

Human Trafficking: The Profitable Business Built on the Exploitation of Human Rights

By Sanaz Alami

Introduction

“[...] I looked and saw all the oppression that was taking place under the sun: I saw the tears of the oppressed—and they have no comforter; power was on the side of their oppressors—and they have no comforter.”¹ Today, slavery still exists throughout the world, including the United States, and goes by the name of human trafficking.² There are an estimated 27 million slaves throughout the world.³ “They may not wear shackles or be branded [...] but they are slaves.”⁴

Jessa Dillow-Crisp endured years of sexual abuse and exploitation and was trafficked between two major countries.⁵ To the surprise of many, these two countries were Canada and the United States.⁶ Jessa’s unfortunate story began at an early age when she was abused by family members, forced to pose for pornographers, and sold to men daily.⁷ Her memories are of a painful time, and include watching a loved one murdered.⁸ After years of abuse, Jessa was granted a six-month visa to the United States, where she hoped to begin a new life of freedom.⁹ Unfortunately, Jessa’s hopes of freedom quickly disintegrated after she met a “friend” at church.¹⁰ Though Jessa’s “friend” had promised to help her, she ultimately forced Jessa back into

¹ *Ecclesiastes* 4:1 (New International Version).

² David Batstone, *Not for Sale: The Return of the Global Slave Trade—and How We Can Fight It* 6 (Harper San Francisco, 2007).

³ Abby Sher, *Breaking Free: True Stories of Girls Who Escaped Modern Slavery* 184 (Barron’s, 2014).

⁴ *Id.*

⁵ Lance Hernandez, *Sex Trafficking Survivor Says Police Were Among Hundreds of Abusers*, ABC 7 (Feb. 19, 2011 5, 10:21 PM), <http://www.thedenverchannel.com/news/local-news/survivor-of-child-sex-traffickers-wants-to-help-others-still-being-exploited>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

prostitution.¹¹ Much of Jessa’s exploitation took place during the 2010 Winter Olympics, where she was sold to hundreds of people.¹² Though Jessa is now free, she continues to advocate against human trafficking in the hopes of shedding light on the issue.¹³

Withelma Ortiz Walker Pettigrew (“T”) was neglected during her childhood years because her parents were drug addicts.¹⁴ T was eventually moved into the foster care system, but was trafficked into prostitution when she was ten-years-old.¹⁵ “Her trafficker manipulated her feelings, promising to care for her—something she’d never known. But he beat her if she didn’t bring home enough money.”¹⁶ T’s exploitation took place in Oakland, California.¹⁷ Fortunately, T escaped her trafficker when she was seventeen-years-old and is now dedicated to helping other victims.¹⁸ “My definition of freedom is deeper than most. For so long, my freedom was nonexistent. My every move was watched, my every conversation was observed. [...] my physical self seemed to belong to everyone but me.”¹⁹

Unfortunately, these are only two stories; millions of other stories exist in the United States and throughout the world. As United States Secretary of State Hilary Clinton stated, “trafficking thrives in the shadows. And it can be easy to dismiss it as something that happens to someone else, somewhere else. But that is not the case. Trafficking is a crime that involves every nation on earth, and that includes our own.”²⁰ Human trafficking is a business built on human rights exploitation that remains highly profitable and lucrative, mainly because the demand

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Allison Marie Behnke, *Up For Sale: Human Trafficking and Modern Slavery 5* (Twenty-First Century Books, 2015).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Allison Marie Behnke, *Up For Sale: Human Trafficking and Modern Slavery 4* (Twenty-First Century Books, 2015).

remains high and few traffickers are prosecuted, thereby decreasing the risks involved. “It ought to concern every person, because it’s a debasement of our common humanity. [...] It ought to concern every business, because it distorts markets. It ought to concern every nation, because it endangers public health and fuels violence and organized crime.”²¹ Currently, human trafficking is the third most profitable organized crime, superseded only by drug and arms trafficking.²² Human trafficking is especially unique compared to drug and arms trafficking because one person can be sold multiple times, thereby increasing profits; drugs and or arms can only be sold once.

This Comment hopes to shed light on human trafficking to increase awareness. Part I defines human trafficking and discusses the process by which it occurs and the many faces it takes. Part II analyzes domestic legislation developed throughout the years to combat human trafficking. Part III discusses the business aspect of human trafficking and the reasons why it continues to remain highly profitable. Part IV discusses Al Capone, an American gangster who became infamous during the Prohibition Era for his involvement in organized crime, and compares modern day traffickers to him. Ultimately, Al Capone was charged with tax evasion because victims were unwilling to testify against him; the argument will be made that modern day traffickers should be prosecuted much the same way. Part V discusses future efforts that should be taken to decrease human trafficking, including business transparency. The ultimate goal of this Comment is to raise awareness of this horrible human rights violation because many are not aware that human trafficking occurs in the United States. With awareness comes eventual change, and this Comment will offer a few solutions to bring about change.

²¹ Presidential Proclamation on National Slavery and Human Trafficking Prevention Month, 2015 (Dec. 31, 2014).

²² National Coalition Against Domestic Violence Fact Sheet.

I. What is Human Trafficking?

The United Nations Convention against Transnational Organized Crime defines human trafficking to be “the recruitment, transportation, transfer, harbor [...] or receipt of persons” through the use of coercion, abduction, fraud, deception, or abuse of power.²³ Human trafficking is different than smuggling, though the distinction is narrow.²⁴ The most important distinction of human trafficking is that victims are exploited through coercion.²⁵ “Trafficking is [...] smuggling with coercion or fraud at the beginning of the process and exploitation at the end.”²⁶

The recruitment phase of human trafficking can vary, depending on the situation. Often times, traffickers employ deceptive practices to lure their victims. This is done through false promises of a better, and more economically prosperous life.²⁷ Unfortunately, poverty is one of the driving forces for trafficking.²⁸ Poverty limits the opportunities that many people have by placing them in situations where they are in desperate need of money, with few viable options to obtain that money.²⁹ As a result, vulnerability to deception and coercion increases.³⁰ This vulnerability is intensified by the lack of education of these individuals, which includes awareness of human trafficking and the living conditions in different countries.³¹ In addition, parents play a vital role in the vulnerability to trafficking.³² Parents, especially those living in poverty, often encourage their children to migrate to other countries to earn money for their

²³ Trafficking in Humans: Social, Cultural and Political Dimensions 4 (Sally Cameron & Edward Newman, eds. 2008).

²⁴ National Coalition Against Domestic Violence Fact Sheet.

²⁵ Allison Marie Behnke, *Up For Sale: Human Trafficking and Modern Slavery* 5 (Twenty-First Century Books, 2015).

²⁶ Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery* 189 (Columbia University Press, 2009).

²⁷ Trafficking in Humans: Social, Cultural and Political Dimensions 22 (Sally Cameron & Edward Newman, eds. 2008).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

family.³³ In addition to poverty, the number of children parents have may also influence this decision.³⁴ For example, a family with more children has greater economic needs, and places more pressure on the children to help fulfill those needs.³⁵ Culture also plays a role in the human trafficking paradigm because many cultures encourage child labor.³⁶ For example, it is socially acceptable for children as young as four-years-old to work in African cultures.³⁷ Countries with low human rights awareness are less likely to “perceive purchasing a woman or child as criminal.”³⁸ “In these areas such behavior is considered a ‘normal’ part of cultural practice, which then directly affects (i.e. expands) the market for trafficked women and children.”³⁹ Another key player that has led to the increase in human trafficking is globalization. Globalization has led to increased international and cross-border trade, which has led to higher demand for cheaper labor and products.⁴⁰ This presents a prime situation in which individuals can be trafficked to other countries to meet, and exploit, these demands by criminal organizations.⁴¹ In sum, poverty, familial pressures, and globalization have increased the trafficking of humans through international borders.⁴²

As a result, traffickers exploit these pressures to entice their victims into human trafficking.⁴³ The victims are often promised work in other countries and a chance to help earn income for their families.⁴⁴ However, this is not always the case. Victims may also be forced into

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 45.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 59. Globalization refers to a “wide range of international processes, from the trans-national spread of free markets to the spread of cultural values and norms. Globalization also refers to the growing sense that the world is interconnected.”

⁴¹ *Id.* at 23.

⁴² *Id.* at 58.

⁴³ *Id.*

⁴⁴ *Id.*

these situations. Nonetheless, the traffickers all have the same goal: the total and complete exploitation of the victim.⁴⁵ Once a victim is in the complete control of the traffickers, he/she is transported through several different methods, which include road and airplane travel, with the use of false travel documents.⁴⁶ These victims who are taken to foreign and unfamiliar countries are defenseless and vulnerable due to the lack of protection and support.⁴⁷ Once a victim has been trafficked, they are often threatened with physical harm if they attempt to escape.⁴⁸

There are several different types of “work” into which victims are forced. The most prevalent form of trafficking is the sexual exploitation of women, also known as sex trafficking.⁴⁹ Internationally, the sex industry grosses over \$35.7 billion per year⁵⁰ and is driven by demand.⁵¹ Sex trafficking victims are forced to work in street prostitution, massage parlors, escort services, strip clubs, and brothels.⁵² Victims are kept in captivity through the use of violence, threats, and emotional manipulation.⁵³ In the United States, sex trafficking occurs every day.⁵⁴ Briana was a victim of sex trafficking when she was twelve-years-old.⁵⁵ After an argument with her mother, Briana ran to the apartment of the brother of a friend in New York City.⁵⁶ She was held captive by this man and forced to work as a prostitute, and was often recruited for sex

⁴⁵ *Id.*

⁴⁶ Interpol Fact Sheet: Trafficking in Human Beings (2014), <http://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Types-of-human-trafficking>.

⁴⁷ 22 USCS § 7101

⁴⁸ *Id.*

⁴⁹ Interpol Fact Sheet: Trafficking in Human Beings (2014), <http://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Types-of-human-trafficking>.

⁵⁰ Janice G. Raymond, *Not a Choice, Not a Job: Exposing the Myths About Prostitution and the Global Sex Trade* xv (Potomac Books, 2013).

⁵¹ *Trafficking in Humans: Social, Cultural and Political Dimensions* 92 (Sally Cameron & Edward Newman, eds. 2008).

⁵² *Human Trafficking and Prevention: Definitions and Types*, Worse Than You Think, <http://www.worsethanyouthink.org/about-human-trafficking/definitions-and-types/>.

⁵³ Allison Marie Behnke, *Up For Sale: Human Trafficking and Modern Slavery* 35 (Twenty-First Century Books, 2015).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

work on websites.⁵⁷ “Briana was so close to home that while looking out of her trafficker’s window, she once saw her mother hanging ‘missing person’ posters on the lampposts outside. Briana was close enough to call out to her mother—but she didn’t dare.”⁵⁸ Unfortunately, Briana’s story is not unique. “In the [United States], children and teens who run away from home are at especially grave risk of sexual exploitation. Experts state that one in three runaways will be lured into prostitution within forty-eight hours. On average, in the United States, kids enter the sex trade between the ages of [twelve] and [fourteen].”⁵⁹ Sex trafficking has become the most documented type of trafficking because it is often the most recognizable and easiest to spot.⁶⁰ Sex trafficking is globalized prostitution.⁶¹ The United States has repeatedly refused to legalize prostitution because it will increase organized crime.⁶² “Legalized prostitution is [...] a trafficker’s best shield.”⁶³

The second most common form of work into which victims are forced is forced labor, also known as involuntary servitude.⁶⁴ This includes, but is not limited to, work at a sweatshop, farm, factory, construction, and restaurant.⁶⁵ “[...] tens of thousands of people labor each day in the United States without pay and under the threat of violence. Because forced labor is often hidden in unregulated work environments or where cheap labor is the norm, most Americans will walk by an incidence of slavery and pay it no notice.”⁶⁶ In 1995, federal agents discovered

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 44.

⁶⁰ United Nations Office on Drugs and Crime, https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html#What_is_Human_Trafficking.

⁶¹ Janice G. Raymond, *Not a Choice, Not a Job: Exposing the Myths About Prostitution and the Global Sex Trade* 180 (Potomac Books, 2013).

⁶² *Id.* at 27.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Interpol Fact Sheet: Trafficking in Human Beings (2014), <http://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Types-of-human-trafficking>.

⁶⁶ David Batstone, *Not for Sale: The Return of the Global Slave Trade—and How We Can Fight It* 228 (Harper San Francisco, 2007).

seventy-two garment workers kept in captivity inside an apartment complex in El Monte, California.⁶⁷ The traffickers had promised the victims high-paying sewing jobs in the United States.⁶⁸ Once the victims arrived, their passports were taken away and they were informed they had a debt to pay.⁶⁹ As a result, they were kept in captivity for seven years and forced to work sixteen-hour shifts.⁷⁰ Though the women had been through a tremendous ordeal, they were treated like illegal aliens and not victims.⁷¹ The “women now had to endure another form of captivity—behind bars and forced to wear prison uniforms. Their treatment sent a horrible message to slaves held anywhere in the United States, supporting the slaveholders’ warning: ‘Report us to the authorities, and you will be the ones thrown in jail.’”⁷² The El Monte case demonstrates the sad reality of forced labor: victims can be held in captivity in a residential neighborhood, in the United States, for many years without ever being noticed.

The third form of work into which victims are forced is debt bondage, also known as bonded labor. In these situations, traffickers will exploit a debt the worker owes and force the worker to work for them until the debt is paid off.⁷³ However, often times, this debt is inflated, which makes the possibility of successfully paying it off impossible.⁷⁴ These debts may be passed down generationally in a family.⁷⁵ It is not uncommon for workers to be enslaved for the duration of their lives to pay off a past generational debt.⁷⁶

⁶⁷ *Id.* at 236.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 237.

⁷³ Interpol Fact Sheet: Trafficking in Human Beings (2014), <http://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Types-of-human-trafficking>.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

Lastly, human trafficking victims are also forced to donate their organs. The black market demand for human organs has significantly increased because of the long waiting lists for organ transplants. This has created a profitable situation in which traffickers exploit the desperation of both patients and potential donors.⁷⁷ Operations may take place in non-sterile, remote, and desolate areas, with no medical follow-up procedures.⁷⁸ “In 2009 the FBI arrested a Brooklyn, New York, man who was buying organs in Israel for about \$10,000 per organ, then selling them to Americans for more than fifteen times that amount.”⁷⁹

Modern day slavery exists throughout the world; victims are recruited, transported to, and exploited in hundreds of countries. Unfortunately, many individuals still believe that human trafficking only occurs in less developed countries. As evidenced through the handful of earlier stories, this is simply not the case. Human trafficking occurs in both developed and under-developed countries. Human trafficking exists in 167 countries; 85% of the world is affected by it. Domestically, an estimated 50,000 women and children are trafficked into the United States every year.⁸⁰

Human trafficking is the second largest global organized crime, and it is estimated to generate \$150.2 billion a year.⁸¹ This number is more than the combined revenues of Amazon, Google, and eBay every year.⁸² The International Labor Organization (“ILO”) believes that two thirds of this estimate comes from commercial sexual exploitation.⁸³ Furthermore, ILO estimates

⁷⁷ Interpol Fact Sheet: Trafficking in Human Beings (2014), <http://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Types-of-human-trafficking>.

⁷⁸ *Id.*

⁷⁹ Allison Marie Behnke, *Up For Sale: Human Trafficking and Modern Slavery* 28 (Twenty-First Century Books, 2015).

⁸⁰ 22 USCS § 7101

⁸¹ End It Movement, <https://secure.enditmovement.com/learn>.

⁸² *Id.*

⁸³ Interpol Fact Sheet: Trafficking in Human Beings (2014), <http://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Types-of-human-trafficking>.

that there are a total of 21 million victims of human trafficking.⁸⁴ Human trafficking remains a highly profitable business due to globalization, decreased border limitations, and insufficient criminalization. Human trafficking thrives on the repetitive exploitation of individuals; and there is a steady demand for this repetitive exploitation. The immense profitability, combined with minimal risk factors, allow the human trafficking industry to thrive. Siddharth Kara believes there are four reasons why human trafficking continues today: (1) it is not understood; (2) the organizations dedicated to combating human trafficking are underfunded; (3) the laws against human trafficking are not well enforced; and (4) “despite numerous studies and reports, a systematic business and economic analysis of the industry, conducted to identify strategic points of intervention, has not yet been undertaken.”⁸⁵

II. History of Human Trafficking Legislation

The 13th Amendment of the United States Constitution was ratified by the states in 1865 and declares, “Neither slavery nor involuntary servitude [...] shall exist within the United States, or any place subject to their jurisdiction.”⁸⁶ In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights, thereby banning slavery throughout the world.⁸⁷ The Mann Act, enacted in 1910, makes it a crime for an individual to “knowingly transport any individual in interstate or foreign commerce [...] with intent that such individual engage in prostitution, or in any sexual activity.”⁸⁸ The Smoot-Hawley Tariff Act, also known as The Tariff Act of 1930, prohibits the importation of goods made with the use of forced or indentured labor.⁸⁹ The Customs and Facilitations and Trade Enforcement Act amended the

⁸⁴ *Id.*

⁸⁵ Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery* 200 (Columbia University Press, 2009).

⁸⁶ U.S. CONST. amend. XIII.

⁸⁷ Abby Sher, *Breaking Free: True Stories of Girls Who Escaped Modern Slavery* 204 (Barron’s, 2014).

⁸⁸ 18 USCS § 2421.

⁸⁹ Smoot-Hawley Tariff Act, 131 Cong Rec S 8284, 131 Cong Rec S 8284.

Smoot-Hawley Tariff Act to include goods that are made through the use of coercion or goods made by victims of human trafficking.⁹⁰ In addition, the Racketeering Influenced Corrupt Organizations Act was designed to prosecute members of organized crime for racketeering offenses.⁹¹ Human trafficking offenses are included as racketeering offenses.⁹²

The Trafficking Victims Protection Act (TVPA) was enacted in 2000 to combat human trafficking, punish traffickers, and protect victims.⁹³ The TVPA incorporates the Declaration of Independence, which “recognizes the inherent dignity and worth of all people. It states that all men are created equal and that they are endowed by their Creator with certain unalienable rights.”⁹⁴ This includes the right to be free from slavery and involuntary servitude. Furthermore, the TVPA states that human trafficking is a grave violation of human rights and is a pressing international concern.⁹⁵ As such, the TVPA makes human trafficking a federal crime, provides restitution to be paid to victims, and discourages the punishment of victims.⁹⁶ The TVPA discourages the incarceration, fine, or penalization of victims for crimes such as using false documentation, entering the country without documentation, or working without documentation.⁹⁷ Rather, the TVPA seeks to punish the traffickers.⁹⁸ The TVPA was reauthorized in 2003 and 2013. The TVPA Reauthorization Act of 2003 established a federal, civil right of action for victims to sue their traffickers.⁹⁹ Furthermore, the act included additional provisions for the protection of victims and their families from deportation.¹⁰⁰ The TVPA Reauthorization Act of 2013

⁹⁰ 111 S. 1631, 2009 S. 1631, 111 S. 1631

⁹¹ 18 USCS § 1961

⁹² *Id.*

⁹³ 22 USCS § 7101

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Trafficking Victims Protection Reauthorization Act of 2003, 108 P.L. 193, 117 Stat. 2875, 108 P.L. 193, 2003.

¹⁰⁰ *Id.*

established and strengthened programs to ensure that United States citizens did not purchase products made by victims of human trafficking.¹⁰¹ Following the 10th anniversary of the TVPA's passage, the United States Department of Justice released a report summarizing the effects of the TVPA. The Dept of Justice found that thirty-seven task forces were developed, over 891 children were rescued from commercial sexual exploitation, and over 500 convictions were produced in state and federal court.¹⁰²

However, the TVPA has received much criticism from human trafficking advocates. Janice G. Raymond feels that although the TVPA has benefits, the fact that prosecutors must prove the use of force, fraud, or coercion makes it very challenging to succeed.¹⁰³ “Even when the traffickers have used force, fraud, or coercion, the burden of proof rests on the victim. Prosecutors depend on victim testimony, but victims may be reluctant to give evidence because their testimony can re-traumatize them and endanger them or their families.”¹⁰⁴ In one case, prosecutors were unable to meet the TVPA's burden of proof.¹⁰⁵ Here, two victims were forced to perform sexual intercourse for fourteen to sixteen hours a day by their traffickers.¹⁰⁶ They were deprived of sleep and food and were subjected to physical and psychological abuse.¹⁰⁷ However, their traffickers were not prosecuted under the TVPA because the prosecution was unable to prove force, fraud, or coercion.¹⁰⁸ Instead, the traffickers were prosecuted under the Mann Act, which carries a lower penalty.¹⁰⁹ According to Raymond, the Mann Act is rarely used

¹⁰¹ *Id.*

¹⁰² U.S. Dep't of Justice, *Report on the Tenth Anniversary of the Trafficking Victims Protection Act*, http://www.justice.gov/crt/about/crm/trafficking_newsletter/tvpaanniversaryreport.pdf.

¹⁰³ Janice G. Raymond, *Not a Choice, Not a Job: Exposing the Myths About Prostitution and the Global Sex Trade* 27 (Potomac Books, 2013).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

because human trafficking cases are costly and time consuming to investigate; prosecutors feel that it is not “worth the time and money to achieve a small penalty for a big-time trafficker who is guilty of gross human rights violations.”¹¹⁰ Raymond proposes a solution - “incorporate the Mann Act’s broader definition of trafficking into the TVPA and give prosecutors the ability to inflict greater penalties on international and domestic traffickers.”¹¹¹ In 2007 Representative Carolyn B. Maloney tried to amend the TVPA to exclude the force requirement, because as previously discussed, not all human trafficking is done through force—most often it is through coercion. This amended version of the TVPA passed in the United States House of Representatives, but did not pass in the Senate.¹¹² Senators worried the federal government would stray from its core anti-trafficking mission against crimes involving force, fraud or coercion and child victims.¹¹³ To date, this amended version of the TVPA has yet to pass.

Another criticism of the TVPA deals with T-visas, “the special, three-year residency visas provided to victims of severe forms of human trafficking, which entitle them to local and state benefits.”¹¹⁴ In order to receive a T-visa, victims must be willing to cooperate with authorities during criminal proceedings. Though this may sound simple, it is in fact very traumatizing for victims. Furthermore, the process to obtain a T-visa is very lengthy, and may take up to nine months. To make matters worse, “50 percent of applications are denied, primarily because the individual is deemed not to be a victim of severe forms of trafficking.”¹¹⁵ In 2011, “only an estimated nine-year total of 2,300 out of an available 5,000 a year had been granted to

¹¹⁰ *Id.* at 28.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 29.

¹¹⁴ Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery* 195 (Columbia University Press, 2009).

¹¹⁵ Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery* 96 (Columbia University Press, 2009).

victims.”¹¹⁶

In 2009, California amended its civil code to reflect human trafficking issues.¹¹⁷ The amendment went into effect on January 1, 2011, and requires retail sellers and manufactures who perform business in California to “develop, maintain, and implement policies related to their compliance with federal and state law regarding the eradication of slavery and human trafficking.”¹¹⁸ The amendment applies to retail sellers or manufactures who generate more than \$2 million in annual sales.¹¹⁹ The California legislature stated that slavery and human trafficking exist in every country, including the United States and specifically, California, and as a result, consumers and businesses are affected by the purchase of goods that have been “infected in the supply chain.”¹²⁰ Due to the criminalized nature of human trafficking, it is often difficult to track the supply chain and ensure that it is not infected.¹²¹ However, businesses are under a good faith obligation to stop doing business in areas where it discovers that its supply chain is tainted by human trafficking.¹²² The act further states that the state of California will assist businesses in identifying and working to eliminate human trafficking from their supply chains, educating consumers on how to purchase goods from reliable companies, and improve the lives of victims of human trafficking.¹²³

One of the most crucial pieces of legislation in the fight against human trafficking is The Human Trafficking Fraud Enforcement Act of 2014 (“HTFE”). The HTFE has been introduced by Representative Carolyn B. Maloney, but is still in the House, and un-passed as of the date of

¹¹⁶ Janice G. Raymond, *Not a Choice, Not a Job: Exposing the Myths About Prostitution and the Global Sex Trade* 29 (Potomac Books, 2013).

¹¹⁷ 2009 Bill Text CA S.B. 657.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

this Comment.¹²⁴ The HTFE establishes an office within the Internal Revenue Service (“IRS”) to focus on “violations of the internal revenue laws by persons who are under investigation for conduct relat[ed] to the promotion of commercial sex acts and trafficking in persons crimes, and to the increase in criminal monetary penalty limitations for the underpayment or overpayment of tax due to fraud.”¹²⁵ Furthermore, the HTFE allows victims of human trafficking crimes to claim awards for “whistleblowing” on traffickers.¹²⁶ The IRS Code will be amended through the HTFE and increases both the civil and criminal penalties for tax evasion as a result of income derived from human trafficking and commercial sexual exploitation.¹²⁷ Additionally, the HTFE makes it a felony to fail to file a tax return including income derived from human trafficking or commercial sexual exploitation.¹²⁸ Maloney stated that “this bill would not only sic the IRS on traffickers and pimps, [but] it would also provide financial assistance and protections to survivors.”¹²⁹ As will be discussed in this Comment in detail, it is of huge significance that “we can use the IRS to follow the money and catch the perpetrators. That’s how we got Al Capone, and that’s how we’ll catch the purveyors of modern day slavery. It’s time we give law enforcement new tools to stop these horrific crimes.”¹³⁰

III. Human Trafficking’s Impact on Businesses

“Like most businesses, [human] trafficking has four components: a product (the victim), a wholesaler (the trafficker), a retailer (the slave owner/exploiter), and a consumer.”¹³¹ Human

¹²⁴ *Maloney’s Human Trafficking Fraud Enforcement Act*, Western Queen’s Gazette, http://www.qgazette.com/news/2014-03-26/Features/Maloneys_Human_Trafficking_Fraud_Enforcement_Act.html.

¹²⁵ 113 H.R. 4708, 2014 H.R. 4708, 113 H.R. 4708.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Maloney’s Human Trafficking Fraud Enforcement Act*, Western Queen’s Gazette, http://www.qgazette.com/news/2014-03-26/Features/Maloneys_Human_Trafficking_Fraud_Enforcement_Act.html.

¹³⁰ *Id.*

¹³¹ Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery* 202 (Columbia University Press, 2009).

trafficking generates an estimated \$150.2 billion a year.¹³² The average cost of a slave in 1850 in the American southern states was equivalent to \$40,000 today.¹³³ However, the average cost of a slave today is only \$90.¹³⁴ Nearly half of victims pay a “recruiting fee” of \$6,150 under false pretenses.¹³⁵ Victims are told that this fee is needed to help pay for their expenses on the journey and to help get them settled in their new country.¹³⁶ As explained, this money is eventually exploited from the victims as well. To add fuel to the fire, human trafficking is increasing by the minute, even in the United States.¹³⁷ It is a highly profitable business built on exploitation and secrecy and is often hard to track. As a result, it continues to increase.

“Since we’re talking about a very informal and mostly illegal trade, numbers are extremely hard to come by. These are not the kind of businesses that create annual reports.”¹³⁸ In addition, the ILO estimates that “private households that employ domestic workers under conditions of forced labor save about \$8 billion annually by not paying or underpaying their workers.”¹³⁹ In more developed countries, victims can be worth almost \$35,000 a year to their traffickers.¹⁴⁰ Human trafficking also affects the travel, meetings and hospitality industries.¹⁴¹ Often times, the exploitation occurs at a hotel.¹⁴² Tourism businesses can play a vital role in the observation and reporting of human trafficking. EPCAT, which stands for End Child Prostitution, Child Pornography & Trafficking of Children for Sexual Purposes, created the

¹³² End It Movement, <https://secure.enditmovement.com/learn>.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Belinda Luscombe, *Inside the Scarily Lucrative Business Model of Human Trafficking*, TIME (May 20, 2014), <http://time.com/105360/inside-the-scarily-lucrative-business-model-of-human-trafficking/>.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Sarah Beauchamp, *Breaking Bonds: The Business Travel and Meetings Industries Combat Human Trafficking*, Business Travel News (Aug. 4, 2014), <http://www.businesstravelnews.com/More-News/Breaking-Bonds--The-Business-Travel-And-Meetings-Industries-Combat-Human-Trafficking/?ida=Government&a=mgmt>.

¹⁴² *Id.*

Tourism Child-Protection Code of Conduct (“The Code”) in 1996.

When a company joins The Code, it must take six steps toward preventing human trafficking, including establishing a set policy and specific procedures against the sexual exploitation of children; providing proper training for employees in regard to children’s rights, the prevention of sexual exploitation and reporting of any suspected human trafficking cases; creating a clause for all contracts that states a zero-tolerance policy of sexual exploitation; making information about human trafficking prevention available to business travelers; collaborating with stakeholders in the prevention of sexual exploitation; and reporting annually on the implementation of the Code.¹⁴³

Companies who join are encouraged to look for warning signs or indicators that should be reported to local authorities.¹⁴⁴ Some of these warning signs are: violent interactions, loud arguments, disheveled guests, confusion among the guests, and individuals who carry little to no possession.¹⁴⁵ In addition, the victims may request numerous towels or have multiple male visitors.¹⁴⁶ Several large travel suppliers, including Hilton Worldwide, Waldorf Astoria Hotels & Resorts, Hampton Hotels, and Delta Air Lines, have signed The Code.¹⁴⁷ More than 30 organizations in the United States have joined The Code.¹⁴⁸

The business model of human trafficking, much like other types of organized crime, is extremely complex and organized, “reminiscent of multinational corporations, which are designed to maximize profits and minimize risks.”¹⁴⁹ Traffickers profit directly from money laundering. Tom Sherman, the Australian president of the Financial Action Task Force, described money laundering as “the process of converting or ‘cleansing’ property, knowing that such property is derived from serious crime, for the purpose of disguising its origin. The concept

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ William C. Gilmore, *Dirty Money: The Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism*, 19 (4th ed. 2011).

of money laundering generally covers those who assist that process and ought reasonably to be aware that they are assisting such a process.”¹⁵⁰ As a result, money laundering significantly impacts the world economy by

(a) harming the effective operations of the national economies and by promoting poorer economic policies, especially in some countries; (b) slowly corrupting the financial market and reducing the public’s confidence in the international financial system, thus increasing risks and the instability of that system; and (c) as a consequence ... reducing the rate of growth of the world economy.¹⁵¹

Human traffickers deal exclusively in cash to avoid financial institutions.¹⁵² Money laundering is a highly complex process that is comprised of several stages.¹⁵³ Often times these stages are referred to as: (1) the placement stage; (2) the layering stage; and (3) the integration stage.¹⁵⁴ During the placement stage, cash that is derived from criminal activity is placed either in a financial institution or used to purchase an asset.¹⁵⁵ The layering stage is “the first attempt at concealment or disguise of the source of the ownership of the funds.”¹⁵⁶ The integration stage is where the money is integrated into the legitimate economy and assimilated with all other assets in the system.¹⁵⁷ Throughout this process, launderers conceal the true ownership and origin of the funds, maintain control of it, and change the form of the proceeds.¹⁵⁸

In the United States, it has become common for criminals to “engage the services of numerous individuals to convert cash of small denominations into larger bills - a process

¹⁵⁰ *Id.* at 23.

¹⁵¹ *Id.* at 24.

¹⁵² *Id.* at 31.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 34–35.

sometimes known as the ‘refining’ of dirty money.’¹⁵⁹ In addition, smurfing has developed in the United States to escape the requirement that all cash transactions above a specific amount be reported.¹⁶⁰ Smurfing “involves the structuring of transactions in such a way as to avoid the automatic triggering of the system.”¹⁶¹ This is done through the “employment of ‘smurfs’, money couriers of innocuous appearance who make large numbers of small transactions, always under \$10,000, at various financial institutions.”¹⁶² Through this method, large quantities of cash enter the banking system without attracting significant attention.¹⁶³ Recently, the IRS has employed strategies to counter money laundering and human trafficking, which will be discussed in further detail.

Often times, money is laundered through smuggling cash, which can involve many risks.¹⁶⁴

The money courier fills suitcases with cash, hides cash in cargo, or sends cash in an international express package. The money is physically transported to a foreign country that has no currency controls and preferably has bank secrecy laws. ... In the tax haven country, the cash will be deposited into a bank or other financial institution and from there it can be moved at will. The money is now indistinguishable from the legitimate funds that are routinely transferred throughout the world’s financial systems.¹⁶⁵

This method of money laundering is ripe with risks, which include theft, detection, and subsequent action by law enforcement.¹⁶⁶

Additionally, money launderers must get rid of the cash. Deposit-taking institutions are increasingly likely to be employed in this area.¹⁶⁷ International levels to combat this include the

¹⁵⁹ *Id.* 35.

¹⁶⁰ *Id.* at 36.

¹⁶¹ *Id.*

¹⁶² *Id.* at 36.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 36–37.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 37.

European Union’s practice of imposing significant obligations on banks, which include requirements for customer identification, comprehensive record keeping, and the creation of audits or paper trails for use by law enforcement.¹⁶⁸

Once cash placement is successful, the layering process begins. Wire transfers are extremely important during this stage because they “offer criminals many advantages as they seek to cover their trail. Speed, distance, minimal audit trail, and increased anonymity amid the enormous daily volume of electronic fund transfers are all major benefits.”¹⁶⁹ Money launderers will “aggregate funds from different accounts and move those funds through accounts at different banks until the origins of the funds cannot be traced.”¹⁷⁰ This will often involve the movement of funds out of the country, “through a bank account in a country with strict bank secrecy laws, and possibly back.”¹⁷¹ Once this is complete, it is difficult to detect money that has been laundered; full integration into the legitimate market is simple from here on out.¹⁷²

IV. Human Traffickers: The Modern-Day Al Capone

26 USCS § 7201 states that “any person who willfully attempts [...] to evade or defeat any tax [...] shall] be guilty of a felony, and upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years.”¹⁷³

Al Capone (“Capone”) is one of the most famous faces of organized crime in the United States. Capone’s rise to power is largely attributable to the Prohibition era of the United States, when the production and sale of liquor was banned.¹⁷⁴ Capone was born into a large Italian

¹⁶⁷ *Id.* at 35.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 37.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ 26 USCS § 7201

¹⁷⁴ Encyclopedia of World Biography, <http://www.notablebiographies.com/Ca-Ch/Capone-Al.html>.

family in Brooklyn, New York, on January 17, 1899.¹⁷⁵ After getting kicked out of school in the sixth grade, Capone began to engage in criminal activities to achieve success.¹⁷⁶ Eventually, Capone made his way to Chicago during the Prohibition era and began to control “part of the bootlegging (illegal supplying of alcohol) in Chicago that had sprung up.”¹⁷⁷ Capone’s business was fueled by demand because many citizens of Chicago were not in favor of Prohibition and were willing to break the law.¹⁷⁸ As a result, Capone cashed in on this illegal demand, which led to an increase in profits for him.¹⁷⁹ In 1927, Capone made an estimated \$100 million.¹⁸⁰ In addition to his illegal business practices, Capone was responsible for a multitude of murders.¹⁸¹

Although Capone was a dangerous man, he was very smart in the way that he conducted his business.¹⁸² He kept his illegal earnings hidden, endorsed only one check in his entire life, never had his own bank account, and dealt strictly in cash.¹⁸³ These factors, combined with the fact that no one was willing to testify against Capone for fear of their life, made it extremely hard for federal prosecutors to press charges against him.¹⁸⁴ In the end, federal prosecutors, who had worked alongside the IRS, could only charge Capone with tax evasion, which he was ultimately found guilty of.¹⁸⁵

Today, the argument can be made that human traffickers are the modern-day Al Capone. Human traffickers run an organized criminal business, built on human exploitation. Similar to the demand for bootlegged alcohol, the demand for slaves remains high today. “The growth of

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Josh Clark, Why Was Tax Evasion the Only Thing Pinned on Al Capone?, How Stuff Works (May 5, 2008), <http://history.howstuffworks.com/history-vs-myth/capone-tax-evasion1.htm>.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

[...] human trafficking [is] related to fierce competition in the global economy, where a company or an industry's access to cheap labor is key to gaining an economic advantage over competitors. When cheap labor is difficult to obtain, [...] industries are willing to turn to human trafficking."¹⁸⁶ This high demand, combined with money laundering and few prosecutions, allows human traffickers to thrive. Human traffickers are able to pocket the cash earned from human rights violations and avoid taxes and prosecution. This should not happen; the traffickers and the people who purchase slaves should be prosecuted under every available avenue of the law, including tax law.

V. Analysis

Human trafficking is one of the biggest human rights violations of this generation. Unfortunately, it continues to remain a highly profitable and lucrative business, even though legislation has passed to combat it. The revenue generated from human trafficking is largely untraceable because traffickers, like Capone, deal exclusively in cash. This is done for the obvious reason of avoiding the IRS and authorities. As such, traffickers are difficult to locate and punish, similar to Capone. As a result, the United States should employ similar tax evasion methods to find human traffickers. Until more aggressive legislation is passed, this is the only method available, just as it was the only method available to prosecute Capone.

“Tax evasion robs California of roughly \$8.5 billion every year—funds which are vital to public services such as education, healthcare, and public safety.”¹⁸⁷ This estimate will undoubtedly increase when taken from the United States as a whole. It is unfortunate that the HTFE has not been passed because it provides an avenue by which human traffickers can be punished—tax evasion. Currently, the IRS has the power to seize bank accounts on suspicion of

¹⁸⁶ up for sale 8-9

¹⁸⁷ News Release: Tax Recovery and Criminal Enforcement (TRaCE) Task Force, (October 24, 2014), http://www.boe.ca.gov/news/2014/TRaCE_Web.pdf.

organized criminal activity, including human trafficking.¹⁸⁸ The IRS notices when a business owner makes a deposit of less than \$10,000 because this is often done to evade reporting income.¹⁸⁹ However, small businesses often employ this deposit method and do not engage in human trafficking; as a result, they have faced much difficulty with the IRS. Nonetheless, this is a step in the right direction. The IRS, if the HTFE were passed, would be on alert for income derived from human trafficking. Although similar tactics are used today, the passage of the HTFE would be a pivotal movement because it would officially be a crime to profit off of human trafficking. With the HTFE, the IRS would be able to view any bank account once suspicious deposits are made. Furthermore, the IRS would be able to trace this money to see if it is eventually withdrawn and if taxes are filed on it. The HTFE requires that income derived from human trafficking be reported to the IRS. However, this presents a double-edged sword. It is not likely that many will report and list an income from human trafficking on their tax returns because they know they will face civil and criminal charges.

Due to human trafficking's large international nature, governments must be on alert about any suspicious bank accounts and assets. A major concern for the government should be if a person's tax returns and assets do not match up. For example, a person might be living a lavish lifestyle and have an expensive house, but their tax returns show that they are not generating much income, if at all. Again, the story of Capone comes to mind. Furthermore, the criminal justice system must not only provide for "the efficient and effective method of tracing, freezing, and eventually confiscating the proceeds derived from criminal activity", but legislation must

¹⁸⁸ Shailla Dewan, *Law Lets I.R.S. Seize Accounts on Suspicion, No Crime Required*, The New York Times (Oct. 25, 2014), http://www.nytimes.com/2014/10/26/us/law-lets-irs-seize-accounts-on-suspicion-no-crime-required.html?_r=0.

¹⁸⁹ *Id.*

also be implemented that “criminalizes and counters the process known as money laundering.”¹⁹⁰

Furthermore, the government must employ the help of citizens in finding traffickers. When a victim is rescued from human trafficking, the correct help must be given to them. This includes adequate shelter, food, and appropriate translation services, if needed, to talk with the victim and obtain a detailed description of the individual(s) involved in his/her exploitation. Victims must be treated as victims—not as criminals or illegal aliens.

Additionally, businesses, especially those who employ immigrants or conduct business overseas, must be absolutely transparent. A business may not intentionally engage in human trafficking, but their supply chain may be tainted. It is crucial that they keep a detailed track of their supplies, countries of origin, and any routes these supplies take to eventually end up in the United States. In addition, a detailed account of their employees, including legal documentation, must be kept by businesses. If businesses do not comply with these, even if they are not intentionally engaging in human trafficking, they must be fined. Businesses throughout the entire country must become so familiar with transparency that it does not become an issue anymore. If every business was transparent, it would be much easier to track and combat human trafficking. Business transparency should also extend to manufactures, factories, massage parlors, hotels, restaurants, and other types of businesses because human trafficking permeates every business. Victims can be found anywhere, which is why transparency is extremely crucial. In addition to transparency, workers should be trained to recognize the warning signs of human trafficking, such as the methods employed by EPCAT.

Through the implementation of these discussed methods, human traffickers can slowly be prosecuted. Additionally, it may serve as deterrence to future human trafficking. Once

¹⁹⁰ William C. Gilmore, *Dirty Money: The Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism*, 22 (4th ed. 2011).

traffickers are punished, either through tax evasion or asset forfeiture, others who engage in this illegal business can see that the federal government is serious in its efforts to combat human trafficking. Currently, there is a good foundation for human trafficking legislation. However, there is a lack of implementation practices that the government can employ to find traffickers.

Conclusion

Human trafficking is modern-day slavery and affects hundreds of countries and millions of individuals. Victims can be found in virtually every business, including massage parlors and sewing factories. Human trafficking is the second largest organized crime and remains highly profitable because of the demand for cheap labor and lack of effective prosecution of traffickers. Though the United States has enacted legislation to combat human trafficking, it has provided little relief. To truly combat human trafficking, the government must have a way to implement this legislation. The biggest tool the government has is the HTFE, which will give the IRS authority to find traffickers. The IRS must have the authority to track suspicious financial deposits and be able to monitor future bank transactions; the HTFE provides this. Human traffickers, the modern-day Al Capone, are engaging in tax evasion and fraud. In order to find and prosecute these traffickers, the government must go after them through tax evasion. Furthermore, businesses should be completely transparent in every aspect—including their supply chain, documented workers, and transactions. These efforts will promote legitimate business practices and combat human trafficking.