

When a family left, no provisions were left for the enslaved. When traffickers were out of the country for an extended period of time, they left a small amount, such as \$100, for the enslaved to purchase food in anticipation of the family's return.⁸⁶ Upon return, the family demanded receipts for anything that was purchased.⁸⁷ When the traffickers were in the house, they controlled the amount of food the enslaved ate, which was

⁷⁶ *Id.* at 8; *see also* KARA, *supra* note 51, at 12 (describing that owners will do anything within their power to ensure that the slaves will remain submissive and "never try to escape").

⁷⁷ First Amended Complaint, *supra* note 60, at 10.

⁷⁸ *Id.*

⁷⁹ *Id.* at 4, 7.

⁸⁰ *Id.* at 7.

⁸¹ *Id.* at 7–8.

⁸² *Id.* at 8.

⁸³ *Id.* at 9.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 15.

⁸⁷ *Id.*

always an insufficient amount.⁸⁸ Any raises provided for in the contract were always denied.⁸⁹ Traffickers told the enslaved that their contract was just for visa purposes and they did not have to pay what was stipulated.⁹⁰ It was common to deduct from the small amount the slaves earn the costs for travel to the United States, room, and board.⁹¹

D. ESCAPING

Less than one percent of slaves escape or are rescued.⁹² Fear instilled by traffickers makes enslaved persons afraid to escape. For instance, Milagros was constantly told that she was legal only as long as she remained employed by the trafficker, and her traffickers told her that she would be reported to immigration authorities if she tried to escape.⁹³ Frequently, enslaved victims are told that the police are corrupt in the same way that they were in their country of origin.⁹⁴ Some slaves who do try to escape are caught by their traffickers and are so thoroughly beaten that to escape again would be almost impossible.⁹⁵ Others are told that their family members will be punished if they try to escape.⁹⁶

Not only does fear prevent slaves from escaping, but a lack of knowledge about the world around them plays a part. For instance, slaves are rarely given time off and, even then, usually only for a few hours on Sunday.⁹⁷ Most slaves do not speak English and are thus hesitant to seek help.⁹⁸ Because they rarely go outside their houses, they do not realize that

⁸⁸ *Id.* at 9.

⁸⁹ *Id.* at 11.

⁹⁰ *Id.* at 13.

⁹¹ *E.g., id.* at 14; *In re Anonymous Applicant No. 5360721*, 2007 WL 5360721, at *1 (involving a teacher from the Philippines who was forced to perform manual labor for his recruiter in order to pay off substantial debt for food and housing controlled by recruiter); *In re Anonymous Applicant No. 5328555*, 2007 WL 5328555, at *1, *5 (forcing a teacher to obey the agents of Omni Corporation, a recruitment company convicted of “aiding and abetting” the “entry of alien at improper time or place” with a rising debt for food and shelter looming over her resulting in collections).

⁹² BALES & SOODALTER, *supra* note 2, at 21.

⁹³ First Amended Complaint, *supra* note 60, at 8.

⁹⁴ BALES & SOODALTER, *supra* note 2, at 22–23.

⁹⁵ KARA, *supra* note 51, at 12 (“If they tried to escape, they might have their throats cut in front of other slaves, who were subsequently required to clean up the slaughter as a visceral lesson in the fate that awaited them should they try to escape.”).

⁹⁶ BALES & SOODALTER, *supra* note 2, at 23.

⁹⁷ *See, e.g.,* First Amended Complaint, *supra* note 60, at 8.

⁹⁸ BALES & SOODALTER, *supra* note 2, at 52.

contacting authorities might be an easy task.⁹⁹

For those who do escape, it often takes an emergency to give them courage. For instance, Milagros's health deteriorated to such a degree that she was concerned that she was about to die.¹⁰⁰ After she was denied access to medical care, she decided she must leave.¹⁰¹ Even as she left, she wrote her trafficker a note pleading with them not to report her to the authorities.¹⁰² As can be seen, power and privilege are the forces behind today's slavery. A deeper analysis into the dynamics of power and privilege is vital to understanding how slavery continues to exist.

IV. POWER: A COMPLEMENTARY FORCE OF PRIVILEGE

Power is a concept that relates to the ability by right or force to command influence over others.¹⁰³ Human trafficking could not exist without the malevolent forces of power. As in all systems of domination, the ultimate goal is "to destroy the autonomy of the victim and induce as far as possible a state of willing submission."¹⁰⁴ The process of human trafficking involves the persistent and pervasive dynamic of captivity. It is critical to understand that captivity is profoundly disempowering and disabling to the victim. According to Amnesty International, methods used to enslave human beings are consistent across political spectrums, cultures, domestic situations, and war.¹⁰⁵ The techniques of disempowerment and disconnection along with methods that instill terror share several common threads. Common among oppressors is systematic, repetitive infliction of psychological trauma that is initiated with physical violence.¹⁰⁶ Physical and emotional desire and the need to avoid pain are central feelings for those who are living in captivity. The most effective method for traffickers to induce pain and terror is through systematic methods of unpredictable violence and coercion, which are often inflicted

⁹⁹ *Id.*

¹⁰⁰ First Amended Complaint, *supra* note 60, at 11.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ See MERRIAM-WEBSTER'S DICTIONARY AND THESAURUS 973 (2004) (defining "power" as "possession of control, authority, or influence over others").

¹⁰⁴ Judith Lewis Herman, *Hidden in Plain Sight: Clinical Observations on Prostitution, in PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS* 1, 4 (Melissa Farley ed., 2003) [hereinafter *Hidden in Plain Sight*].

¹⁰⁵ JUDITH LEWIS HERMAN, *TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE—FROM DOMESTIC ABUSE TO POLITICAL TERROR* 76 (1997) [hereinafter HERMAN].

¹⁰⁶ See, e.g., KARA, *supra* note 51, at 12.

with great precision.¹⁰⁷ What makes the dynamic more powerful is that quite frequently traffickers present themselves initially to the family and children as being people of influence who can help better the lives of their victims.¹⁰⁸ Most children and adults who become victims of trafficking come from countries in which there is severe poverty, social and economic dislocation, or armed conflict.¹⁰⁹ Families may view traffickers as a means of giving a better life to their children or providing economic support for the family itself.¹¹⁰ Once this opportunity presents itself, traffickers achieve power and control through enticement and later by physical and emotional infliction of trauma. Thus, without power, human trafficking could not exist.

V. PRIVILEGE: THE FUEL OF POWER

Privilege is another kind of covert form of power that is invisible and far more pervasive, yet ultimately just as dangerous to victims of human trafficking. Similar to an odorless unseen gas that imperceptibly envelopes those in its path, privilege fuels the system. Privilege is the pulling force that allows those in its sphere the ability to enslave others for their own benefit. The privileged may be ordinary people next door.¹¹¹

In the United States, privilege most easily and often comes with whiteness. According to Paula S. Rothenberg, privilege is invisible to those who have it: "Some of those of us who are white have a hard time accepting the idea that white privilege is a powerful force in society because we do not *feel* privileged."¹¹² Privilege may be thought of as "an invisible package of unearned assets" which can be cashed in each day, but about which one in that position remains oblivious.¹¹³ Most often this

¹⁰⁷ Nancie Palmer & Christine Edmunds, *Violence Within the Family System*, in VICTIM ASSISTANCE: EXPLORING INDIVIDUAL PRACTICE, ORGANIZATIONAL POLICY, AND SOCIETAL RESPONSES 191, 199 (Thomas L. Underwood & Christine Edmunds eds., 2003).

¹⁰⁸ LAUDAN Y. ARON, JANINE M. ZWEIG & LISA C. NEWMARK, COMPREHENSIVE SERVICES FOR SURVIVORS OF HUMAN TRAFFICKING: FINDINGS FROM CLIENTS IN THREE COMMUNITIES 11 (June 2006), available at http://www.urban.org/UploadedPDF/411507_human_trafficking.pdf.

¹⁰⁹ Rachel Shigekane, *Rehabilitation and Community Integration of Trafficking Survivors in the United States*, 29 HUM. RTS. Q. 112, 116 (2007), available at <http://hrc.berkeley.edu/pdfs/trafficking-RS-HQR.pdf>.

¹¹⁰ *Id.* at 120.

¹¹¹ BALES & SOODALTER, *supra* note 2, at 3–4.

¹¹² PAULA S. ROTHENBERG, WHITE PRIVILEGE: ESSENTIAL READINGS ON THE OTHER SIDE OF RACISM 3 (2002).

¹¹³ Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, in WHITE

invisibility is in reference to race, but it also pertains to gender and sexuality.¹¹⁴ The privilege of economic advantage allows ordinary people, even women, to engage in the trafficking of domestic laborers without drawing attention to themselves. One perspective purports that the trafficking of women is supported by deep structural underpinnings of gender dehumanization and commodification, through among other structures is a patriarchal system that fosters domination and oppression of women. Women may, without conscious thought then, participate in hiring other women as a privilege, ironically against the backdrop of their own oppression.

The environmental context then becomes a powerful invisible force that supports human trafficking. For example, Gunilla Ekberg suggests that Swedish law conveys a societal message that it is inappropriate to buy and sell women and children for men's sexual pleasure, and thus serves a normative function to convey a message to society¹¹⁵ Conversely, where there are no such laws, there is tacit support for behaving otherwise.¹¹⁶

PRIVILEGE: ESSENTIAL READINGS ON THE OTHER SIDE OF RACISM 97, 97 (Paula S. Rothenberg ed., 2002). McIntosh identifies such privileges as related to race, although the concept can be applied to many attributes:

[1] [T]o be in the company of people of my race most of the time. . . .

[2] I can go shopping alone most of the time, pretty well assured that I will not be followed or harassed. . . .

[3] I can be sure that my children will be given curricular materials that testify to the existence of their race. . . .

[4] I can swear, or dress in secondhand clothes, or not answer letters, without having people attribute these choices to the bad morals, the poverty, or the illiteracy of my race. . . .

[5] I can do well in a challenging situation without being called a credit to my race.

Id. at 98–99.

¹¹⁴ See ROTHENBERG, *supra* note 112, at 1. White privilege is not the same for everyone. Those who are male and wealthy are placed at greater advantages than the rest of American society. “[T]he deprivations and inequities imposed by class and/or male privilege may be so overwhelming that they mask the privileges some of us receive simply by virtue of being white.” *Id.* at 3.

¹¹⁵ Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of Sexual Services*, 10 VIOLENCE AGAINST WOMEN 1187, 1201–03 (2004). Swedish law is extraterritorial in that citizens are expected to obey the law even when they are outside their country. *Id.* at 1196–97. “Swedish citizens can be charged, prosecuted, and convicted under Swedish laws when having committed a crime in another country, if that country has legislation similar to Swedish legislation.” *Id.* at 1196 (citing BROTTSBALKEN [BrB] [Criminal Code] 2:2 (Swed.)).

¹¹⁶ See SOM I VARDAGLIGT TAL BRUKAR KALLAS FÖR SEXKÖPSLAGEN [The Act Prohibiting the Purchase of Sexual Services] (Scensk författningssamling [SFS] [Swedish Statutes] 1998:408) (Swed.) *repealed and replaced in 2005 by* BROTTSBALKEN [BrB] [Criminal Code] 6:11 (Swed.); *see also* MINISTRY OF EDUC. & RESEARCH, *Legislation on the Purchase of Sexual Services*, REGERINGSKANSLIET: GOV. OFFICES OF SWED. (Mar. 1, 2011), <http://www.sweden.gov.se/sb/d/4096/a/119861> (explaining the success of the original statute

Economic factors further encourage the subordination of enslaved women. In contrast to the cost of slaves from Africa in 1850 which would have cost \$40,000, a slave can be bought today for just a few hundred dollars.¹¹⁷ Domestic slaves become more easily and readily available to a much larger population because of their relatively low cost. Given the low cost of slaves, they are a “disposable commodity” subject to tremendous abuse and neglect, even to the point of death.¹¹⁸

Privilege is the fuel of oppression. George Lipsitz considers the “possessive investment in whiteness,” and observes that it is not a “simple matter of black and white; all racialized minority groups have suffered from it, albeit to different degrees and in different ways.”¹¹⁹ Woven into the very fabric of society in the United States is a culture that promotes the use of power, however subtle, to raise one’s status and access to privileges. The sense of powerlessness is felt more acutely in these circumstances, perhaps making slaveholding more acceptable and desirable to those who access this privilege. In other words, even persons who are not wealthy or white can own slaves too, thus accessing privilege and gaining power. What also makes this possible are the rationalizations of the privileged in convincing themselves that they are not owning slaves per se but helping people access a better life in the United States. For example, slave owners in the United States may believe that they are opening the door for the poor to come to the United States for education and opportunity: “For some slaveholders, gaining and maintaining total control over someone is intoxicating and addictive.”¹²⁰ The use of power ensures compliance to control a domestic slave. Given that this power is unseen and hidden behind doors, violence may likely escalate. Compliance is critical in affirming the slaveholder’s ownership and

and the importance of maintaining a constant vigil against sexual slavery to play the role of deterring criminal behavior); see generally SWEDISH GOV. REPORT SOU 2010:49, THE BAN AGAINST THE PURCHASE OF SEXUAL SERVICES: AN EVALUATION 1999-2008 (2010), available at <http://www.sweden.gov.se/content/1/c6/11/98/61/2ac7d62b.pdf> (explaining that the deterrent function of a law where a violator may be imprisoned for up to six months was to prevent both sex trafficking and purchase of prostitution).

¹¹⁷ BALES & SOODALTER, *supra* note 2, at 6; see *supra* notes 46–47 and accompanying text.

¹¹⁸ *Id.*

¹¹⁹ George Lipsitz, *The Possessive Investment in Whiteness*, in WHITE PRIVILEGE ESSENTIAL READINGS ON THE OTHER SIDE OF RACISM 61, 62 (Paula S. Rothenberg ed., 2002) (describing “whiteness” as being synonymous with freedom while non-white races, Asian Americans, Mexican Americans, Native Americans, and African Americans, have historically been subject to involuntary servitude, voting restrictions, exploiting labor practices, and slavery by the white European settlers of North America).

¹²⁰ BALES & SOODALTER, *supra* note 2, at 27.

control. Interestingly, like all forms of captivity the domination of another becomes the quicksand of the controller as well. This is the paradox of control and oppression. Paulo Freire, in his seminal work, *Pedagogy of the Oppressed*, observed that in the process of dehumanizing others, the oppressor likewise becomes dehumanized.¹²¹ In other words, by its nature, oppression leads to a beguiling form of “captivity” of the oppressor.¹²²

VI. POWER AND PRIVILEGE TURNED UPSIDE DOWN

A curious phenomenon to the outsider is the common reaction of slaves themselves who, in their own effort to survive, become unwitting agents in the human trafficking trade. That is, captives engage in enticement and other means of bringing other children and women into a life of slavery. This phenomenon has been explained as the Stockholm Syndrome, which describes the reciprocal feelings between captives and their captors, and as a Complex Post Traumatic Stress Disorder (“PTSD”).¹²³ One characteristic of Complex PTSD is an altered perception of the captor; this includes feeling “idealization or paradoxical gratitude: perceiving a ‘special or supernatural relationship’ with the captor, and accepting the captor’s “belief system or rationalization.”¹²⁴ Recent innovations in science have revealed that there is also neurobiological basis for this odd behavior.¹²⁵ Sometimes referred to by biologists as

¹²¹ PAULO FRIERE, *PEDAGOGY OF THE OPPRESSED* 42 (Myra Bergman Ramon trans., 1970).

¹²² *Id.*; see also DOMAN LUM, *CULTURALLY COMPETENT PRACTICE: A FRAMEWORK FOR UNDERSTANDING DIVERSE GROUPS AND JUSTICE ISSUES* 55, 60–63 (2007).

¹²³ Auerback, et al., *Interpersonal Impacts and Adjustment to the Stress of Simulated Captivity: An Empirical Test of the Stockholm Syndrome*, 13 J. SOC. & CLINICAL PSYCHOL. 207, 208 (1994). Although it is counterintuitive, captives who were able to more readily identify with their captors experience less distress than those who do not. See ERIN WILLIAMSON, NICOLE M. DUTCH & HEATHER J. CLAWSON, U.S. DEP’T OF HEALTH & HUMAN SERVS., OFFICE OF THE ASSISTANT SEC’Y FOR PLANNING & EVALUATION, *EVIDENCE-BASED MENTAL HEALTH TREATMENT FOR VICTIMS OF HUMAN TRAFFICKING* 2–3, (2008) available at <http://aspe.hhs.gov/hsp/07/HumanTrafficking/MentalHealth/index.pdf>. The Stockholm Syndrome originally referred to a 1973 bank robbery in Stockholm in which four hostages were held captive for several days and upon release showed this paradoxical behavior. THE FREE DICTIONARY (Farlex Inc., 2012), <http://medical-dictionary.thefreedictionary.com/Stockholm+syndrome> (last visited Apr. 23, 2012).

¹²⁴ HERMAN, *supra* note 105, at 121.

¹²⁵ Sadrudin, et al., *supra* note 8, at 402. “Long term changes at the neuroanatomical level severely affect the cognitive abilities of people who suffer” from PTSD due to prolonged captivity or exposure to repeated trauma. *Id.* “In medical terms, these include: preferential use of the right hemisphere; inhibition of the left frontal cortical areas of the brain; activation of the limbic area;[and irregularities with] “the hypothalamic pituitary axis, catecholamines, serotonin,

appeasement, similar behaviors have been observed in many mammalian species, particularly primates.¹²⁶ Appeasement reduces the risks of harm and is believed to be evolutionary in origin.¹²⁷

The use of violence to create such behavior in captives can take many forms, such as injuring, controlling or contorting the body; torture; and causing harm to the captive's personal property, pets, or others.¹²⁸ This violence convinces the victim that resisting her "omnipotent" captor will be useless and dangerous.¹²⁹ In addition, captors will use psychological tactics to instill and maintain fear within captives, such as depriving them of sleep for long periods of time,¹³⁰ forcing the use of drugs and alcohol,¹³¹ withholding food, and physically restraining victims, such as with chains or locks.¹³² Traffickers will also limit victims' potential means of escape by taking possession of their passports and earned income, as well as blocking access to anyone who speaks the victim's language.¹³³ On the other hand, traffickers ensure that their captives remain compliant and even grateful through intermittent rewards, such as improvements in living conditions, gifts, or personal attention.¹³⁴ Thus, by using physical and psychological torture to instill fear in the captive, while simultaneously

and opioid systems. These neurobiological changes correlate with cognitive and behavioral changes such as loss of the ability to put things into proper context [and] loss of the ability to distinguish real threats from non-threats." *Id.* Another behavioral trait seen in victims of human trafficking is "traumatic attachment" to the aggressor, which is "difficult to extinguish one it has been set into motion." *Id.* at 404.

¹²⁶ Chris Cantor & John Price, *Traumatic Entrapment, Appeasement and Complex PTSD: Evolutionary Perspectives of Hostage Reactions, Domestic Abuse, and the Stockholm Syndrome*, 41 AUSTL. & N.Z. J. PSYCHIATRY 377, 380 (2007).

¹²⁷ *Id.* at 379–80.

¹²⁸ Nancie Palmer, *The Essential Role of Social Work in Addressing Victims and Survivors of Trafficking*, 17 ILSA J. INT'L & COMP. L. 43, 50 (2010); see also HERMAN, *supra* note 105, at 76–77 ("[V]iolence is a universal method of terror . . ."); Palmer & Edmunds, *supra* note 107, at 199. In addition to creating terror in the victim, "the perpetrator seeks to destroy the victim's sense of autonomy. This is achieved by scrutiny and control of the victim's body and bodily functions. The perpetrator supervises what the victim eats, when she sleeps, when she goes to the toilet, what she wears." HERMAN, *supra* note 105, at 77.

¹²⁹ Palmer, *supra* note 128, at 50; Palmer & Edmunds, *supra* note 107, at 199.

¹³⁰ Palmer, *supra* note 128, at 50; Palmer & Edmunds, *supra* note 107, at 200.

¹³¹ Palmer, *supra* note 128, at 50; see William F. Nelson, *A Treatment-Assisted Recovery Model for Victims of Prostitution and Trafficking*, 2008 CORRECTION TODAY 1, 4 (2009).

¹³² Palmer, *supra* note 128, at 50; Shigekane, *supra* note 109, at 119. A 2003 study of victims of human trafficking found the median reported age of first drug use was thirteen. Nelson, *supra* note 131.

¹³³ Palmer, *supra* note 128, at 51; Shigekane, *supra* note 109, at 118; see also ARON, ZWEIG & NEWMARK, *supra* note 108, at 11.

¹³⁴ Palmer, *supra* note 128, at 51; Palmer & Edmunds, *supra* note 107, at 200.

gaining her respect and sense of dependence, traffickers create compliant prisoners, over whom they have complete control.¹³⁵ With this control, traffickers can cause their captives to eventually act against their moral principles, such as by harming others sexually or physically, or engaging in self degrading acts.¹³⁶ For example, victims may be forced to defecate upon themselves or others, or be filmed by others for wide distribution.¹³⁷ These tactics all serve to create and reinforce senses of self loathing and that the victim deserves her treatment, which only further commits the captive to her owner.¹³⁸

VII. CURRENT LAWS TURN A BLIND EYE TO SLAVERY

The story of the domestic slave belongs to a silent minority bound by fear in a country that historically feigns an interest in freedom only when convenient.¹³⁹ Politicians often speak of slavery to undermine an issue that they are adamantly against¹⁴⁰ or to champion a cause that brings votes from a much needed demographic.¹⁴¹ But when the reality of modern slavery faces Americans in our “*Taco Bell*,”¹⁴² *Supersize*,¹⁴³ *Nanny Raise*

¹³⁵ Palmer, *supra* note 128, at 51; HERMAN, *supra* note 105, at 83.

¹³⁶ Palmer, *supra* note 128, at 51; Palmer & Edmunds, *supra* note 107, at 200.

¹³⁷ Palmer, *supra* note 128, at 51; Palmer & Edmunds, *supra* note 107, at 200.

¹³⁸ Palmer, *supra* note 128, at 51; HERMAN, *supra* note 107, at 83; Shigekane, *supra* note 109, at 119.

¹³⁹ See *infra* Parts VII.A–B, D.

¹⁴⁰ Andrew Malcolm, *Rand Paul Says People Who Support Universal Healthcare ‘Believe in Slavery’*, L.A. TIMES, May 12, 2011, <http://latimesblogs.latimes.com/washington/2011/05/rand-paul-says-people-who-support-universal-health-care-believe-in-slavery.html?cid=6a00d8341c630a53ef01543245e91c970c>; see, e.g., Rand Paul, *Universal Health Care = Slavery*, THE PAJAMA PUNDIT, (May 18, 2011), <http://www.thepajamapundit.com/2011/05/rand-paul-universal-health-care-slavery.html>.

¹⁴¹ See, e.g., Senator Barack Obama, *A More Perfect Union* (Mar. 18, 2008), available at <http://www.npr.org/templates/story/story.php?storyId=88478467> (analogizing “the slavery question” within “a Constitution that promised its people liberty and justice and a union that could be and should be perfected over time” to resolving “the challenges of our time”); Bill Warner, *Barack Obama and Slavery*, AMERICAN THINKER (Sept. 26, 2008), http://www.americanthinker.com/2008/09/barack_obama_and_slavery.html (relating the issue of slavery to the impact of his candidacy in advocating for the 2008 presidential nominee Barack Obama five weeks before the election).

¹⁴² American Anti-Slavery Group, *Boycott Taco Bell!*, CORPWATCH (Sept. 15, 2003), <http://www.corpwatch.org/article.php?id=8531>.

¹⁴³ Todd Howland, *From the RFK Memorial Poverty Tour: Fields Ripe with Injustice*, THE HUFFINGTON POST (May 6, 2006), http://www.huffingtonpost.com/todd-howland/from-the-rfk-memorial-pov_b_20497.html.

*my Kids*¹⁴⁴ lifestyle,” our politicians and federal agencies often turn a blind eye to the needs of the slave.

Although significant strides have been made to combat this terrible crime, states have had to develop legislation what the federal legislation has failed to protect. Additionally, inefficient government agencies have wasted precious federal resources and alienated the very victims whom Congress initially intended to protect. This is both true for local and foreign spending on the issue of human trafficking.

A. VISAS OF HOUSE SLAVES: A-3, G-5, & B-1 VISAS

Federal laws on preventing domestic servants from becoming house slaves are ineffective and inconsistently applied to foreign visa holders working in the United States.¹⁴⁵ Many house slaves located in the United States are foreign born and seeking employment in America.¹⁴⁶ Organized criminals have thoroughly developed their craft of transporting victims of human trafficking in plain sight through legal means.¹⁴⁷ Their enterprises are funded with the billions of dollars in revenue collected by the purchase and sale of persons as chattel.¹⁴⁸ The United States Congress, drawing from the Fourteenth Amendment, has decided to combat this “calamity” by implementing the TVPA.¹⁴⁹

¹⁴⁴ See R.W. Dellinger, *Nannies Who Are Trafficked and Exploited*, THE NANNY TIME BOMB (Jan. 24, 2011), <http://thenannytimebomb.blogspot.com/2011/01/nannies-who-are-trafficked-and.html>.

¹⁴⁵ Compare ASSOCIATED PRESS, *Feds Work to Help Human Trafficking Victims in Pa.*, THE SENTINEL (July 31, 2011, 3:42AM), http://www.cumberlandlink.com/news/state-and-regional/article_53c96dfc-bbad-11e0-bf43-001cc4c002e0.html (“[U.S. Citizenship and Immigration Services Philadelphia district director Tony Bryson said,] ‘We want [victims of severe human trafficking] to know that we will protect them . . . [w]e don’t want them to stand in the shadows anymore.’”), with April Rieger, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 HARV. J.L. & GENDER 231, 250 (2007) (“the TVPA’s definition of ‘severe trafficking’” requires that the victim be “forced or coerced,” eliminating any “sex workers who knew and consented to the type of work and conditions they ultimately encountered” from gaining visas, despite their unawareness and lack of choice regarding the conditions of their migration).

¹⁴⁶ See BALES & SOODALTER, *supra* note 2, at 33.

¹⁴⁷ H.R. REP. NO. 101-430(I), at 33 (2007); see U.S. DEPT. OF STATE, BUREAU OF CONSULAR AFFAIRS, *Are You Coming to the United States Temporarily to Work or Study?* [hereinafter *William Wilburforce Brochure*], available at <http://www.travel.state.gov/pdf/Pamphlet-Order.pdf> (last visited Sept. 12, 2011).

¹⁴⁸ *Id.*

¹⁴⁹ H.R. REP. NO. 101-430(I), at 34; Trafficking Victims Protection Act of 2000 §§ 101–13, 22 U.S.C. §§ 7101–10, 2151n, 2152d (2006); see U.S. CONST. amend. XIV.

Each year, up to two million . . . victims cross international borders . . . caught in the scheme of organized crime. Transnational criminals have increasingly become involved in trafficking, which may be the third most lucrative crime after the trade in illegal narcotics and illegal sale of illegal weapons. Trafficking has been estimated to yield \$12 to \$17 billion each year, giving traffickers increasing resources to avoid punishment.¹⁵⁰

Many of these trafficked persons enter under an air of legitimacy, through work visas issued for domestic workers of the privileged.¹⁵¹ Three visa classifications in particular, the A-3, G-5, and B-1 visas, are relevant because they also “lead to many cases of domestic slavery.”¹⁵² Domestic workers employed by diplomats receive an A-3 visa.¹⁵³ Domestic workers employed by those working for international agencies (i.e., the United Nations or the International Monetary Fund) receive a G-5 visa.¹⁵⁴ The B-1 visa, on the other hand, “serves a larger group, since it covers the domestic workers who ‘belong’ to businesspeople, foreign nationals, and American citizens with permanent residency abroad.”¹⁵⁵ All three of these visas require a closer look.

The A-3 visa requires: (1) proof of a valid employment contract between the A-1 and/or A-2 visa diplomat and “the attendant, servant, or personal employee”; (2) a “Note Verbale from the Foreign Ministry, Chief of Transportation Section of the United Nations, or the appropriate department in other international organizations, confirming the employment status of the employer”; (3) copy of valid employer A-1 and/or A-2 U.S. visa status; and (4) a signed letter explaining that the applicant understands the William Wilburforce Act pamphlet.¹⁵⁶ The William Wilburforce Trafficking Victims Protection Reauthorization Act of 2008 was created, in part, “[t]o authorize appropriations for fiscal years

¹⁵⁰ H.R. REP. NO. 101-430, at 33 (2007); *see also* H.R. REP. NO. 106-939, at 89 (2000) (Conf. Rep.) (“[W]omen and children are trafficked within or across international borders . . . often through force, fraud, or coercion . . . [and] that trafficking in such persons . . . involves forced labor and other violations of human rights . . .”).

¹⁵¹ BALES & SOODALTER, *supra* note 2, at 33.

¹⁵² *Id.*

¹⁵³ *Id.*; *see also* EMBASSY OF THE U.S. BOGOTÁ, COLOMBIA, *Documents Required for Visa Application* <http://bogota.usembassy.gov/scvcc.html> (last visited Sept. 12, 2011).

¹⁵⁴ BALES & SOODALTER, *supra* note 2, at 33; EMBASSY OF THE U.S., *supra* note 153.

¹⁵⁵ BALES & SOODALTER, *supra* note 2, at 33 (describing domestic workers as “housekeepers, nannies, cooks, drivers, and gardeners”). B-2 visas are often sought for nonimmigrants “who wish to visit the United States temporarily for business or pleasure.” EMBASSY OF THE U.S. BOGOTÁ, COLOMBIA, *supra* note 153.

¹⁵⁶ *Id.*

2008 through 2011 for the Trafficking Victim's Protection Act of 2000, to enhance measures to combat trafficking in persons¹⁵⁷

Trafficking in Persons represents an emerging and dangerous abuse of the increasingly interconnected nature of the international economic system. In this sense, it has often been referred to as the "dark side of globalization." The International Labor Organization has estimated that as many as 12.3 million individuals are trafficked annually, with 40 percent being trafficked into sexual exploitation and *a third into forced labor*.¹⁵⁸

Many of the 4.1 million forced, coerced, or defrauded laborers trafficked annually belong to a protected class.¹⁵⁹ The protection begins for the A-3 visa applicant when the applicant signs a document stating that they have reviewed the brochure defining their rights.¹⁶⁰ Fortunately for the citizens in Columbia,¹⁶¹ Romania,¹⁶² and Azerbaijan¹⁶³ who are applying for an A-3 visa, both the pamphlet and contract are available online.¹⁶⁴ Unfortunately for non-English speaking individuals, these documents are only available in English.¹⁶⁵

The U.S. Bureau of Consular Affairs was clearly concerned about

¹⁵⁷ William Wilburforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044, 5044.

¹⁵⁸ H.R. REP. No. 101-430, at 33 (2007) (emphasis added) (explaining one of the goals of the act is "to provide legal frameworks that protect foreign migrant workers, including domestic servants, to the same degree as U.S. citizens).

¹⁵⁹ *Id.* at 33, 45.

¹⁶⁰ *William Wilburforce Brochure*, *supra* note 147, at 2.

¹⁶¹ EMBASSY OF THE U.S. BOGOTÁ, COLOMBIA, *supra* note 153.

¹⁶² EMBASSY OF THE U.S. BUCHAREST, ROMANIA, *Vize Tempore*, <http://romania.usembassy.gov/vize/non-immigrant.html> (last visited Sept. 12, 2011) (providing a website in Romanian but linking a PDF that is only in English by clicking "Actul William Wilburforce privind Protectia Victimelor Traficului de Persoane.").

¹⁶³ EMBASSY OF THE U.S. BAKU, AZERBAIJAN, *Information About Specific Types of Visas*, http://azerbaijan.usembassy.gov/types_of_visas.html (last visited Oct. 4, 2011) (providing a link to the William Wilburforce Brochure only in English).

¹⁶⁴ Mexico, a country contiguous with the United States where a vast number of humans are trafficked by *Coyotes*, does not even have a link to the William Wilburforce Brochure. See EMBASSY OF THE U.S. MEXICO CITY, MEXICO, *Democracy & Human Rights*, <http://mexico.usembassy.gov/eng/democracy.html> (last visited Oct. 4, 2011). The only link available is that of the "2011 Trafficking in Person's Report." *Id.* These links, although available to the public, are not helpful to those seeking entry into the United States from Mexico and in informing them about their rights.

¹⁶⁵ See generally *William Wilburforce Brochure*, *supra* note 147. But see generally DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* (2011) (providing copies of the report in English, Arabic, Chinese, French, Persian, Russian, and Spanish), <http://www.state.gov/g/tip/rls/tiprpt/2011/index.htm> (last visited Oct. 4, 2011).

this problem when they wrote, “Make sure that you understand the terms of the contract. If you cannot understand the language in which the contract is written, ask someone you trust to read the contract to you in a language that you understand. Do not sign anything that you do not understand!”¹⁶⁶ They provided this very helpful language in the William Wilburforce brochure—in English.

The G-5 visa requires: (1) “a valid contract”; (2) “[n]ote Verbale from the Foreign Ministry confirming the employment status of the employer”; (3) “[c]opy of employer’s valid U.S. visa or evidence of the employer’s U.S. visa status”; and (4) “signed form . . . saying that the applicant has read and understood [the William Wilburforce Act pamphlet].”¹⁶⁷ The very problem of not having materials available in non-English languages that affects A-1 visa applicants also applies to G-5 visa applicants.

These visas are fairly easy to obtain. Employers simply need to provide employment contracts stating that they will provide employees with “reasonable living and working conditions.”¹⁶⁸ Once domestic workers receive their visas and enter the United States, information about their whereabouts and well-being is lost.¹⁶⁹ This occurs because the State Department does not keep records of the locations of those living in the United States with an A-3, G-5, or B-1 visa.¹⁷⁰ Confidential records may

¹⁶⁶ *William Wilburforce Brochure*, *supra* note 147, at 2 (emphasizing the “Do not sign” language by bolding it in red).

¹⁶⁷ EMBASSY OF THE U.S. BOGOTÁ, COLOMBIA, *supra* note 153. *Compare id.*, with EMBASSY OF THE U.S. MEXICO CITY, MEXICO, *supra* note 164 (failing to provide absolutely any information on the rights of those victims of human trafficking, and providing only reports dealing with human trafficking generally).

¹⁶⁸ BALES & SOODALTER, *supra* note 2, at 35. Additional requirements for A-3, G-5, and B-1 visas include:

- An agreement by your employer not to keep your passport, employment contract, or other personal property from you;
- An agreement by your employer to abide by the laws of the United States;
- An explanation of how much you will be paid for your work, as well as how frequently you will be paid; and
- A description of your work duties, weekly hours, holidays, sick days, and vacation days.

William Wilburforce Brochure, *supra* note 147, at 2.

¹⁶⁹ BALES & SOODALTER, *supra* note 2, at 33.

¹⁷⁰ Since appropriations for the William Wilburforce Trafficking Victims Protection Reauthorization Act of 2008 ends in 2011, it is unknown whether additional resources will be spent to protect the victims of human trafficking. *See* William Wilburforce Trafficking Victims Protection Reauthorization Act of 2008, 122 Stat. at 5044; Trafficking Victims Protection Reauthorization Act of 2011, H.R. 2830, 112th Cong. (2011); Trafficking Victims Protection Reauthorization Act of 2011, H.R. 3589, 112th Cong. (2011). *Compare* Bill Summary & Status

only be viewed by employers.¹⁷¹ Therefore, once a domestic worker leaves the airport, she is, for all intents and purposes, at the mercy of her employer.¹⁷² The same document that allowed her to come to the United States is often the same one that facilitates her enslavement.¹⁷³

B. THE PRIVILEGED AND FORTUNATE J-1 DOMESTIC WORKER

The scheme for A-3, G-5, and B-1 holders differs sharply from the State Department's Congressionally-sponsored Au Pair Program.¹⁷⁴ "Au pair" means "an equal" in French.¹⁷⁵ These domestic workers are treated more akin to U.S. citizens than their A-3, B-1, and G-5 counterparts.¹⁷⁶ Au pairs receive the coveted J-1 visas. The different class of visa brings an entirely different class of protections and privileges; the au pair's employer is required to check in with a counselor every month, and the au pair has access to educational opportunities as well as the ability to reach out to other au pairs for support.¹⁷⁷ Furthermore, au pairs are able to seek the aid of a counselor if they are experiencing trouble in their household.¹⁷⁸ The State Department markets its Au Pair Program as a

– 112th Congress (2011-2012) – H.R. 2830, THOMAS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:HR02830:@@L&summ2=m&/home/LegislativeData.php?n=BSS;c=112> (last visited Apr. 10, 2012); Trafficking Victims Protection Reauthorization Act of 2011, H.R. 2830, 112th Cong. (2011) (seeking to extend appropriations for the victims of human trafficking through 2013 still sitting in the House having been referred to five committees with no action taken since Nov. 2, 2011), with Trafficking Victims Protection Reauthorization Act of 2011, H.R. 3589, 112 Cong. (2011) (seeking to extend appropriations for the victims of human trafficking through 2013 still sitting in the House having been referred to four committees with no action taken since Feb. 3, 2011); Bill Summary & Status – 112th Congress (2011-2012) – H.R. 3589, THOMAS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:HR03589:/home/LegislativeData.php?n=BSS;c=112> (last visited Apr. 10, 2012).

¹⁷¹ Joy Mutanu Zarembka, *Maid to Order: Joy Mutanu Zarembka says the Situation of Imported Domestic Workers is a Form of Modern-Day Slavery*, COLORLINES, Oct. 31, 2001, at 26.

¹⁷² BALES & SOODALTER, *supra* note 2, at 36.

¹⁷³ *Id.* at 36. "Our visa system, far from being used to the advantage of the household workers, stacks the deck against them from the beginning." *Id.* The domestic workers' undocumented status is also dangerous because it offers a means through which an employer can justify exploiting her employee. Janie A. Chuang, *Achieving Accountability for Migrant Domestic Worker Abuse*, 88 N.C. L. REV. 1627, 1636 (2010).

¹⁷⁴ Joy M. Zarembka, *America's Dirty Work: Migrant Maids and Modern-Day Slavery*, in GLOBAL WOMAN 142, 148–49 [hereinafter Zarembka, *America's Dirty Work*].

¹⁷⁵ Zarembka, *Maid to Order*, *supra* note 171, at 26.

¹⁷⁶ *Id.*

¹⁷⁷ Zarembka, *America's Dirty Work*, *supra* note 174, at 148–49.

¹⁷⁸ Dina Francesca Haynes, *Exploitation Nation: The Thin and Grey Legal Lines Between*

valuable educational opportunity through which individuals from different countries can experience American culture and receive childcare training.¹⁷⁹

However, only a limited number of overseas individuals have the opportunity to take advantage of the Au Pair Program. The Au Pair Program “largely recruits young, middle-class women from Europe,” and “few women of color from developing countries are so lucky.”¹⁸⁰ This disparity between B-1 and J-1 visa-holders is explained by differences in race and class; more affluent, middle-class au pairs receive better treatment under the J-1 visa, while poorer minority women receive B-1 visas and become more vulnerable to enslavement.¹⁸¹

C. CRITICISM OF EXISTING FEDERAL LAWS

A contributing factor to the enslavement of domestic workers is the National Labor Relations Act (“NLRA”).¹⁸² Congress passed the NLRA in 1935 in part to protect employers and employees and to prevent the implementation of objectionable labor practices.¹⁸³ However, when defining the word “employees,” the NLRA expressly states that domestic workers are not included.¹⁸⁴ In addition to the NLRA, domestic workers are also denied protection under the Occupational Health and Safety Act (“OSHA”) and the Fair Labor Standards Act (“FLSA”).¹⁸⁵ In 2005, the International Labour Organization (“ILO”) studied the laws in sixty-five countries and found that, of these sixty-five countries, only nineteen had

Trafficked Persons and Abused Migrant Laborers, 23 NOTRE DAME J.L. ETHICS & PUB. POL’Y 1, 33 (2009).

¹⁷⁹ U.S. DEP’T. OF STATE, *J-1 Visa Exchange Visitor Program*, <http://j1visa.state.gov/programs/au-pair> (last visited Sept. 26, 2011).

¹⁸⁰ Zarembka, *America’s Dirty Work*, *supra* note 174, at 149.

¹⁸¹ *Id.* at 148–49.

¹⁸² See National Labor Relations Act of 1935, 29 U.S.C. §§ 151–69 (2006) [hereinafter NLRA of 1935]; BALES & SOODALTER, *supra* note 2, at 22.

¹⁸³ NLRA of 1935, 29 U.S.C. §§ 151–69 (2006).

¹⁸⁴ 29 U.S.C. § 152(3). (“The term ‘employee’ . . . shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor . . .”). The reason behind the NLRA’s exclusion of domestic workers from its definition of “employee” is race-based. Chuang, *supra* note 173, at 1635. When the NLRA was first drafted, “domestic workers were predominately black and . . . Southern politicians feared expanding domestic workers’ rights would upset the racial status quo.” *Id.*

¹⁸⁵ *Id.* at 1638.

laws in place to protect domestic workers.¹⁸⁶

Although domestic workers continue to receive less than adequate protection under the visa program and the NLRA,¹⁸⁷ a significant safeguard against enslavement came in 2000 with the passage of the TVPA.¹⁸⁸ Under the TVPA, human trafficking became a crime for the first time,¹⁸⁹ and it set forth “definitions, charges, and penalties for dealing specifically with cases of sex and labor slavery in the United States.”¹⁹⁰ Under the TVPA, “severe forms of trafficking in persons” is defined in part as “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.”¹⁹¹ So long as a domestic worker reasonably cooperates with authorities to prosecute the traffickers who allegedly enslaved her, she becomes eligible to receive social services comparable to those afforded to refugees, as well as “temporary (and potentially permanent) residency status, mandatory restitution, and the right to pursue a civil action against her traffickers for monetary compensation.”¹⁹²

This ground-breaking and expansive piece of legislation is credited with sparking the United States’ anti-trafficking movement as well as providing the impetus for several states to pass their own anti-trafficking laws.¹⁹³ Until passage of the TVPA, domestic workers’ options for recourse were largely limited to seeking money damages under the FLSA or under a breach of contract theory.¹⁹⁴

In order to assist states in creating and passing their own anti-trafficking laws, the Department of Justice (“DOJ”) drafted the Model State Anti-Trafficking Criminal Statute in 2004.¹⁹⁵ This model statute, which the DOJ based off of the TVPA, was the first of its kind;

¹⁸⁶ *Id.* at 1637–38.

¹⁸⁷ *Id.* at 1629. “Relegated to the informal labor sector, migrant domestic workers are routinely excluded as a worker category from labor law protections.” Chuang, *supra* note 173, at 1629.

¹⁸⁸ See BALES & SOODALTER, *supra* note 2, at 58.

¹⁸⁹ Mohamed Y. Mattar, *Interpreting Judicial Interpretations of the Criminal Statutes of the Trafficking Victims Protection Act: Ten Years Later*, 19 AM. U.J. GENDER, SOC. POL’Y, & L. 1247, 1248 (2011).

¹⁹⁰ BALES & SOODALTER, *supra* note 2, at 58.

¹⁹¹ 22 U.S.C. § 7102(8)(B) (2006).

¹⁹² 22 U.S.C. § 7105(b)(1)(E)(i)(I) (2006); Chuang, *supra* note 173, at 1641.

¹⁹³ BALES & SOODALTER, *supra* note 2, at 59, 197.

¹⁹⁴ Chuang, *supra* note 173, at 1640.

¹⁹⁵ BALES & SOODALTER, *supra* note 2, at 198.

previously, there had never before been an attempt to create a uniform anti-trafficking law for adoption by the fifty states.¹⁹⁶ The model law sought to achieve “seamless partnerships in combating human trafficking.”¹⁹⁷

The model statute had three goals: “prevent gaps between federal and state laws; promote a national legal strategy to combat trafficking that would facilitate greater coordination and reduce confusion on the part of both victims and law enforcement; and provide examples of the most effective legislative approaches to address trafficking.”¹⁹⁸ Although the DOJ sought to provide guidance to the states by providing legal definitions for terms such as “blackmail, commercial sexual activity, financial harm, forced labor or services . . . and trafficking victim,” the definitions vary across states.¹⁹⁹

To date, forty-three states have passed anti-trafficking legislation.²⁰⁰ Florida is one such state. Regarded as one of the epicenters of human-trafficking,²⁰¹ Florida recognized the need for anti-trafficking laws and passed its own statute, section 787.06 of the Florida Statutes, even before the DOJ issued its model statute.²⁰² Section 787.06 declares that human trafficking is a form of modern day slavery²⁰³ and defines human trafficking as “transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport.”²⁰⁴

[Anyone who] knowingly engages, or attempts to engage, in human trafficking with the intent or knowledge that the trafficked person will be subjected to forced labor or services or benefits financially by receiving anything of value from participation in a venture that has subjected a

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 199.

²⁰⁰ CENTER FOR WOMEN POLICY STUDIES, FACT SHEET ON STATE ANTI-TRAFFICKING LAWS 2 (2011), *available at* <http://www.centerwomenpolicy.org/documents/FactSheetonStateAntiTraffickingLawsFebruary2011.pdf>.

²⁰¹ BALES & SOODALTER, *supra* note 2, at 181. The Office of the United States Attorney in Fort Myers, Florida has acknowledged that “Southwest Florida has more trafficking cases than many states.” *Id.* The high volume of human trafficking in Florida has sparked the creation of several agencies and research institutes, such as the Coalition of Immokalee Workers and Florida Gulf Coast University’s Esperanza Center for Human Trafficking Research. *See id.* at 46, 181.

²⁰² BALES & SOODALTER, *supra* note 2, at 201; *see* FLA. STAT. § 787.06 (2011).

²⁰³ *Id.* § 787.06(1)(a).

²⁰⁴ *Id.* § 787.06(2)(c).

person to forced labor or services commits a felony of the second degree.²⁰⁵

On August 16, 2011, United States Senator Marco Rubio (R-FL) addressed the unsettling prevalence of human trafficking in Florida.²⁰⁶ Rubio listed the cities of Miami, Orlando, and Tampa as “main transit points” of human trafficking.²⁰⁷ In July 2011 alone, twelve Floridians faced human trafficking charges.²⁰⁸ Senator Rubio voiced his support for the Trafficking Victims Reauthorization Act—an extension of the TVPA—and encouraged Floridians to remember their responsibility “to protect and be a voice for the powerless.”²⁰⁹ Senator Rubio’s article demonstrates how the issue of human trafficking has come to the forefront both in Florida and across the country.

Other politicians have addressed this serious issue. According to Senator Leticia Van de Putte (D-TX), domestic workers trafficked illegally from Latin America are forced into labor by Coyotes that smuggle them into this country under debt bondage.²¹⁰ Latinos comprise an alarming fifty-six percent of all labor trafficking victims.²¹¹ “The I-10 corridor between El Paso and Houston has been identified as a main human trafficking route by Children at Risk and the U.S. Department of Health and Human Services.”²¹² This, combined with Texas’s proximity to Mexico, makes it an ideal point of entry into the United States by international human trafficking criminal organizations.²¹³ For these

²⁰⁵ *Id.* § 787.06(3)(a)–(b).

²⁰⁶ Marco Rubio, *My Word by U.S. Senator Marco Rubio: Let’s Put an End to Modern Day Slavery*, ORLANDO SENTINEL, Aug. 16, 2011, <http://www.orlandosentinel.com/news/opinion/os-ed-sex-trafficking-myword-081611-20110815,0,3401904.story>.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ Leticia Van De Putte, *Latina Politician Fights Human Trafficking*, NEWS TACO (May 2011), <http://www.newstaco.com/2011/04/14/latina-politician-fights-human-trafficking/>. Domestic workers forced into labor under the air of legitimacy are very different in how they enter the United States than those that are trafficked by Coyotes. “Coyotes” are the commonly used name for persons that smuggle human trafficking victims across the border between Mexico and the United States for a fee. S.E. Smith, *Regarding Immigration, What is a Coyote?*, WISEGEEK, <http://www.wisegeek.com/regarding-immigration-what-is-a-coyote.htm> (last visited Sept. 26, 2011). Normally the fee grows exponentially once a Coyote smuggles a victim across the border and threatens the victim or family in order to “work off” the increasing debt. This is commonly known as debt bondage. See 8 C.F.R. § 214.11(a).

²¹¹ Leticia Van de Putte, *supra* note 210.

²¹² *Id.*

²¹³ *Id.*

reasons, Senator Van de Putte introduced Texas Senate Bill 24, amending sections 20A.01 and 20A.02 of the Texas Penal Code, which was signed into law by Texas Governor Rick Perry on April 21, 2011, and became effective September 1, 2011.²¹⁴ The goal is to deter human trafficking in the State of Texas, another frontline state dealing with this very real problem.²¹⁵

Despite the increased awareness of human trafficking and the passage of laws at both the state and federal levels, obstacles in bringing traffickers to justice still exist. For example, some states remain reluctant to pass their own anti-human trafficking laws, believing that human trafficking is a problem best handled by federal authorities.²¹⁶ Furthermore, even with more laws in place, human trafficking cases remain difficult to prosecute,²¹⁷ it is difficult to prove psychological coercion, and even though a victim may have been enslaved for many years, the physical evidence required to return a conviction is often difficult to procure.²¹⁸ As an alternative to charges such as rape and torture, prosecutors often “water down” the charges to increase the chances of a conviction.²¹⁹ However, because the trafficker is then found guilty of lesser charges, the prison sentence she serves is often “far shorter than the time [she] held her . . . [victim] in slavery.”²²⁰

D. INTERPRETING U.S. POLICY ON THE T-1 VISA

During President George W. Bush’s administration, the United States Department of Justice Immigration and Naturalization Service (“INS”) interpreted cases on T-1 visa applicants, based on an endorsement provided by State Law Enforcement Agents (“LEA”) or documentation

²¹⁴ TEX. PENAL CODE ANN. §§ 20A.01–.02 (West 2012).

²¹⁵ See Press Release, Office of State Senator Leticia Van de Putte, Senator Van de Putte Advances Human Trafficking Legislation (Mar. 15, 2011), <http://www.vandeputte.senate.state.tx.us/pr11/p031511a.htm>.

²¹⁶ BALES & SOODALTER, *supra* note 2, at 201. This belief may be attributed to the “significant prosecutorial advantages” that federal authorities have over state authorities in this arena. These advantages include “a well-established federal infrastructure designed to handle trafficking cases, federal control over victims’ immigration status, the extensive reach of federal jurisdiction, and the breadth of federal statutes under which traffickers may be prosecuted.” Eileen Overbaugh, Comment, *Human Trafficking: The Need for Federal Prosecution of Accused Traffickers*, 39 SETON HALL L. REV. 635, 636 (2009).

²¹⁷ BALES & SOODALTER, *supra* note 2, at 31.

²¹⁸ *Id.* at 201.

²¹⁹ *Id.* at 31.

²²⁰ *Id.* at 31–33.

granting an applicant continued presence by the United States Department of Homeland Security's Citizenship and Immigration Services ("CIS").²²¹ In July 2011, U.S. Citizenship and Immigration Services Philadelphia District Director Tony Bryson said, "We want [victims of severe human trafficking] to know that we will protect them . . . [w]e don't want them to stand in the shadows anymore."²²² Yet so few immigrants receive T-1 visa protection.²²³ In fact, in 2010, only 796 T visas, of the 5000 issuable annually, had been issued.²²⁴ As of June 2011, only 890 visas have been issued.²²⁵

The original TVPA appropriated just under \$95 million for both federal and foreign victims of human trafficking between 2001 through 2002.²²⁶ The Trafficking Victims Protection Reauthorization Act of 2003 ("TVPRA of 2003") reauthorized appropriations, by amending the TVPA, but increased the amount of money allocated to this cause by just under \$208 million for the years of 2003 thru 2005.²²⁷ The Trafficking Victims Protection Reauthorization Act of 2005 ("TVPRA of 2005") extended the appropriations, by amending the TVPA, to increase tax dollars spent to just under \$305 million.²²⁸ Additionally, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA of 2008") once again extended the appropriations by about \$443 million from 2008 thru 2011.²²⁹ This brings the total amount of appropriations that taxpayers have spent to battle the deplorable criminal violence and acts associated with human trafficking well over one billion dollars.

And yet in the last year and a half, after one decade of this act being in effect, and over a billion dollars in taxpayer money spent, only 1,686 immigrants have been offered a T-1 visa? That's 1,686 out of

²²¹ Compare *In re Anonymous Applicant No. 5360868*, 2007 WL 5360868, *1 (I.N.S. Nov. 29, 2007), with *Feds Work to Help Human Trafficking Victims in Pa.*, *supra* note 145; U.S. DEP'T OF HOMELAND SECURITY, U.S. CITIZENSHIP & IMMIGRATION SERVS., *Victims of Human Trafficking: T Nonimmigrant Status* (last updated Sept. 14, 2011), <http://www.uscis.gov/portal/site/uscis/menuitem> (follow "Victims of Human Trafficking & Other Crimes" hyperlink; then follow "T Nonimmigrant Status (T Visa) hyperlink).

²²² *Feds Work to Help Human Trafficking Victims in Pa.*, *supra* note 145.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ TVPA of 2000, Pub. L. No. 106-386, § 113, 114 Stat. 1464, 1490-91.

²²⁷ TVPA of 2003, Pub. L. No. 108-193, § 7, 117 Stat. 2875, 2884-86.

²²⁸ TVPA of 2005, Pub. L. No. 109-164, § 301, 119 Stat. 3558, 3572.

²²⁹ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 301, 122 Stat. 5044, 5085-87.

10,000 possible visas.²³⁰

It is instructive to look at the methodology of the law as applied by the INS in 2007 to truly understand why so few immigrants have come forward. Applicants may be classified according to the following categories, if “she is”:²³¹

(i) [S]ubject to section 214(O), an alien who the Attorney General [now Secretary of Homeland Security (Secretary)] determines —

(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the [TVPA],

(II) is physically present in the United States, American Samoa, or the Commonwealth of Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking,

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

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

A successful section 101(a)(15)(T) application is dependent first upon a showing that the applicant is a victim of a severe form of trafficking in persons. According to the Trafficking Victims Protection Act, 22 U.S.C. § 7102 (8), 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 subjecting to involuntary servitude, peonage, debt bondage, or slavery.

The regulations at 8 C.F.R. § 214.11(f) provide specific guidelines on evidence that may be provided to support an applicant’s contention that she is a victim of a severe form of trafficking. The regulations state:

(f) *Evidence demonstrating that the applicant is a victim of a severe form of trafficking in persons.* The applicant must submit evidence that fully establishes eligibility for each element of the T nonimmigrant status to the satisfaction of the Attorney General. **First, an alien must**

²³⁰ Because \$443 million dollars divided by four equals \$110,750,000. And in the last two years 1686 applicants have been granted T-1 visas. This means that thus far, each applicant in the last two years that has been granted T-1 status has cost the United States government \$131,376. That’s far more than the \$22,150 that Congress intended (two years of \$110,750,000 divided by 10,000 applicants). Over six times as much as Congress intended.

²³¹ *In re Anonymous Applicant No. 5360868*, 2007 WL 5360868, *2 (I.N.S. Nov. 29, 2007).

demonstrate that he or she is a victim of a severe form of trafficking in persons. The applicant may satisfy this requirement either by submitting an LEA endorsement, by demonstrating that the Service previously has arranged for the alien's continued presence under 28 C.F.R. § 1100.35, or by submitting sufficient credible secondary evidence, describing the nature and scope of any force, fraud, or coercion used against the victim (this showing is not necessary if the person induced to perform a commercial sex act is under the age of 18). An application must contain a statement by the applicant describing the facts of his or her victimization. In determining whether an applicant is a victim of a severe form of trafficking in persons, the Service will consider all credible and relevant evidence.²³²

Absent the requisite showing that the applicant is a victim of severe human trafficking, the threshold matter never gets to the analysis of whether the applicant deserves an opportunity to stay under the T-1 visa.²³³ This is true even if the victim is suffering Post Traumatic Stress Disorder and Panic Disorders.²³⁴ For purposes of the INS interpretation of the rule, unless the victim is suffering from "severe" human trafficking, there is no chance that a T-1 visa applicant will be authorized to stay in the United States.²³⁵

LEA Endorsement and a promise by the CIS of continued stay to the victim is taken as primary evidence by the INS that the applicant is a victim of "severe human trafficking."²³⁶ But in order to get either of these, the applicant must submit to the legal authorities, admit their illegal status, and fully disclose all material evidence against their human traffickers.²³⁷ Should this evidence not be sufficient, then applicant's cooperation with law enforcement results in deportation to their country of origin.²³⁸ No wonder *Coyotes* use the threat of deportation by the United States Government against those that would otherwise seek to escape.

Although significant strides have been made in protecting individuals from becoming house slaves through the T-1 visa program, the program has fallen far short of what it intended. The federal government has not done enough. Even though the J-1 visa offers domestic workers amazing

²³² *Id.* at *2–3 (emphasis added).

²³³ *Id.* at *8–10.

²³⁴ *Id.* at *11.

²³⁵ *Id.*

²³⁶ *Id.* at *3

²³⁷ *See id.*

²³⁸ *See In re Anonymous Applicant No. 5360868*, 2007 WL 5360868, *3, *11 (I.N.S. Nov. 29, 2007).

opportunities that protect these workers from human trafficking, the A-3, G-5, and B-1 visas do not. And although forty-three states have passed legislation to prosecute those that would traffic human beings, the states are not in the best position to control immigration as doing so would almost assuredly raise a preemption issue based on the federal government.²³⁹ In essence, the Federal Government needs to raise its bar higher, become more efficient with its spending, and help the victims—all the victims—that Congress intended to protect.

VIII. CONCLUSION

Human trafficking is a complex choreography of pushing factors such as poverty, marginalization, and political uncertainty in which perpetrators capture human beings for profit and financial power. Within this choreography are also the pulling forces of power to control and privilege to “own” that completes and perpetuates the continual enslavement and movement of humans for the pleasure, work, and benefit of others. Wading into the arena are recent findings in neuroscience that further complicate the need to respond in a humane and strategic fashion. All of this is set against a backdrop of uneven international ethics and laws that continue to value power, marginalize and dehumanize the vulnerable and poor, and thus make them ready victims for trade. Within the United States, there are similar pulling forces that while on the surface deny the use of slaves, in fact support its practice through power and privilege. It is this reality that must give us pause to see our ownership and collusion in the dance of injustice.

²³⁹ CENTER FOR WOMEN POLICY STUDIES, *supra* note 200.