

DECENTRALIZING THE FIGHT AGAINST HUMAN TRAFFICKING IN THE UNITED STATES: THE NEED FOR GREATER INVOLVEMENT IN FIGHTING HUMAN TRAFFICKING BY STATE AGENCIES AND LOCAL NON-GOVERNMENTAL ORGANIZATIONS

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INTRODUCTION

While much of the media and reporting on human trafficking concentrate on other regions of the world, there are countless hidden slaves here in our own back yards. It is estimated that between 14,500 and 17,500 people are trafficked into the United States each year.¹ As will be discussed throughout this paper, our government has take extensive measures since 2000 to combat this growing problem, but despite these efforts, these governmental programs have not even scratched the surface of this problem: only 841 trafficking victims have been certified to receive social services benefits between 2001 and 2005, while only 140 traffickers have been prosecuted during this time.²

Despite these bleak statistics, there is the general ethos among anti-trafficking advocates that trafficking can be eradicated in our lifetime.³ To this end, in the United States many disparate anti-trafficking initiatives and efforts coalesced on the federal level in 2000 with the enactment of the Trafficking Victims Protection Act (TVPA).⁴ The TVPA focuses federal law enforcement resources on combating trafficking and federal social service agencies on providing assistance to trafficking

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¹ See U.S. DEP'T OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 4 (2005), available at <http://www.usdoj.gov/ag/annualreports/tr2005/assessmentofustipactivities.pdf> [hereinafter SEPTEMBER 2005 DOJ REPORT].

² See U.S. DEP'T OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS IN FISCAL YEAR 2005 4, 14 (2006), available at http://www.usdoj.gov/ag/annualreports/tr2006/assessment_of_efforts_to_combat_tip.pdf (last visited October 2, 2006) [hereinafter SEPTEMBER 2006 DOJ REPORT].

³ See KEVIN BALES, DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY 232-64 (1999).

⁴ Victims of Trafficking and Violence Protection Act, Pub. L. No-106-386 Division A, 114 Stat. 1464 (codified as amended in scattered sections of 22 U.S.C.) [hereinafter TVPA]. For an overview and history of the United States' anti-trafficking legal approaches, including an overview of the TVPA, see Kathryn E. Nelson, *Sex Trafficking and Forced Prostitution: Comprehensive New Legal Approaches*, 24 HOUS. J. INT'L L. 551 (2002).

victims.⁵ Since 2000, through two reauthorizations of the TVPA,⁶ government programs have been strengthened and extended, and numerous grants have been allotted to trafficking victim service agencies. Also since 2000, the general public has been made more aware of the seriousness of this issue through the proliferation of news stories, scholarly works, films, and other forms of media coverage of the topic.⁷ However, despite all of these efforts, there remain a number of roadblocks in this country's approach that pose serious problems to its ability to effectively eradicate this practice. These can be classified into two rough categories: (1) problems with the federal approach to trafficking and (2) the lack of wide-spread anti-trafficking resources on the state and local level.

As per the first problem, major discrepancies exist between the normative intent behind the TVPA and how it has been implemented by federal agencies. The federal government has taken swift actions against human trafficking through the TVPA and its subsequent reauthorizations, but many of the working solutions that have come out of these laws remain cumbersome, unscalable, and lopsided. Anti-trafficking advocates have written a number of insightful articles discussing these policy discrepancies, an understanding of which is integral to anyone interested in federal anti-trafficking policies. As such, this paper will not focus on these issues, but rather on the second category of problems, the lack of widespread anti-trafficking resources on the state and local level.

At the time of writing, twenty-two states have passed their own anti-trafficking statutes, while seven more are currently considering legislation.⁸ Traffickers, on the other hand, operate in a much wider geographic area than is reflected by these state laws. In September 2004, Free the Slaves,⁹ a non-governmental organization (NGO) working to end slavery worldwide, reported that forced labor operations¹⁰ exist in at least ninety cities spread across thirty of the

⁵ The TVPA concentrates on the "three P's" of trafficking: prosecution, protection, and prevention, while a victim-centered approach, encouraged by the State Department and the Department of Justice, also encompasses the "three R's," rescue, rehabilitation, and reintegration. *See* U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 5 (2006) *available at* <http://www.state.gov/documents/organization/66086.pdf> [hereinafter TIP 2006].

⁶ *See* Trafficking Victims Protection Reauthorization Act of 2003, H.R. 2620 (codified as amended in scattered sections of 22 U.S.C.) [hereinafter TVPRA 2003]. *See also* Trafficking Victims Protection Reauthorization Act of 2005, H.R. 972 (codified as amended in scattered sections of 22 U.S.C.) [hereinafter TVPRA 2005].

⁷ *See generally* SEPTEMBER 2006 DOJ REPORT, *supra* note 2.

⁸ *See id.* at 17. (States with anti-trafficking statutes include: Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, South Carolina, Texas, and Washington. States that are currently considering anti-trafficking legislation include Connecticut, Hawaii, Maine, Massachusetts, New York, North Carolina, and Oregon.); *See also* Appendix A, *infra* for a categorization of the sixteen state anti-trafficking laws passed by the end of 2005.

⁹ *See* FreetheSlaves.net, <http://www.freetheslaves.net> (last visited March 10, 2006).

¹⁰ *See generally* FREE THE SLAVES AND HUMAN RIGHTS CENTER, HIDDEN SLAVES: FORCED LABOR IN THE UNITED STATES, (2004) *available at* http://freetheslaves.net/files/Hidden_Slaves.pdf [hereinafter HIDDEN SLAVES]. (Although the term "trafficking" technically refers to the act of transporting a person against their will for monetary gain, the terms "trafficking" and "slavery" have become interchangeable

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U.S. States.¹¹ In order to effectively combat trafficking under our federalist paradigm of governance, human trafficking must be addressed by each level of government. Accordingly, large NGO's working on the national policy level, as well as grass roots NGO's working locally and directly with individuals, need to address human trafficking at their corresponding level of expertise. That is, it would not be effective for a national policy focused NGO to be tasked with providing direct services to trafficking survivors, nor would it be wise for federal law enforcement agents better positioned and trained to investigate wide-spread organized crime rings to be tasked with investigating small-scale trafficking offenders. However, local law enforcement officers, being locally embedded in their communities, would be in the position to seek out and investigate the latter offenders. These different levels of both NGO and federal resources have to work simultaneously and together, collaborating their efforts, while remaining decentralized and dispersed throughout the nation. Currently, this country's anti-trafficking effort is top-heavy-focused primarily on the federal level. To be sure, much has been accomplished over the past five years since the enactment of the TVPA, but again these efforts pale in comparison with the extent to which this problem has infiltrated our country—an issue which will be discussed in further detail in Part I.

This Note stands for the simple proposition that this top-heavy model needs to change. During the past year, six states passed anti-trafficking statutes and seven more states are currently considering such legislation. However, that still leaves less than two-thirds of the states and territories trying to find legal solutions to trafficking. The rest of the states need to catch up, but the government cannot act alone. NGO's serve a powerful role in this battle. Trafficking victims, once they are rescued, need someone to take care of them, to get them back on their feet. Direct service NGO's serve this role, through the use of public funds and private donations. They are able to turn a trafficking victim into a trafficking survivor—someone who can live life anew, not plagued by trauma and horrid memories. There are numerous direct service agencies that deal with indigent populations that

in US and International laws and treaties. Often organizations, such as Free the Slaves will also use the synonymous term "forced labor." "Forced labor" is defined, with exceptions, in the International Labor Organization Convention Concerning Forced Labor (No. 29) as "...all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."); *See also* The UNITED NATIONS PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, *available at*

http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf (last visited March 10, 2006) (defining "trafficking in persons" as: "The recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of the position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.").

¹¹ *See* HIDDEN SLAVES, *supra* note 10, at 10-11.

have joined the anti-trafficking cause, but more help is needed as government efforts are increased and more trafficking victims are rescued.

This Note discusses in detail why this model is appropriate for fighting human trafficking in this country, and then discusses what affirmative measures need to be taken by states and local organizations to implement this model. As an aid to the discussion, Part I provides the reader with a brief overview of trafficking in the United States. The discussion includes background information, a brief discussion of victim trauma, and a survey of the various economic sectors where trafficking can be found in this country, including short examples from each. Part II provides an argument as to why and how state and local anti-trafficking efforts are key to eradicating human trafficking in the United States, providing a number of reasons and examples as to why the federal government cannot fight this battle alone. Finally, Part III discusses what affirmative measures states can take to address human trafficking, arguing for state-wide criminalization of human trafficking and outlining how federal victim assistance programs work under the TVPA and how state agencies and local NGO's can take advantage of federal grants to build law enforcement training and victim assistance programs. As an aid to the discussion, Appendix A contains a categorized table of state anti-trafficking laws passed by the end of 2005.

I. A BRIEF SNAPSHOT OF HUMAN TRAFFICKING IN THE UNITED STATES

A. Overview

In a survey of press reports dated before September 2004, Free the Slaves found 131 cases of trafficking involving 19,254 victims,¹² 1,200 of whom were children.¹³ Trafficking has been found spread across eight sectors of the U.S. economy,¹⁴ most often occurring in the prostitution, domestic service, and agricultural industries.¹⁵ Victims have been found to come from thirty-nine countries, most often from Mexico and other locations within the United States itself.¹⁶

¹² See HIDDEN SLAVES, *supra* note 10, at 5; See also U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 7 (2003) available at <http://www.state.gov/documents/organization/21555.pdf>. (There is a discrepancy between these numbers and those estimated by the September 2005 DOJ Report. The DOJ did not explain its research methods, nor how it came up with its numbers, so unfortunately they cannot be checked against the numbers reported by Free the Slaves in HIDDEN SLAVES. In its 2003 report, the State Department approximated that there were between 18,000 to 20,000 trafficked persons entering the United States annually.); See also INTERNATIONAL ORGANIZATION FOR MIGRATION, COMBATING TRAFFICKING IN SOUTH-EAST ASIA: A REVIEW OF POLICY AND PROGRAMME RESPONSES, 5 (2000), available at http://www.iom.int/documents/publication/en/mrs_2_2000.pdf (In a previous report by the International Organization for Migration, this number was estimated to be closer to 50,000).

¹³ See HIDDEN SLAVES, *supra* note 10, at 58 n.13.

¹⁴ See *id.* at 14.

¹⁵ *Id.* (The economic distribution was reported as follows: Prostitution 46.4%, Domestic service 27.2 %, Agriculture 10.4%, Sweatshop-factory 4.8%, Service-food-care 3.8%, Sexual exploitation of children 3.1%, Entertainment 3.1%, Mail-order bride .8%).

¹⁶ HIDDEN SLAVES, *supra* note 10, at 13. (The country statistics were reported as follows: Mexico

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Beyond daily humiliation and violence, trafficking victims also often also suffer permanent damage to physical and mental health.¹⁷ During their forced migration, which may last anywhere between one day to several months, trafficking victims are subjected to conditions that risk serious injury or death by “drowning, freezing, or suffocating, or by being crushed or exposed to toxic materials.”¹⁸ Also, traffickers systematically displace a trafficked person’s sense of security and self-reliance and create a cycle of dependence, oftentimes complicating survivor recovery after release.¹⁹ Traumatic experiences such as these make it difficult for trafficking victims to trust authority figures or those wishing to aid them or provide them with assistance.

Once a trafficked person arrives at where they are being taken, their living conditions usually expose them to a number of health risks. For example, victims working in the sex industry often run the risk of contracting AIDS or other sexually transmitted diseases.²⁰ Shelters are often overcrowded and unkempt with poor sanitation.²¹ In one case, a trafficking survivor recalled that thirty-six trafficked workers had to share one to two showers and two to five often nonfunctional toilets with no hot water or toilet paper.²²

The psychological effects suffered by trafficking survivors are still not fully understood, and some experts believe that victims never fully recover mentally.²³ Trafficking victims are said to suffer from post-traumatic stress disorder (PTSD), amongst other types of mental ailments.²⁴ PTSD affects the victim’s memory and may result in constant feelings of fear, avoidance of certain types of experiences, or alienation from family, friends or others trying to assist him or her.²⁵

Trafficking victims often have to adapt to conditions in which their lives and bodies are under constant threat.²⁶ Some experts believe that consistent affliction of highly stressful environments and living in a constant state of fear and anxiety can create permanent alterations in the victim’s “neurochemical and

25%, United States 20%, China 11 %, Thailand 9%, India 9%, Bangladesh 8%, Russia 8%, Vietnam 6%, Honduras 5%, Philippines 5%, Korea 4%, Guatemala 3%, Indonesia 3%, Cambodia 2%, Cameroon 2%, Estonia 2%, Ghana 2%, Kenya 2%, Malaysia 2%, Zambia 2%, Albania 1%, Brazil 1%, Czech Republic 1%, Ecuador 1%, Ethiopia 1%, Guyana 1%, Haiti 1%, Hungary 1%, Jamaica 1%, Kryghistan 1%, Latvia 1%, Micronesia 1%, Nigeria 1%, Peru 1%, Romania 1%, Tonga 1%, Ukraine 1%, Uzbekistan 1%, Yugoslavia 1%).

¹⁷ See generally Hussein Sadruddin, et al, *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses* 16 STAN. L. & POL’Y REV. 379 (2005).

¹⁸ HIDDEN SLAVES, *supra* note 10, at 35. (citing Brian D. Gushaulak & Douglas W. MacPherson, *Health Issues Associated with the Smuggling and Trafficking of Migrants*, 2 JOURNAL OF IMMIGRANT HEALTH 67-78 (2000)).

¹⁹ See HIDDEN SLAVES, *supra* note 12, at 35.

²⁰ See *id.* at 36.

²¹ See *id.*

²² See *id.*

²³ Sadruddin, et. al., *supra* note 17, at 401.

²⁴ See *id.* at 401-06.

²⁵ See *id.*

²⁶ See *id.* at 403.

neuroanatomical functioning.”²⁷ This can cause profound changes in the victim’s personality, including “chronic states of irritability or anger” and dissociation from emotion, creating a semblance of emotional numbness.²⁸ The psychological after-effects of sexual slaves are also poignant as one report explains:

The reaction to this abuse takes many forms: lethargy, aggression, self-loathing and suicide attempts, confusion, self-abuse, depression, full-blown psychoses, and hallucinations. Girls who have been freed and taken to shelters are found to have all these. Rehabilitation workers report that the girls suffer emotional instability; they are unable to trust or form relationships, to readjust to the world outside the brothel, or to learn and develop normally.²⁹

In the United States, once victims are rescued, they can be certified to receive social service benefits through a process outlined in the TVPA.³⁰ Services cover basic amenities such as food, shelter, and clothing, as well as physical and mental health services.³¹ However, before rehabilitation can begin, identifying and rescuing victims can be difficult without proper training on how to distinguish between victims and undocumented workers.³² For example, many victims of sexual slavery are often mistaken for prostitutes by law enforcement officers and are then arrested and adjudicated as criminals.³³ Additionally, as will be discussed below, law enforcement officials and victim assistance workers must be trained to handle the specific mental and physical traumas trafficking victims face. Through this training, those working with victims learn how to more easily gain a victim’s trust, which is integral not only in getting victims’ assistance in ongoing trafficking investigations, but also in providing the victim with adequate and appropriate mental and health care.³⁴

B. Examples

As noted above, people are trafficked into and within the United States to work in forced labor operations in eight different economic sectors.³⁵ Some trafficked persons are brought to work for small family-owned businesses. For example, in Berkeley, California, Lakireddy Bali Reddy trafficked women for

²⁷ *See id.*

²⁸ *See id.* at 404.

²⁹ BALES, *supra* note 3, at 59.

³⁰ *See TVPA, supra* note 4, at § 107.

³¹ *See* SEPTEMBER 2006 DOJ REPORT, *supra* note 2, at 3-16.

³² *See* HIDDEN SLAVES, *supra* note 10, at 25-26.

³³ *See id.*; *See also* Juhu Thukral, Director, Sex Workers Project, Urban Justice Center, Statement at the Human Trafficking in New York State: Hearing on A. 1898a and A. 9038 Before the Joint Public Hearing of the Assembly Standing Committee on Codes, Assembly Standing Committee on Children and Families, and Assembly Standing Committee on Labor 2 (October 25, 2005) [hereinafter Thukral] (on file with author).

³⁴ *See id.*

³⁵ *See supra* note 14.

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fifteen years from his native village in India to the United States, forcing them to work for his Indian restaurant, and continually sexually abusing and exploiting them.³⁶

Some people are trafficked to the United States to work in large factories or farms. The Oklahoma based John Pickle Company used a recruitment agency in India to bring workers for its pressurized valve manufacturing plant.³⁷ Upon arrival, these workers were stripped of their travel documents and forced to live and work in the factory.³⁸

Many people are trafficked into the United States for use as domestic servants. In one case, two Cameroonian sisters and their husbands living in Washington D.C. were found to have trafficked two girls from Cameroon to work as domestic servants in their homes.³⁹ In another case, the common-law wife of Thailand's Ambassador to Sweden abducted a young woman from Thailand for work as a domestic servant in her Los Angeles home.⁴⁰

³⁶ HIDDEN SLAVES, *supra* note 10 at 7.

The Case against Lakireddy Bali Reddy: Sexual Exploitation in California: Lakireddy Bali Reddy, a local businessman, sexually exploited several young girls from his native village in India. Uncovered in January 2000, his sex and labor exploitation ring spanned fifteen years and operated in India and California. He repeatedly raped and sexually abused his victims and forced them to work in his businesses in Berkeley, California, including a well-established Indian restaurant. Reddy pleaded guilty to criminal charges related to immigration fraud and illegal sexual activity and agreed to pay U.S. \$2 million in restitution to several of his victims. In 2004, some Reddy survivors and their families received an out of court settlement of \$8.9 million in response to civil claims brought against the Reddy estate.

³⁷ *Id.*, at 8.

The Case against the John Pickle Company: Forced Labor in a Factory in Oklahoma: Qualified skilled workers were recruited in September 2001 in India through the Al-Samit International labor-recruitment agency and promised good jobs in a factory that manufactures pressure valves in the state of Oklahoma. On arrival, the workers were forced to surrender their travel documents and to live in the factory and work twelve to sixteen hours a day, six days a week, for well below the legal minimum wage. By February 2002, all of the approximately fifty workers had managed to escape and later filed a civil suit against their former employer. Subsequently, the U.S. Equal Employment Opportunity Commission, the federal agency charged with investigating and filing cases of employment discrimination, filed a separate civil action against the John Pickle Company.

³⁸ *Id.*

³⁹ *Id.* at 8.

The Case against the Satia Family: Forced Domestic Servitude in Washington, D.C.: The Satias, two Cameroonian sisters and their husbands, recruited young Cameroonian girls, aged fourteen and seventeen, to work as domestics in their Washington, D.C. homes. The girls were recruited with the promise of studying in the U.S. in exchange for providing childcare and domestic help. Once in the U.S., the domestic servants were confined to the Satias' homes, working in excess of fourteen hours a day without remuneration and under threat of violence and deportation. The younger survivor escaped in 1999 after two years of captivity. A year later the older survivor fled, after having been exploited for five years. In 2001 the Satia sisters and their husbands were charged with forced labor. Found guilty, they received criminal sentences ranging from five to nine years and were ordered to pay their victims over \$100,000 in restitution.

⁴⁰ *Id.*

The agricultural industry is also a common site for trafficked workers. A citrus harvesting company in Florida used threats of violence to force an estimated seven hundred Mexican and Guatemalan immigrants to work with little or no pay.⁴¹ Also, an internationally known asparagus grower used similar methods to force hundreds of workers to harvest asparagus from its farms in California.⁴²

“Sweatshops” are also a common economic area for trafficked persons to be working in. In one such case, a Korean businessman recruited women primarily from China and Vietnam to work in his garment factory in American Samoa from 1998 to 2000. The man used contract fees and penalties to trap workers into a cycle of debt bondage. The workers were locked in the factory compound, and used violence and food withholding as means to control the workers.⁴³

The Case against Supawan Veerapool: Enslavement of a Domestic Service Worker in California: In 1989 a Thai woman by the name of Supawan Veerapool, the common law wife of Thailand’s ambassador to Sweden, brought a domestic worker to Los Angeles to provide household support in her home. On arrival in the United States the domestic worker’s passport was confiscated and she was then forced to work twenty-hour days, six days a week until she escaped in 1998. Convicted on criminal charges in 1999, Veerapool was sentenced to eight years in prison.

⁴¹ HIDDEN SLAVES, *supra* note 10 at 8.

The Case against R&A Harvesting: Forced Farm Labor in Florida: Florida citrus pickers endured abuse by R&A Harvesting, a farm labor contractor, between January 2000 and June 2001. The company used threats of violence to force as many as seven hundred Mexican and Guatemalan workers to labor for little or no pay. After R&A Harvesting employees attacked a van driver suspected of assisting the workers, the Coalition of Immokalee Workers, a local community organization, pressured prosecutors to investigate the allegations of forced labor. The owners of R&A Harvesting, the three Ramos brothers and a cousin, were tried and convicted of forced labor charges in 2002. One of the brothers, Ramiro Ramos, was sentenced in 2004 to fifteen years in prison, fined \$20,000 and ordered to forfeit property valued at over \$3 million. Another brother, Juan Ramos, is being re-sentenced.

⁴² *Id.* at 7

The Case against Victoria Island Farms/JB Farm Labor Contractor: Exploitative Farm Labor in California: California asparagus harvesters, numbering in the hundreds, were forced to harvest the high-priced vegetable in substandard conditions for virtually no pay on the property of Victoria Islands, an internationally known asparagus grower, during the 2000 growing season. Hired by JB Farm Labor Contractor, the workers, recruited mostly from Mexico, were powerless to stop the huge deductions for transportation and other “debts” the employer took from their weekly paychecks. Some escaped during the season. Some of the workers filed a civil case against JB Farm Labor Contractor and Victoria Island Farms that resulted in the defendants’ paying the workers the wage owed them.

⁴³ *Id.* at 7

The Case against Kil-Soo Lee: Sweatshop Workers in American Samoa: Kil-Soo Lee, a Korean businessman, recruited primarily women from China and Vietnam to work in his garment factory on the island of American Samoa from 1998 until the factory closed in late 2000. Kil-Soo Lee used employment contract fees and penalties to trap the workers into remaining with the company. He kept workers locked in the factory compound, withheld food as punishment, and authorized violent retaliation for resistance on the part of the workers. In February 2003 Kil-Soo Lee was convicted of criminal charges of involuntary servitude, extortion, and money laundering.

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Almost half of the people trafficked into the United States are made to serve as sex slaves.⁴⁴ Many of these prostitution houses are run by families who have ties to the local communities from which they abduct and traffic young women. For example, a family based in Mexico would lure women into the United States, promising them work as waitresses or domestic servants, only to take the women to South Carolina and force them to work as prostitutes primarily for Mexican migrant farm workers.⁴⁵

Many of the prostitution rings involve trafficking from one United States state to another. In Detroit, two men were found to have been trafficking women and girls from other Midwestern towns. They would force these women to dance at their brothel and have sex with the clients. The women were also severely emotionally and physically abused by the brothel's proprietors—so much so, that many of the women were too afraid to attend the sentencing hearing of the prostitution ring's leader.⁴⁶

Child trafficking in the United States also takes many forms. As in the above prostitution ring case, children are often abducted by strangers and trafficked into sex slavery; however in some cases, a child's own family will force them into sexual slavery for economic gain. For example, one thirteen year old mentally handicapped girl living in New York was being forced by her mother and her mother's paramour into having sex with the paramour's friends in order to contribute money to the household.⁴⁷

⁴⁴ Id. at 58 n.13.

⁴⁵ Id. at 8

The Case against the Cadena Family: Forced Prostitution in Florida and South Carolina: Based in Mexico, the Cadena family members lured young girls and women to come to the United States ostensibly to work as waitresses and domestic workers. Between August 1996 and February 1998, the Cadena family brought between twenty-five and forty unsuspecting victims to Florida and South Carolina and forced them to work as prostitutes to service primarily Mexican migrant farm workers. In March 1998 several Cadena family members and their associates were brought to justice, receiving criminal sentences ranging from two to fifteen years imprisonment.

⁴⁶ See HIDDEN SLAVES, *supra* note 10, at 12.

⁴⁷ Christa Stewart, legal director, The Door, Statement at Human Trafficking in New York State: Hearing on A. 1898a and A. 9038 Before the Joint Public Hearing of the Assembly Standing Committee on Codes, Assembly Standing Committee on Children and Families, and Assembly Standing Committee on Labor 3 (2005) (on file with author)

A. is now a [twenty year-old] who is obtaining services from The Door's legal department. A is a mentally handicapped young woman who was brought from Mexico by her mother when she was 10. Since A. was 13 she was forced to have sex with her mother's paramour and his acquaintances and friends in order to contribute money to the household. Neither the mother nor the boyfriend enrolled A. in school. Ultimately, charges were made against A for prostitution but eventually it was brought to light that the mother and paramour had forced her into this work. When A. was 16, she was finally removed from the home. She has been in foster care since that date and The Door closely monitored her rights in foster care. She was successfully represented in her special immigrant juvenile status petition and now has a green card. She is receiving intensive support services and treatment at a local community-based project.

On the other hand, some children are sold into trafficking by their families abroad in order to come to the United States to make money to support the family back home. In these cases, the family is often required to pay an exorbitant fee to a trafficker to get the child to the United States; however, once the child arrives, the fee is continually increased in order to keep the child in debt bondage. One such case involved a child from China who was beaten by his father and told he was too much of a burden on the family. The father paid a \$20,000 fee to a trafficker to send the child to the United States to earn money for the family. Once in the United States the boy was told that he had to pay back \$70,000. The restaurant in Delaware where the boy worked was raided by immigration officials and the boy was sent to a youth detention center in Chicago. The boy eventually sought legal help after his aunt in New York received threats from loan sharks.⁴⁸

Also, as in the case from Cameroon noted above, it is very common for children to be trafficked into the United States for use as domestic servants. Two other such cases in New York involved a child working as a domestic servant to diplomats from Mauritania⁴⁹ and a girl from Bulgaria made to cook and work as a nanny for a Bulgarian family that brought her to the United States to escape violence in their home country.⁵⁰

It is evident from this small sample of cases is that human trafficking exists in many geographic and economic sectors of the United States. Furthermore, contrary to popular belief, many forms of trafficking in the United States do not

⁴⁸ *Id.*

B. is a young man from China who was beaten by his father quite often. His father told him he was a burden to the family as he was the second child in a country that has a one-child per family policy. B's father arranged for him to come to the US so that he could support the family. He borrowed money from neighbors to pay the \$20,000 fee. B. came to the US and was told that the fee owed was now \$70,000. As a result, he went to Vermont to work in a restaurant to pay off the debt. He worked continuously and was constantly trying to pay back the debt. One day, agents of the Immigration and Customs Enforcement agency raided the restaurant and arrested B. B. was sent to a youth detention center in Chicago but finally released to an aunt in New York. Because of constant threats from the "snakehead", his aunt was so concerned about his well-being that she took out a second mortgage to pay off B's debt. B. came to The Door seeking legal assistance in his case and is being represented in immigration court.

⁴⁹ *Id.*, at 4

C. is a young woman from Mauritania who was brought in to the country with friends of the family. This couple worked for the diplomatic mission in New York and portrayed C. as their daughter and another child as their son. C. was forced to cook and clean from 6AM to 10PM without breaks. C. was allowed out one afternoon a week and attended ESL classes at The Door. C. confided in her teacher and when the teacher suggested that she report her abuse, she never returned to class.

⁵⁰ *Id.*

D., a young woman from Bulgaria, came to The Door's Health Center for dental care. Her teeth were severely rotted and causing her enormous pain. When D. was meeting with her health educator, D. explained that she had very limited contact with the outside world, as she was made to cook and work as a nanny for a family that brought her to the US to escape violence back home. She was referred to the legal department and is being represented in an asylum case.

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depend on wide-spread criminal organizations. Because trafficking in the United States is diverse and decentralized, anti-trafficking efforts must be as well. The government should address each form of trafficking with an accordant level of response. Victims of each type of trafficking should have equal access to benefits and rehabilitation. This can be done by more state agencies and local NGO's getting involved in anti-trafficking work. Part II discusses a number of reasons why state agencies are better at tackling some forms of trafficking.

II. WHY STATES AGENCIES AND LOCAL NGO'S ARE NEEDED TO HELP FIGHT TRAFFICKING

Since the TVPA already offers federal remedies to trafficking victims, including possible benefits regarding immigration status and a federal cause of action against traffickers,⁵¹ it may not be obvious at first why states need their own anti-trafficking laws or initiatives. To be clear, involvement at the state level is not meant to replace measures in the TVPA nor federal efforts created therein, but rather to augment and complement these efforts. Also, suggesting greater state and local involvement is not new, as both Congress and various federal agencies have recognized the need to integrate state and local governments in federal anti-trafficking initiatives and have been promoting various solutions in this regard.⁵²

Greater state and local involvement would augment and complement federal efforts for a number of reasons. First of all, incidents of trafficking are local by nature. Thus, state law enforcement officials are the most likely to uncover incidents of trafficking:⁵³ “[State] officers are often most familiar with the locations, victims, and perpetrators of these crimes in their jurisdiction and provide critical facts and observations that can lead to larger interstate or international investigations.”⁵⁴ Witnesses are also more likely to call local police rather than federal officials to report trafficking crimes. For example, dialing “9-1-1” to report a crime connects to local police, not federal agents.

Also, because local police have a tangible presence in their communities they are more likely to be approached by either victims or witnesses.⁵⁵ Furthermore, trafficking crimes are more likely reported by those in immigrant communities who are often especially afraid to report anything to federal officials for fear of

⁵¹ See generally TVPA, *supra* note 4 at § 107 (outlining protection and assistance for trafficking survivors); See also Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, at § 4(a)(4) (giving trafficking survivors a private right of action against their traffickers).

⁵² See SEPTEMBER 2005 DOJ REPORT, *supra* note 2, at 4. (Part III discusses in further detail the federal resources that Congress and federal agencies have made available to the states to encourage their anti-trafficking involvement.).

⁵³ See *id.* at 2.

⁵⁴ REPORT TO CONGRESS FROM ATTORNEY GENERAL ALBERTO R. GONZALES ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS IN FISCAL YEAR 2004 17, available at www.usdoj.gov/ag/annualreports/tr2004/agreporthumantrafficking.pdf [hereinafter JULY 2005 DOJ REPORT].

⁵⁵ See Thukral, *supra* note 33, at 2.

harassment or removal.⁵⁶ However, state officials typically have greater success in assuring illegal immigrants that their cooperation will not jeopardize their presence in this country.⁵⁷

Second, trafficking is a crime not easily recognizable to those without proper training.⁵⁸ Even though local police may be the most likely to come across trafficking crimes, by no fault of their own, they often do not have the training to recognize trafficking for the crime it is.⁵⁹ Quite often, local police will investigate and arrest trafficked persons as illegal sex workers or undocumented workers.⁶⁰ In fact, this lack of training may work to the trafficker's advantage.⁶¹ The case of the John Pickle Company, introduced in Part I, above, illustrates this point.

Three months after the trafficked workers arrived at the John Pickle plant, one of them tried to leave by secretly applying for a job at a local hotel and was questioned by the police for applying for the job without a passport or proper identification. He told the officer that the John Pickle Company was holding these documents. Instead of investigating into why a factory would confiscate an immigrant worker's passport and identification papers, the officers simply returned the worker to the John Pickle Company without any further questions.⁶² This could have been a groundbreaking discovery of the John Pickle Company's large-scale human trafficking operation, but the officer was too unfamiliar with the indicia of trafficking to make a simple inquiry into the matter. Unfortunately, countless other opportunities presented to the police by brave, desperate trafficked persons may go unnoticed and un-investigated every day.

To avoid missing such opportunities, state investigators should be trained to recognize and distinguish trafficking from its many disguises.⁶³ Furthermore, NGO employees who work directly with people in these high risk demographic populations, such as immigrants and the indigent, are more likely to run across or be informed of trafficking operations. These workers should also go through such training. Perhaps the John Pickle factory would have been shut down much earlier had this single police officer recognized that confiscated passports and identification can often be indications of trafficking.⁶⁴

⁵⁶ See JULY 2005 DOJ REPORT, *supra* note 54, at 43; See also Thukral, *supra* note 33, at 2; HIDDEN SLAVES, *supra* note 10, at 43. (Reporting by others is important because trafficking victims often fail to seek support for themselves. Predominant reasons for this are: "Fear or threat of retaliation or deportation[;] Isolation/lack of social support/connections[;] Shame/embarrassment/stigma[;] Learned helplessness[;] Lack of knowledge of available services[;] Lack of knowledge of victims' rights[;] Lack of trust[;] Language differences[;] Cultural differences[;] Feeling of indebtedness.")

⁵⁷ See Thukral, *supra* note 33, at 2.

⁵⁸ See *id.* at 26-27.

⁵⁹ See HIDDEN SLAVES, *supra* note 10, at 34; See also Thukral, *supra* note 33, at 2.

⁶⁰ BALES, *supra* note 3, at 25-26.

⁶¹ HIDDEN SLAVES, *supra* note 10, at 44.

⁶² *Id.* at 27.

⁶³ *Id.* at 34; See also Thukral, *supra* note 33, at 2.

⁶⁴ *Id.* at 8 (The John Pickle Company was in fact shut down in February 2002; however, it is unclear from the HIDDEN SLAVES report how much time lapsed between these events and February

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Third, getting states involved in anti-trafficking makes sense from a viewpoint of efficiency and resource allocation. Federal anti-trafficking resources are overtaxed. Involving state agencies and NGO's in anti-trafficking efforts dramatically increases the number of persons involved in anti-trafficking work in this country. Furthermore, these personnel are already embedded in their communities. They have a visible local presence and in many cases have gained the trust of the local population. Training state and local law enforcement officers alone would add almost one million pairs of eyes and ears trained to focus on human trafficking.⁶⁵

Also, beyond investigation and adjudication, state and local law enforcement officials can also help in certifying trafficking victims for rehabilitation and social service benefits—discussed in detail in Part III. Currently, federal agents are required to review a case to certify the victims involved for benefits, even though these agents may not have any knowledge about the case.⁶⁶ These certifications are often delayed because there are not enough federal agents to expeditiously review the growing number of claims, and these delays are only going to increase as more states agencies and NGOs become involved in fighting human trafficking. However, as will be discussed in Part III, state and local law enforcement officials have been authorized by Congress to make benefit certifications recommendations which can expedite this process dramatically.

Fully addressing trafficking in this country necessitates taking advantage of this country's federal system of governance and the decentralized network of NGO's working throughout the nation. This is so not only for the reasons discussed above, but moreover, because it just makes practical sense. That is, no one should fight international crime armed only with the Memphis city police department, and accordingly, a moving violation down Elvis Presley Boulevard does not necessitate an FBI investigation. Also, any increase in the number of state and local officials tasked with investigating local instances of trafficking would free up a comparable number of federal officials to concentrate on interstate and international instances of this crime.

Involvement from state agencies and local organizations is essential if this country is to adequately and effectively rid itself of human trafficking. As discussed in the introduction, a top-heavy approach will not suffice. The diversity of human trafficking necessitates a diverse response, one that utilizes the resources already available throughout this country, and focusing part of these resources on human trafficking. This process is of course costly and state agencies and local organizations cannot be expected to fund these programs by themselves. To address this problem, the federal government, through its various agencies has made ample resources available to facilitate and engender a network of country-

2002).

⁶⁵ See SEPTEMBER 2006 DOJ REPORT, *supra* note 2, at 17.

⁶⁶ See Thukral, *supra* note 34, at 2.

wide anti-trafficking advocates. The next part discusses first, how state criminalization is key to getting state agencies involved, and second, how state agencies and local organizations can take advantage of federal resources to fund anti-trafficking programs.

III. ACTIONS TO BE TAKEN ON THE STATE AND LOCAL LEVEL

Slavery is strictly outlawed by every country in the world,⁶⁷ and some argue it has become a preemptory norm of international law.⁶⁸ Indeed, the very first human rights organization was founded to eradicate slavery.⁶⁹ However, while our world has come a long way since the transatlantic slave trade, there are more human beings enslaved today than any other time in human history.⁷⁰ Trafficking is the modern form of slavery.⁷¹ It has evolved far quicker than the reach and adaptability of law.⁷² In fact, traffickers rely on the law's slow adaptability in this area.⁷³ Most traffickers continue to stay one step ahead of law enforcement, making extremely high profits with very little overhead. And because so much money is to be made, trafficking is found in at least 150 countries around the world,⁷⁴ and at least thirty U.S. States.⁷⁵

Numerous treaties, protocols, and conventions exist relating to trafficking worldwide, and several domestic remedies to trafficking exist, such as the TVPA; however, as noted in the Introduction, the TVPA's implementation regime has been criticized by many as too cumbersome, unscalable, and lopsided.⁷⁶ This country's anti-trafficking regime needs to catch up with its normative aspirations of eradicating trafficking and slavery worldwide. Beyond the problems with the federal implementation regime, the TVPA and the federal government's anti-

⁶⁷ For a list of conventions related to trafficking and their signatories, see TIP 2006, *supra* note 5, at 284-287; *See also* UNIVERSAL DECLARATION OF HUMAN RIGHTS, Art. 4, ("No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in *all their forms*") (emphasis provided).

⁶⁸ *See* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 102, Reporter's Note No. 6.

⁶⁹ *See* BALES *supra* note 3, at 258-259. (Anti-Slavery International was formed in 1839 to campaign against the Atlantic slave trade. Based in London, the organization still exists working hard to combat slavery and child labor today.); *See also* Anti-Slavery Homepage, <http://www.antislavery.org> (last visited October 7, 2006).

⁷⁰ *See* BALES, *supra* note 3, at 8-10.

⁷¹ *See id.* at 1-33.

⁷² *See id.*

⁷³ *See id.* at 53-57.

⁷⁴ *See* TIP 2006, *supra* note 5, at 46-264.

⁷⁵ HIDDEN SLAVES, *supra* note 10, at 11 (As of September 2004, instances of trafficking had been found in the following states: Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Washington, and Wisconsin.).

⁷⁶ *See generally* Sadruddin, *supra* note 17 (noting that the TVPA overemphasizes cooperation with law enforcement at the detriment of victims attaining the benefits they need).

trafficking efforts have not put due emphasis and pressure upon the states and local anti-trafficking initiatives.

A. State Criminalization

State efforts are key to eradicating human trafficking. As will be discussed below, the federal government has made ample grants and funding sources available for training in recognizing, investigating, and adjudicating trafficking crimes, as well as how to appropriately provide for survivors. However, another fundamental step, that should precede or at least be concurrent to training programs, needs to be made: country-wide state criminalization of human trafficking. It seems elementary that states should include trafficking as a criminal offense, but just over a handful of states have actually done so.⁷⁷

State criminalization allows traffickers to be tried in state and local courts. This alleviates federal dockets, as well as allowing local officials to carry out trafficking cases from start to finish, without having to hand off cases to federal agents for adjudication half-way through an investigation. This would also give visibility of anti-trafficking efforts on a local level. That is, local inhabitants, including traffickers, citizens, and trafficking victims themselves, would more likely hear about investigations and adjudications of trafficking cases on a local level, via local news sources and media, increasing the visibility and public support for the anti-trafficking cause.

However, criminalization should be a collective effort of all the states in order to be fully effective. If, for example, a handful of States resist or fall short on criminalization, while all the other fifty States pass and implement such laws, these States could find themselves to be a haven for traffickers. That is, if traffickers know that they can more easily get away with their crime under the jurisdiction of neglectful states, many traffickers may move their operations to those states. Certainly, not all types of trafficking and forced labor can so easily pick up and move to another state, or even be economically conducive to a move, such as individual domestic servants and large agricultural operations. However, many other forms of trafficking would be more likely to move to a “trafficking-tolerant zone,” such as large prostitution rings, sweatshops or other factory labor operations.

Thus, criminalization is an important first step for a state to address human trafficking. Beyond the practical reasons above, when one of the most fundamental human rights violations systematically occurs on a smaller and smaller scale, hidden and embedded in local communities, it only makes sense for the law to adapt to this smaller scale—that is, this international preemptory norm should be addressed on a more local level, through local laws. A criminal offense in a state

⁷⁷ As of December 2005, only twelve states had criminalized trafficking. For a list of these states, see Appendix A, *infra*.

court cannot be based on an international treaty obligation, or a federal statute. Thus to be able to take advantage of the plethora of state and local adjudicatory resources, this egregious violation of international law, being practiced on a local scale, must be actionable on the local level. States should adopt human trafficking criminalization statutes because the law must adapt to the behavior that it is trying to prevent.

But to be sure, state criminalization is only the first step to ending this practice. Numerous affirmative measures, as discussed above, such as the creation of local task forces and the adaptation of local social service benefit programs to trafficking victims, must concurrently be made. The next section discusses these steps in more depth.

B. Affirmative Measures Beyond Criminalization

Criminalization is the first step to a robust state level anti-trafficking solution. By adding trafficking to its penal code, a state has a legislative mandate to use not only its law enforcement resources to investigate traffickers but also its courts and prosecutorial resources to adjudicate traffickers. But even with country-wide criminalization, many of the problems trafficking victims face would remain.

Many traffickers have to rely on the generosity of concerned citizens and social workers to get basic necessities to survive.⁷⁸ For example, in her testimony to the New York State Assembly, Joint Public Hearing on Human Trafficking in New York⁷⁹, Juhu Thukral, a New York lawyer and anti-trafficking advocate, outlined a case she worked on in which two trafficking survivors, “Carmen” and “Victoria”,⁸⁰ were taken from their homes in Mexico and forced to become sex slaves in a New York brothel. Once Carmen and Victoria escaped, Ms. Thukral worked swiftly to register them for social service benefits, which include housing, clothing and food—all extremely important to anyone having just narrowly escaped the confines of slavery. However, even though there were a number of federal officials who agreed that Carmen and Victoria were indeed trafficking survivors, there was no specific federal agent assigned to their case who could formally identify them as trafficking survivors, and it was months before any such certification could be made. Thankfully, during these months Ms. Thukral and her staff were able to cobble together housing, medical, and counseling services through local charities and good samaritans. Thus, even though Carmen and Victoria cooperated with federal and local law enforcement agents, and likewise abiding by all the required provisions in the TVPA to receive victim benefits, they were not able to receive any of these benefits, purely because, by no choice of their own, their case was taken up in state court, rather than federal court.

⁷⁸ See Thukral, *supra* note 33, at 3.

⁷⁹ See *id.*

⁸⁰ See *id.* Note that these are not the real names of the women involved, but are pseudonyms to protect their privacy.

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This and problems like it can be remedied by States taking affirmative measures beyond criminalization. Ideally, victims would not have to rely on anyone unfamiliar with their case to make certifications on their behalf. Through legislation a state can authorize local law enforcement personnel to make these authorizations and recommendations required by the TVPA to get immigration and social services benefits. Furthermore, state legislation can authorize training of local enforcement officers and create local anti-trafficking task forces specialized to investigate and adjudicate these crimes.

This Section describes the mechanisms by which trafficking victims are certified to receive social services benefits, how state and local organizations can play a role in this process, and how they can take advantages of federal grants to partially or wholly fund these programs.

1. Requirements for Immigration and Social Services Benefits

The TVPA provides three types of immigration benefits available to non-citizen trafficking victims: (1) “continued presence,” affording short-term nonimmigrant status,⁸¹ (2) a “T-visa,” affording nonimmigrant status for up to three years,⁸² and (3) lawful permanent residence—a “green card”—which may be applied for after three years on a T-visa—otherwise at the end of the T-visa period the trafficking victim must leave the United States.⁸³ In order to qualify for any benefits, the trafficked person must be a victim of a “severe” form of trafficking,⁸⁴ which includes: (1) any victim of trafficking for sexual purposes under the age of 18, (2) any trafficked person forced to perform sexual acts through force, fraud, or coercion, and (3) any trafficked person forced to perform labor or services through the use of force, fraud, or coercion “for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”⁸⁵

In addition to being a victim of a “severe” form of trafficking, an applicant for continued presence must be authorized by a law enforcement officer as a potential witness in pursuance of the prosecution of her trafficker(s).⁸⁶ A T-visa applicant must additionally prove that her physical presence within the United States is on account of being trafficked, and that she would suffer “extreme hardship involving unusual and severe harm upon removal.”⁸⁷ Finally, if at the end of a three year T-visa, a trafficking victim wishes to file for legal permanent residence, she must additionally prove that she is “willing to assist in every

⁸¹ See TVPA, *supra* note 4, at §107(c)(3). This provision affords the victim nonimmigrant status during the course of a victim-aided prosecution.

⁸² *Id.* at §107(e).

⁸³ *Id.* at §107(f); See also Sadruddin, *supra* note 17, at 387.

⁸⁴ TVPA, *supra* note 4, at §107(b)(1)(A). For a criticism of the severity requirement, see generally Sadruddin, *supra* note 17.

⁸⁵ TVPA, *supra* note 4, at § 103(8).

⁸⁶ *Id.* at § 107(c)(3).

⁸⁷ *Id.* at § 107(e).

reasonable way in the investigation and prosecution of severe forms of trafficking in persons.”⁸⁸

Temporary immigration status granted by continued presence or a T-visa authorizes a trafficking victim to receive refugee benefits and services as provided by a number of government agencies and non-governmental organizations, acting through federal grants).⁸⁹ These benefits are meant only as intermediary assistance before the victim either must leave the country, at the end of her or his continued presence or T-visa status, or be adjusted to a lawful permanent resident.⁹⁰ Note that these programs have traditionally only been available to U.S. citizens, but through the TVPA, these services are made available to non-citizen victims of trafficking.⁹¹

2. Benefit Certification

Since the adoption in 2000, federal agencies have recognized the importance of tying federal resources allocated by the TVPA with state and local anti-trafficking initiatives.⁹² In order to work efficiently, authorizations for victim benefits should be made by those working most directly with trafficking victims.⁹³ As discussed in Part II, this frees up federal resources and empowers state and local enforcement officers to adequately advocate for their clients, rather than having to pass those clients on to federal agents. Furthermore, increased state involvement means increased resources allocated to anti-trafficking overall. This in turn increases the number of victims aided and the number of traffickers that can be tried for their crimes.

For the practical purposes illustrated by the “Carmen” and “Victoria” case above, allowing for local benefit certifications can help victims receive benefits sooner. Trafficking victims should not have to rely on Good Samaritans and other donors to provide them with basic subsistence, especially when a federal law does the same. An obvious discrepancy exists between the TVPA’s aspirations and its implementation regime when the private sector finds itself doing what a federal

⁸⁸ *Id.* at § 107(f)(1)(I); *See also* SEPTEMBER 2006 DOJ REPORT, *supra* note 2, at 4. (noting that this proof is in addition to the independent proofs of law enforcement assistance needed for both continued presence and a T-visa. The latter two require proof only of assistance for prosecution of the victim’s trafficker(s). Adjustment to permanent resident status requires proof of willingness to assist in the investigations of any future trafficking prosecutions within reason. Numeric limitations also apply (with a 5,000 per year cap), as do limitations on those victims that are believed to have been collusive in trafficking activities. The numeric limitations are of little concern at this point since less than a thousand “T” visas have been issued since the enactment of the TVPA in 2000.)

⁸⁹ *See* JULY 2006 DOJ REPORT, *supra* note 54, at 7-14.

⁹⁰ Benefits include programs such as Temporary Assistance for Needy Families, Medicaid, and food stamps. *See id.* at 7 n.1.

⁹¹ *See id.* at 9-10 n.1.

⁹² *See* SEPTEMBER 2005 DOJ REPORT, *supra* note 1, at 10-11.

⁹³ *See*, Sadruddin, *supra* note 17, at 393.

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statute promises. Unfortunately, this is the reality that anti-trafficking lawyers, working in the state or federal system face on a day-to-day basis.⁹⁴

In recognition of this gap, Congress passed the 2003 Trafficking Victims Protection Reauthorization Act, TVPRA 2003. The Act allows for statements made by state and local enforcement officials to be used when certifying victims under the TVPA.⁹⁵ The TVPRA 2003 also authorizes the consideration of statements made by state or local enforcement officials when determining whether the victim has complied with reasonable requests for assistance in the prosecution of trafficking cases.⁹⁶

Allowing state officials to make certification decisions is better for victims.⁹⁷ Some NGO's have reported that federal officials are often reluctant to certify victims for benefits for fear that "they are giving away a green card."⁹⁸ Also, as is illuminated by the example of Carmen and Victoria above, waiting for federal agents to make certification decisions is time consuming and often requires a trafficking victim to wait months before receiving benefits.⁹⁹ Furthermore, some advocates have reported that the dependence on federal authorities for federal

⁹⁴ In New York City, anti-trafficking lawyers have found the TVPA and its implementation regime so complicated and sometimes difficult to deal with, that they have banded together to create a network of anti-trafficking lawyers. These lawyers meet quarterly and communicate on a listserv, to share best practices and resources to best advocate for their clients solely because handling their cases via state and local systems has proven to be exceedingly difficult without state anti-trafficking legislation. For more information on the New York Anti-Trafficking Network (NYATN), and to join their listserv, visit their website at <http://www.nyc-anti-trafficking.com>. In fact, it has been through working with the NYATN that the author became aware of these problems, compelling the writing of this Note. Also, it may be of interest that the NYATN is integrally involved with various New York State Congresspersons to help draft and review forthcoming anti-trafficking legislation for the state of New York. This is an example of how a decentralized group of individuals, working with the city and state government and local NGOs, can make a powerful impact upon the anti-trafficking programs and initiatives at the state and local level.

⁹⁵ TVPRA 2003, *supra* note 6, at § 4(a)(3)(iv) ("In making the certification . . . with respect to the assistance to investigation or prosecution . . . the Secretary of Health and Human Services shall consider statements from State and local law enforcement officials that the person . . . has been willing in every reasonable way with respect to the investigation and prosecution of State and local crimes such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking appear to have been involved.")

⁹⁶ *Id.* at § 4(b)(2)(B)(6): ("In making a determination . . . with respect to an alien, statements from State and local law enforcement officials that the alien has complied with any reasonable request for assistance in the investigation or prosecution of crimes such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking in persons . . . appear to have been involved, shall be considered.") It is important to note that although this provision does require immigration officials to consider statements made by state and local enforcement officers, immigration officials are awaiting guidance on how to implement this directive. See HIDDEN SLAVES, *supra* note 12, at 61 n.81. This is a perfect example of some of the implementation problems that have followed the enactment of the TVPA and its subsequent reauthorizations. While the lack of implementing these directives renders any state certification scheme useless until DHS officials are given a mandate to this effect, this should not hinder the states from passing legislation authorizing local certification. In fact, as more states adopt these measures, federal agencies are pushed to implement this provision in the TVPRA 2003. That is, the states can (and should) force the hand of DHS to implement this provision by authorizing their enforcement officials to make these certifications under the mandate of the TVPRA 2003.

⁹⁷ See HIDDEN SLAVES, *supra* note 10, at 28.

⁹⁸ *Id.*

⁹⁹ *Id.*

benefits, “compounded by the pain and discomfort of testifying about their experience... dissuades [survivors] from cooperating with law enforcement.”¹⁰⁰

In the same vein, gaining the trust of a trafficking victim in the first place can often be quite difficult. This trust is keyed to the people working on the victim’s case, at a direct level. Requiring the victim to speak to federal agents—whom the victim has had no contact with previously—to review the victim’s ability to cooperate with law enforcement often will make the victim recoil their trust. This is because being passed around from one department to another, in an impartial fashion, can be reminiscent of the trafficking process itself.

Unfortunately, even though trafficking victims have a right under the law to receive these federal benefits, most state and local enforcement officials have not undergone the appropriate training to take advantage of these TVPRA 2003 provisions.¹⁰¹ In part, this training teaches state and local enforcement officials how to recognize the complex indicia that someone is a victim of human trafficking,¹⁰² and how to file for these benefits.¹⁰³ So for victims to see any of the benefits of TVPRA 2003 provisions empowering state officials to act more affirmatively on their behalf, states must implement training programs and create anti-trafficking task forces specifically geared towards this work.¹⁰⁴

Upon such a proposal, questions arise as to how states would pay for such programs and task forces, and moreover, whether doing so is justified in a state with low incidents of trafficking. Not only are these arguments specious, and inherently flawed,¹⁰⁵ they are in actually preempted by Congress and various executive agencies. The next section discusses the various federal funds that Congress and various executive agencies have made available to the state agencies and local organizations for setting up or building upon state anti-trafficking programs and task forces.

3. Funding and Training Options for States and Local Agencies

The fight against human trafficking at the federal level has been spread across a number of federal agencies. Some of the agencies provide assistance and funds for victims, while others focus on criminal investigations and adjudications.

¹⁰⁰ *Id.*

¹⁰¹ Thukral, *supra* note 33, at 2.

¹⁰² See HIDDEN SLAVES, *supra* note 10, at 35-41 (Victims of trafficking develop unique mental and physical health conditions that must be addressed by trained professionals); See also Sadruddin, *supra* note 17, at 398-406.

¹⁰³ See U.S. CITIZENSHIP & IMMIGR. SERV., FORM I-914, OMB NO. 1653-0027, at <http://uscis.gov/graphics/formsfee/forms/files/i-914.pdf> (last visited March 10, 2006) (The I-914 immigration form for a T-visa is not easily deciphered, including seven pages of complex instructions.).

¹⁰⁴ See HIDDEN SLAVES, *supra* note 10, at 26-29.

¹⁰⁵ That is, purporting to have a low incidence of trafficking in order to avoid affirmative requirements in this regard begs the question. A state cannot properly assess the incidence of trafficking therein without its law enforcement agents and NGO personnel working with target communities being trained on how to search for traffickers or how to discern trafficking from similar crimes.

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The reach of anti-trafficking efforts into the federal system has also increased dramatically over the past four years with some agencies doubling or tripling their efforts. Beyond extending their efforts at the federal level, each of these agencies has more recently been focusing on the state and local level, especially after the enactment of the TVPRA 2003 and TVPRA 2005. Through the increased focus on the state and local levels, state agencies and local organizations have a number of funding and training options for setting up their own anti-trafficking task forces and programs, or building upon those already in place.

a. Training and Outreach Programs

Training and outreach programs provide one example of an area where federal agencies have been pushing their efforts to the state and local level. In fiscal year 2005, The Civil Rights Division (“CRD”) of the Department of Justice (“DOJ”) conducted a training in February 2005 in Houston, Texas for state and local enforcement personnel.¹⁰⁶ This training brought together multi-disciplinary teams from twenty anti-trafficking task forces around the country. The CRD also worked with the Federal Bureau of Investigation (“FBI”) in fiscal year 2005 to train federal and local investigators, prosecutors, non-governmental organizations, and victim advocacy groups in sixteen cities.¹⁰⁷ It also conducted seventy other training programs for federal and local law enforcement agencies, non-governmental and health care organizations, business leaders, and legal practitioners.¹⁰⁸

The Human Smuggling and Trafficking Center (“HSTC”), a part of Immigrations Customs and Enforcement (“ICE”) hosted over forty-five training sessions on trafficking for international, federal, state, and local groups. The goal of the sessions was to increase public awareness of trafficking, improve the ability to find and rescue victims, and to provide information on the difference between smuggling and trafficking, encouraging collaboration between the attendees throughout.¹⁰⁹ HSTC also developed a guide to identifying the differences between smuggling and human trafficking that is used to train federal and state law enforcement personnel.¹¹⁰

The Criminal Division of the DOJ’s Child Exploitation and Obscenity Section partnered with the FBI and National Center for Missing and Exploited Children to develop week-long training seminars dedicated to investigating and prosecuting cases of child prostitution.¹¹¹ Approximately three hundred fifty state

¹⁰⁶ SEPTEMBER 2006 DOJ REPORT, *supra* note 2, at 21.

¹⁰⁷ *See id.* at 21.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 22.

¹¹⁰ *Id.* at 24.

¹¹¹ *Id.* at 16.

and federal personnel, prosecutors, and social service providers have been trained through these programs began in March of 2005.¹¹²

The Citizenship and Immigration Services (“CIS”) conducts training sessions for T visa adjudicators and administrative appeals officers that include presentations from CIS personnel, local and federal law enforcement personnel, and national advocacy groups.¹¹³ These training sessions cover substantive training on human trafficking, T visa eligibility requirements, waiver of inadmissibility claims, psychological dynamics of trafficking, trafficking prosecutions, and cultural awareness training.¹¹⁴

The DOJ has also been instrumental in helping set up anti-trafficking task forces.¹¹⁵ These task forces bring together law enforcement personnel from the state, local, and federal levels to collaborate on interdisciplinary solutions to human trafficking in their areas.¹¹⁶ As such, these task forces have been integral in increasing the number of trafficking investigations and victims rescued. For example, in fiscal year 2005, a task force helped rescue and provide assistance to nearly 100 trafficking victims and was involved in ten convictions of forced prostitution and forced labor in the Houston, Texas area.¹¹⁷ The DOJ has helped set up a total of thirty-two such task forces throughout the United States.¹¹⁸

b. The Model Anti-Trafficking Statute

The CRD of the DOJ has drafted and made available to the states the Model State Anti-Trafficking Criminal Statute,¹¹⁹ which is based upon the TVPA and experience the CRD has had prosecuting trafficking cases.¹²⁰ As noted in the Introduction, twenty-two states have passed their own anti-trafficking statutes, while seven more states are currently discussing anti-trafficking legislation.¹²¹ In

¹¹² SEPTEMBER 2006 DOJ REPORT, *supra* note 2, at 21.

¹¹³ *See id.* at 23.

¹¹⁴ *Id.*

¹¹⁵ *Id.*, at 2.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ SEPTEMBER 2006 DOJ REPORT, *supra* note 2 at 2.

¹¹⁹ MODEL STATE ANTI-TRAFFICKING STATUTE,

http://www.usdoj.gov/crt/crim/model_state_law.pdf (last visited October 6, 2006). A drawback of the model statute is that it is only includes a criminal provision. While not all of the states need adopt measures beyond criminalization, including provisions for a private right of action for victims, funds for victim assistance, or establishing anti-trafficking task forces in the model statute would further encourage states to adopt these affirmative steps. Drafting legislation is difficult and time consuming, and if the CRD were to draft these provisions beforehand, state legislators could spend more time custom tailoring these provisions to their purposes rather than spending this time drafting provisions from scratch. A useful guide targeted at state legislators interested in adopting state anti-trafficking laws can be found at

<http://www.gonzagajil.org/pdf/symposia/11.11.2005/Resource%20Guide%20for%20State%20Legislators.pdf> (last visited October 6, 2006).

¹²⁰ *See* SEPTEMBER 2006 DOJ REPORT, *supra* note 2, at 17.

¹²¹ *Id.* at 17.

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fiscal year 2005, Attorney General Alberto Gonzales wrote to the governors and legislative leaders of all of the fifty states, and U.S. territories and commonwealths encouraging adoption of the model anti-trafficking statute and promoting uniformity in enforcement mechanisms as part of a “national strategy” to combat human trafficking.¹²²

c. Funding Options for State and Local Programs and Task Forces

A number of the federal agencies also provide grant and funding options to state and local agencies, as well as non-governmental organizations providing victim benefits and services. The DOJ’s Office for Victims of Crime (“OVC”) funded twenty-five direct service projects for victims in fiscal year 2005, serving a total of 682 victims during that year alone.¹²³ Grantee organizations provided benefits such as building shelter capacity for victims or providing other victim benefits to pre-certified victims that are culturally and linguistically appropriate in communities across the country.¹²⁴

Task forces across the country have also been formed and funded through federal funding programs. The CRD itself has formed and funded thirty-two task forces in twenty-one states and territories with thirteen million dollars.¹²⁵ All of these task forces have also been funded by OVC to provide trafficking victim services.¹²⁶

ICE’s Victim-Witness Assistance Program operates a Federal Crime Victim Assistance Fund with OVC funds which provides trafficking victims with emergency services such as housing, food, and incidentals until these victims can be safely transferred to NGOs.¹²⁷ Beneficiaries of this program include seventeen Korean victims of sex trafficking in San Francisco; ten Honduran victims of sex trafficking in Newark; four Ukrainian victims of sex trafficking in Detroit; Mexican sex trafficking victims in Baltimore, New York City, Newark, and Tampa; as well as one hundred potential trafficking victims in San Francisco.¹²⁸

ORR also provides grants to service organizations involved in providing victim assistance benefits and trafficking awareness programs. In an effort to improve upon its grantee programs in previous years,¹²⁹ in fiscal year 2005 ORR

¹²² *Id.* at 17.

¹²³ *Id.* at 5.

¹²⁴ A list of OVC grantee organizations can be found at <http://www.ojp.usdoj.gov/ovc/help/traffickingmatrix.htm> (last visited October 6, 2006).

¹²⁵ SEPTEMBER 2006 DOJ REPORT, *supra* note 2, at 20.

¹²⁶ *Id.* at 20.

¹²⁷ *Id.* at 6.

¹²⁸ *Id.*

¹²⁹ *See id.* at 5. Another “improvement” ORR has implemented in fiscal year 2005 is a move from grants given for a certain time period (one or three year grants, for example) to a “per capita” grant system that matches federal funds in relation to the size of the case load of the number of victims actually being served by that agency. The per capita system requires agencies to file for refunds on money spent for each individual case. For example, Carmen and Victoria’s lawyer and social workers

initiated its “street outreach” program, which funded eighteen organizations to help identify victims of trafficking among populations these organizations had already operated and built up a level of public trust.¹³⁰ These grants are meant to support “direct, person-to-person contact, information sharing, counseling, and other communication between agents of the grant recipient and members of a specified target population.”¹³¹

As evidenced, numerous options are available to both state and local organizations to fund a full breadth of anti-trafficking programs and task forces. These funding programs show that federal agencies are ready, willing, and able to fund programs at the state and local levels. As more communities become involved in fighting human trafficking, these agencies will continue to increase the amount of available funds—as most of these agencies have done over the past five years.

CONCLUSION

In order to adequately and effectively address the prevalence, diversity, and gravity of trafficking in the United States, each State must actively play its part. Trafficking touches a diverse cross-section of the U.S. economy, and ranges from localized offenses such as domestic servitude, to larger transnational organized crime rings. Thus, the approach in this country should be one that systematically attacks each of these instances accordingly. Smaller, locally embedded incidences of trafficking should be fought by state and local agencies, while country-wide organized criminal human trafficking enterprises are best fought by federal agencies. At the same time, assistance to victims should be readily available throughout the country. Those best able to provide such assistance are the decentralized network of NGOs already working directly with indigent populations throughout the country.

would file for federal funding, *after* they provide Carmen and Victoria with legal and rehabilitation services. Therefore, this funding is not guaranteed at the time of providing services. As one may imagine, it is virtually impossible for an NGO to budget ahead of time for providing anti-trafficking services, if the grant money for such a program is not guaranteed and has to be filed for after the fact. Furthermore, some NGOs, such as Safe Horizon in New York City (*see* <http://www.safehorizon.org>), have used the money provided by federal grants to set up entire anti-trafficking divisions and have been very effective in training personnel, advocating for victims, and providing them with services. However, a task force or division like this will have a hard time being budgeted for with the implementation of per capita grant funding, and the future of these divisions is uncertain at this point. HHS states that moving to a per capita system will create greater transparency and accountability of its funded projects, but the impact of this decision may actually force the shut down many highly successful anti-trafficking initiatives. *See also* SEPTEMBER 2005 DOJ REPORT, *supra* note 1, at 9; JULY 2005 DOJ REPORT, *supra* note 54, at 13.

¹³⁰ *See* SEPTEMBER 2006 DOJ REPORT, *supra* note 2, at 30.

¹³¹ *See id.* at 30. Recipients of ORR’s street outreach program for fiscal year 2005 include: Catholic Charities, Inc., City of Homestead, Good Shepherd Corporation of Atlanta, Crisis House, Inc., Refugee Women’s Alliance, Breaking Free, Inc., Catholic Social Services of Central and Northern Arizona, Farmworker Legal Services of New York, Inc., Girls Educational & Mentoring Services, West Care Nevada, Inc., Catholic Charities of the Archdiocese of Milwaukee, Georgia Legal Services Program, Inc., The Salvation Army, Rural Opportunities, Inc., The Door - A Center of Alternatives, Inc., Colorado Legal Services, Coalition to Abolish Slavery and Trafficking, U.S. Conference of Catholic Bishops.

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Our federalism is based upon, in part, the appropriate powers being exercised at the appropriate levels. Similarly, the appropriate scope of crimes are investigated and adjudicated by the appropriate level of government. By getting states more involved in investigating and adjudicating trafficking cases, and more local NGOs involved in the victims' benefits process, this country gains the robust, scalable means of eradicating this grave practice.¹³²

Indeed, trafficking is one of the gravest crimes today, and even if a State has a low frequency of trafficking, this is still a low frequency of one of the most widely condemned human rights violations in human history. One cannot imagine counter-arguments to eradicating slavery and trafficking. Certainly, there are practical considerations and hurdles along the way, but the path is clear. It involves moving beyond federally focused trafficking initiatives to spreading trafficking resources across the country to hidden places beyond the practical reach of the federal government, but not beyond the reach of traffickers, those that would turn a profit at the expense of the basic dignity and worth of another human being. Right now this country is crawling along its anti-trafficking path, while traffickers take advantage of our snail's progress.

The resources are there. The federal government has made grants and training programs available to the states and local organizations. As is evidenced by the dramatic increase in federal funds made available to these groups in the past five years, these funds will likely increase as more state agencies and local organizations get involved. The federal government has and is playing its part. The onus is now on state and local groups to play theirs. Through an effective implementation of a decentralized model for fighting human trafficking in this country, there is no justified reason why this practice cannot be eradicated in our lifetimes.

¹³² See BALES, *supra* note 3, at 232-264 (noting that eradication is indeed possible in our lifetime, it is only a matter of focus, determination, and political will.).

Appendix A. State Anti-Trafficking Laws

Figure 1 summarizes all of the state anti-trafficking legislation passed by the end of 2005. The laws are broken into four categories: statutes which include (1) criminal provisions, (2) state funding for victim assistance programs, (3) affirmative remedies or causes of action for victims, and (4) those creating state-level anti-trafficking task forces or commissions.

Figure 1: State Human Trafficking Legislation Overview as of December 2005¹³³

State	Year Passed/Effective	Title	Criminal Statute	Victim Assist.	Comp./Rest./Civil	Task Force/Commis.
Arizona	2005	S1372	✓		✓	
Arkansas	2005	Act2267	✓			
California	2005	AB22	✓	✓		✓
Colorado	2005	HB1143				✓
Connecticut	2004	HB5358				✓
Florida	2004	SB1962	✓			
Idaho	2005	HCR 18				✓
Illinois	2006	HB1469	✓	✓	✓	
Kansas	2005	SB 72	✓			
Louisiana	2005	HB 56	✓			
Minnesota	2005	HB 1	✓			✓
Missouri	2004	HB1487	✓	✓	✓	
New Jersey	2005	A2730	✓		✓	

¹³³ Research by Steve Lize, Ph.D., Legislative Policy Analyst, Office of Program Policy Analysis and Government Accountability (Florida) (Jan. 24, 2006) (on file with author). For a detailed description of these laws, see *Fact Sheet from National Institute on State Policy on Trafficking of Women and Girls A Program of the Center for Women Policy Studies Prepared for Women's Policy, Inc. Congressional Briefing*, at 2-6 (July 2005) available at <http://www.gonzagajil.org/content/view/62/28/>.

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State	Year Passed/Effective	Title	Criminal Statute	Victim Assist.	Comp./Rest./Civil	Task Force/Commis.
Texas	2003	HB2096	✓			
Washington	2003*	HB1175	✓		✓	✓*

* Originally passed in 2002 (HB2381). Extended in 2003(HB1090). Additional legislation in 2005 (HB5127)