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## Hidden Slaves: Forced Labor in the United States

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# Hidden Slaves

## Forced Labor in the United States

By  
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California, Berkeley\*

### I.

#### EXECUTIVE SUMMARY

Forced labor is a serious and pervasive problem in the United States. At any given time, ten thousand or more people work as forced laborers in scores of cities and towns across the country. And it is likely that the actual number is much higher, possibly reaching into the tens of thousands. Because forced labor is *hidden, inhumane, widespread, and criminal*, sustained and coordinated efforts by U.S. law enforcement, social service providers, and the general public are needed to expose and eradicate this illicit trade.

The International Labor Organization (ILO) Convention Concerning Forced Labor 29 defines forced labor, with exceptions, 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.”<sup>1</sup>

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Research for this report was conducted under the direction of Kevin Bales, Laurel Fletcher, and Eric Stover by Kevin Bales, Camilla Brown, Terry Coonan, Laurel Fletcher, Natalie Hill, Steve Lize, Kristin Madigan, Jacob Patton, Natasha Pinto, Rachel Shigekane, and Eric Stover. Harvey Weinstein consulted on the research design of the case studies. The Center for the Advancement of Human Rights at Florida State University conducted a survey of forty-nine social service providers in the United States.

Further research assistance was provided by Alexander Freeman, Abigail Lloyd, Angele Motlagh, L. Kathleen Roberts, Rebecca Tanner, Kaja Tretjak, and Charlotte J. Wiener of the International Human Rights Law Clinic at U.C. Berkeley. Jolene Smith of Free the Slaves and Mark Gertz and Pippin Whitaker of the Center for the Advancement of Human Rights, Florida State University, provided valuable assistance to this project. The researchers gratefully acknowledge the courage of survivors to speak with us in the hope that telling their stories will help eliminate forced labor.

1. Convention Concerning Forced or Compulsory Labour, *adopted* June 28, 1930, art. 2(1), 39 U.N.T.S. 55, 58 (entered into force May 1, 1932) [hereinafter Forced Labour Convention]. The ILO Convention on the Elimination of the Worst Forms of Child Labour 182 adds that these types of child labor comprise (a) “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced

This report documents the nature and scope of forced labor in the United States from January 1998 to December 2003. It is the first study to examine the numbers, demographic characteristics, and origins of victims and perpetrators of forced labor in the United States and the adequacy of the U.S. response to this growing problem since the enactment of the Victims of Trafficking and Violence Protection Act of 2000 (Trafficking Act). The report is based on data obtained from a telephone survey of forty-nine service providers that have worked with or are experts in forced labor cases, a press survey of 131 incidents of forced labor, and eight case studies of forced labor in different regions of the United States. The study was conducted by a team of researchers from Free the Slaves<sup>2</sup> and the Human Rights Center of the University of California, Berkeley.<sup>3</sup>

Victims of forced labor come from numerous ethnic and racial groups. Most are “trafficked” from thirty-five or more countries and, through force, fraud, or coercion, find themselves laboring against their will in the United States. In the study, Chinese comprised the largest number of victims, followed by Mexicans and Vietnamese. Some victims were born and raised in the United States and found themselves pressed into servitude by fraudulent or deceptive means. Over the past five years, forced labor operations have been reported in at least ninety U.S. cities. These operations tend to thrive in states with large populations and sizable immigrant communities, such as California, Florida, New York, and Texas—all of which are transit routes for international travelers.

Forced labor is prevalent in five sectors of the U.S. economy: prostitution and sex services (46%), domestic service (27%), agriculture (10%), sweatshop/factory (5%), and restaurant and hotel work (4%). Forced labor persists in these sectors because of low wages, lack of regulation and monitoring of working

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or compulsory recruitment of children for use in armed conflict”; (b) “the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances”; (c) “the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties”; and (d) “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.” Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, *adopted* June 17, 1999, art 3(a)-(d), S. Treaty Doc. No. 106-5, 1, 4, 38 I.L.M. 1207, 1208 (entered into force Nov. 19, 2000).

2. Free the Slaves is a non-profit, non-partisan organization dedicated to ending slavery worldwide. Founded in 2000, Free the Slaves works to empower grassroots anti-slavery organizations, educate the public about the existence of slavery, eliminate slave-made goods from product supply chains, encourage governments to enact and enforce anti-slavery laws, and conduct social science-based research on slavery and human trafficking. Free the Slaves seeks to create an inclusive and diverse movement, respecting the dignity and views of all people involved in eradicating slavery; base all strategies on accurate research; support sustainable solutions, preventing adverse repercussions for those we aim to assist; and seek guidance and ideas from agencies around the world that are carrying our local and regional anti-slavery programs.

3. Founded in 1994 with the assistance of The Sandler Family Supporting Foundation, the Human Rights Center (HRC) is a unique interdisciplinary research and teaching enterprise that reaches across academic disciplines and professions to conduct research in emerging issues in international human rights and humanitarian law. The HRC complements and supports the work of nongovernmental human rights organizations by drawing upon the creativity and expertise of researchers from several diverse university programs and departments including anthropology, demography, ethnic studies, geography, journalism, law, political science, and public health. The HRC collaborates closely with the International Human Rights Law Clinic and the Berkeley War Crimes Study Center at the University of California, Berkeley.

conditions, and a high demand for cheap labor. These conditions enable unscrupulous employers and criminal networks to gain virtually complete control over workers' lives.

The U.S. government has been a leader in recognizing and combating forced labor worldwide. The Trafficking Act embodies an aggressive, proactive approach to the problem of human trafficking and forced labor that:

- *criminalizes* procuring and subjecting another human being to peonage, involuntary sex trafficking, slavery, involuntary servitude, or forced labor;
- provides social services and legal *benefits* to survivors of these crimes, including authorization to remain in the country;
- provides funding to support *protection programs* for survivors in the United States as well as abroad; and
- includes provisions to *monitor and eliminate* trafficking in countries outside the United States.

Despite these considerable advancements, the Trafficking Act has some notable shortcomings. The act conditions immigration relief and social services on prosecutorial cooperation and thus creates the perception that survivors are primarily instruments of law enforcement rather than individuals who are, in and of themselves, deserving of protection and restoration of their human rights.

Furthermore, more proactive measures need to be taken to train law enforcement officers, particularly at the local level, to identify victims and forced labor operations; improve cooperation and information sharing on forced labor between federal and state agencies; revise procedures for the handling of survivors; and provide survivors with protection, benefits, and compensation.

By and large, victims of forced labor are reluctant to report abuse to law enforcement personnel because they fear retribution from their traffickers. Many victims also have an inherent fear of police based on their past experiences with corrupt authorities in their home countries and communities. To overcome these obstacles, there is an urgent need to train law enforcement personnel at all levels to recognize and assist trafficking victims.

Trafficking is defined almost exclusively as a federal crime to be handled by federal authorities. This limited mandate has hindered coordination between federal and state law enforcement agencies and, in turn, has allowed perpetrators of forced labor to go undetected. Moreover, federal law enforcement personnel are often unable to protect survivors and their families from traffickers because authorities lack the necessary legal tools, assistance, and funds to provide them with secure and safe refuge. Taken together, these obstacles can impede a survivor's willingness to cooperate in criminal investigations.

Forced labor survivors are at significant risk of developing health-related problems. Most survivors come from impoverished areas of the world where access to adequate health care is limited or nonexistent. Because forced labor victims often circumvent formal medical screenings for migrants, many arrive in the United States without proper immunizations and bearing communicable diseases. Once trafficked migrants reach their destination in the United States, they continue to face a variety of health risks as they begin working in dangerous and unregulated work environments. Those who work in the sex trade are especially

at risk of contracting HIV or other sexually transmitted diseases. Perpetrators of forced labor frequently use violence or the withholding of food as a means of “breaking,” controlling, and punishing their workers.

Victims of forced labor often suffer psychological assaults designed to keep them submissive. Cut off from contact with the outside world, they can lose their sense of personal efficacy and control, attributes that mental health professionals have long considered essential to good mental and physical health. In such situations, many forced labor victims become increasingly dependent on their captors, if merely to survive. While little is known about the specific psychological sequelae of forced labor, survivors often report feelings of depression, recurring nightmares, and panic attacks.

While the Trafficking Act has greatly amplified the federal government’s role in investigating and prosecuting forced labor cases in the United States, the job of providing basic social and legal services to survivors has fallen squarely on the shoulders of nongovernmental organizations (NGOs) and social service agencies. Yet fewer than half of these agencies are able to meet these needs. Social service agencies report that finding appropriate housing for survivors has been one of their greatest challenges. Housing that is safe and secure can protect survivors from their former captors. Yet housing of any kind can be costly for social service agencies. Much would be gained if these agencies were provided with greater financial support so that they could provide survivors of forced labor with safe and adequate housing and other basic legal and social services.

We recommend that the U.S. government undertake the following measures to combat forced labor in the United States:

1. *Start a broad-based awareness-raising campaign about human trafficking and forced labor in the United States with special attention to reaching immigrant communities.* Private citizens should be informed about the characteristics of forced labor operations and how to identify potential victims. Further, increased public awareness about the demand for goods and services provided by forced labor can foster public pressure on employers and manufacturers to eradicate conditions that generate market vulnerabilities to the use of forced labor.

2. *Improve the institutional capacity of law enforcement personnel at the local, state, and federal level to respond to forced labor and trafficking.* The U.S. government should increase training and coordination of officials involved in the identification, investigation, and prosecution of perpetrators. In addition, more resources should be devoted to enable service agencies to aid existing clients and to conduct outreach that might result in identifying more victims.

3. *Ensure better legal protections and monitoring of workers in sectors such as agriculture, domestic labor, garment manufacturing, and food service that are particularly vulnerable to forced labor and trafficking.* The U.S. government should promote accountability in sectors, especially agriculture and garment manufacturing, which use subcontracting systems that violate labor laws and practices.

4. *Correct aspects of migration policy that provide incentives for unscrupulous employers to use forced labor.* The U.S. government should eliminate the visa requirement that requires each worker to remain with one particular employer. This would help reduce the vulnerability of low-wage workers to exploitation.

5. *Strengthen protection and rehabilitation programs for survivors.* To address short-term needs of survivors, the U.S. government should create incentives for survivors to come forward and cooperate with law enforcement personnel. This includes developing mechanisms to protect victims and family members vulnerable to retaliation and threats by traffickers in home countries. U.S. authorities should also review eligibility requirements for immigration relief, as well as their administration, to ensure that they are consistent with the goal of supporting and protecting survivors. Increased public and private support to social service agencies is necessary to provide adequate, safe housing to survivors upon liberation from captivity. Once survivors feel safe and secure, they are more likely to aid law enforcement personnel in the prosecution of suspected traffickers.

## II.

### INTRODUCTION

#### MIGRANT-CAMP OPERATORS FACE FORCED LABOR CHARGES

The New York Times, June 21, 2002

#### TAKOMA PARK COUPLE ENSLAVED WOMAN

The Washington Post, June 10, 2003

#### SLAVERY IN FLORIDA'S CITRUS GROVES

The Miami Herald, Nov. 21, 2002

#### "COYOTES" OFFER EVIL DEAL: HONDURANS FORCED INTO PROSTITUTION

The Washington Times, July 23, 2002

For most Americans, the occasional newspaper headline is the only indication that forced labor exists in the United States. Each year, forced labor generates millions of dollars for criminals who prey on the most vulnerable—the poor, the uneducated, and the impoverished immigrant seeking a better life. Held as captives, victims of forced labor toil in slave-like conditions for months and even years with little or no contact with the outside world. Those who survive enslavement face enormous challenges as they struggle to regain control over their shattered lives. Forced labor is a serious and pervasive problem in the United States for four reasons: it is *hidden*, it is *inhumane*, it is *widespread*, and it is *criminal*.

#### *Forced Labor Is Hidden*

Each year thousands of men, women, and children are trafficked into the United States and forced to work without pay in deplorable conditions. Most of them are rarely seen in public places. Hidden from view, they toil in sweatshops, brothels, farms, and private homes. To prevent them from escaping, their

captors confiscate their identification documents, forbid them from leaving their workplaces or contacting their families, threaten them with arrest and deportation, and restrict their access to the surrounding community.

*Forced Labor Is Inhumane*

Victims of forced labor have been tortured, raped, assaulted, and murdered. They have been held in absolute control by their captors and stripped of their dignity. Some have been subjected to forced abortion, dangerous working conditions, poor nutrition, and humiliation. Some have died during their enslavement. Others have been physically or psychologically scarred for life. Once freed, many will suffer from a host of health-related problems, including repetitive stress injury, chronic back pain, visual and respiratory illnesses, sexually transmitted diseases, and depression.

*Forced Labor Is Widespread*

Forced labor exists in ninety cities across the United States. It is practiced in a wide range of industrial sectors, including domestic service, the sex industry, food service, factory production, and agriculture. In the last five years alone, the press has reported 131 cases of forced labor in the United States involving 19,254 men, women, and children from a wide range of ethnic and racial groups.<sup>4</sup> Although many victims are immigrants, some are U.S. residents or citizens.

*Forced Labor Is Criminal*

Forced labor is universally condemned and outlawed. Its practice in the United States violates a host of laws, including prohibitions on indentured servitude, money laundering, and tax evasion. Yet criminals find it a highly profitable and lucrative enterprise. Their workers are forced to be docile, and when problems arise, “employers” know they can rein workers in with threats and physical violence. Criminals also have learned that the odds are good that they will never be held accountable in a court of law.

*The Study*

The United States is at a critical juncture in its struggle to end forced labor. In 2000, the U.S. government enacted new laws to hold perpetrators of forced labor accountable and to assist survivors freed from captivity. Since then, both prosecutions of suspected wrongdoers and the number of social and legal service providers assisting survivors have increased exponentially. As efforts to stamp out forced labor gather speed, there is a need to evaluate the record to date and to propose new measures that will further strengthen the eradication of this egregious practice. To this end, Free the Slaves and the Human Rights Center at the University of California, Berkeley, with the assistance of the Center for the Ad-

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4. Of these 131 cases, 105 listed the number, or the estimated number of persons who had been found in a situation of forced labor.

vancement of Human Rights at Florida State University, conducted a study of the nature and scope of forced labor in the United States to assess efforts of the government and NGOs to address the problem and recommend measures to improve the U.S. response to forced labor.

The research team employed a combination of quantitative and qualitative research methodologies. To gain an understanding of the numbers, demographic characteristics, and origins of those in forced labor in the United States, we conducted:

- a survey of newspaper articles reporting incidents of forced labor between January 1998 and December 2003;<sup>5</sup>
- a telephone survey of forty-nine service providers that have worked with or are knowledgeable about forced labor cases;<sup>6</sup>
- a review of reports published by the U.S. government regarding the number of forced labor cases it has investigated and prosecuted.

To gain knowledge regarding the experience of survivors of forced labor and the adequacy of the United States response, we also conducted:

- a review of the U.S. and international laws regarding forced labor;
- interviews with key informants, including government officials, service providers, and advocates, who have extensive experience with forced labor;
- eight case studies of forced labor in different regions of the United States that illustrate how the problem has affected a wide range of economic and demographic sectors.<sup>7</sup>

Of the eight case studies selected for study, one involved forced prostitution, two involved servitude of domestic workers, two involved agricultural workers, two involved factory workers, and one involved children who had been sexually abused and forced to work in the restaurant and service industries. In conducting the case studies, researchers often encountered difficulty gaining access to survivors. Some service providers and advocates were unwilling to convey our request for participation in this study to their clients, citing the need to

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5. More than 300 published news reports for the period of January 1998 through December 2003 were reviewed for the survey. Cases that seemed to meet the criteria set out in ILO Convention 29 on forced labor were then coded into an SPSS format for analysis. When a case of forced labor was covered in more than one news report, the information from the multiple reports was combined into a single computer record. A total of 131 individual cases of forced labor were identified, each case having from one to thousands of victims. The following variables were recorded for each case: location of violation; city of violation; country of origin (victim); number in forced labor; whether a minor was involved; economic sector of exploitation; type of visa held by victim, if any; country of origin of perpetrator; story title and author; report citation; and contact name for story, if any.

6. A telephone research unit at Florida State University contacted forty-nine service provision agencies across the United States. Respondents in the agencies were asked a series of questions aimed at discovering if that agency had helped individuals who were caught in situations of forced labor. If such cases were reported, then questions were asked concerning the age and gender of the victims; the economic sector of exploitation; if the victims were minors, whether they had been sexually abused; the country of origin of the victim; the country of origin of the perpetrator; whether there had been arrests or prosecutions in relation to the case; the current situation of the victims; and further contact information for the agency. These data were then coded into an SPSS format for analysis.

7. Information for the case studies was gathered from a wide range of sources, including news reports, legal records, and interviews. The cases were selected to be illustrative of forced labor in different sectors and regions.



protect them from contact with individuals who were not directly involved in their cases. This access barrier to survivors may impede success of further research regarding the effects of forced labor on survivors and may influence how well clients are served by the current U.S. response. Despite this challenge, researchers interviewed six survivors.

*The Case against Kil-Soo Lee: Sweatshop Workers in American Samoa*

Kil-Soo Lee, a Korean businessman, recruited women primarily 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.

*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 \$2 million in restitution to several of his victims.

*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 deducted 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 wages owed them.

*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 700 Mexican and Guatemalan workers to labor for little or no pay. After R&A Harvesting employees attacked a van driver sus-

pected 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.

*The Case against the Cadena Family: Forced Prostitution in Florida and South Carolina*

Based in Mexico, 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.

*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, Veerapool confiscated the domestic worker's passport and then forced her 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.

*The Case against the John Pickle Company: Forced Labor in a Factory in Oklahoma*

In 2001, the Al-Samit International agency recruited qualified skilled workers in India by promising them good jobs in a factory that manufactured pressure valves in the state of Oklahoma. On arrival, the John Pickle Company forced the workers to surrender their travel documents, 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. They 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.

*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. They recruited the girls with the promise of studying

in the United States in exchange for providing childcare and domestic help. Once in the United States, the Satias confined the domestic servants to their homes and forced them to work 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 endured five years of exploitation. 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.

The rest of this report consists of six sections. Section 3 provides background and analysis of the causes and extent of forced labor in the United States. It reviews the literature and research on the structure of labor markets and their relationship to maintaining forced labor. It also examines data collected on forced labor to determine geographic and demographic patterns, as well as the occurrence of forced labor in particular economic sectors. Section 4 reviews the legal history of prohibitions against forced labor in the United States and at the international level. Section 5 examines the way in which U.S. laws are enforced against traffickers and used to assist survivors of forced labor. Section 6 discusses the impacts of trafficking and forced labor on the health of survivors. Section 7 sets out the numerous challenges that social and legal service providers face in their efforts to meet the needs of survivors. Finally, Section 8 presents our conclusions and recommendations to strengthen the U.S. response to forced labor.

### III.

#### ENDING FORCED LABOR IN THE UNITED STATES

Forced labor exists in the United States because factors in the U.S. economy, the legal system, and immigration policy support it. Forced labor is a problem that is driven by a growing “informal economy” in the United States. The International Labor Organization (ILO) defines an informal economy as “all remunerative work—both self-employment and wage employment—that is not recognised, regulated, or protected by existing legal or regulatory frameworks and non-remunerative work undertaken in an income-producing enterprise.”<sup>8</sup> Forced labor exists in both legal and illegal industries that are poorly regulated and fail to comply with U.S. labor laws. “Employers” in such industries are often criminal entrepreneurs for whom forced labor may be one of a number of illegal activities. Over time, such employers have found that forced labor can support a lucrative business through the ready availability of free labor, better and more varied transport, new methods of secure communications, and the increased permeability of borders.

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8. EMPLOYMENT SECTOR, INT’L LABOUR ORG., WOMEN AND MEN IN THE INFORMAL ECONOMY: A STATISTICAL PICTURE 12 (2002).

*Exposing Forced Labor*

U.S. NGOs deserve the lion's share of credit for exposing the existence of forced labor in the United States. The first major bust of a forced labor operation in recent years took place in 1995, when labor rights groups uncovered a sweatshop operated by a Chinese-Thai family in El Monte, California, a small community near Los Angeles. The seventy-two workers, most of them Thai women, had been held in a compound behind fences tipped with razor wire and forced to sew garments in slave-like conditions. Outrage over the case fueled efforts of a relatively small group of advocates and government officials to end such practices. The U.S. Congress responded by adopting the Victims of Trafficking and Violence Protection Act of 2000 (Trafficking Act).<sup>9</sup> One effect of this process is that policymakers and advocates have taken the lead in the struggle to end forced labor. The challenge now is to raise the public's awareness of the problem and to educate and equip state and local law enforcement to recognize and destroy forced labor operations.

Public awareness of forced labor is practically nonexistent in the United States. Occasionally, the police or a group of rights advocates will expose a forced labor operation, and invariably the media will depict it as a single and shocking event. But rarely do such exposés educate the public about forced labor's place and function within the U.S. economy.

Like the public, U.S. law enforcement is largely unaware of or poorly informed about the nature of forced labor and the plight of its victims. Because most victims of forced labor are undocumented workers or illegal aliens, law enforcement often regards them as criminals rather than victims ensnared in an illicit trade. This is largely because trafficking into forced labor is considered a federal crime. As a result, state and local law enforcement personnel lack basic training on identifying the crime, protecting victims, and bringing perpetrators to justice. Ironically, treating forced labor victims as criminals only makes it easier for an "employer" to get away with the crime because prosecutions rarely succeed without cooperative eyewitnesses.

*The Number of Victims*

Our data suggest that at any given time 10,000 or more people are working as forced laborers in the United States.<sup>10</sup> It is likely that the actual number reaches into the tens of thousands. Determining the exact number of victims, however, has proven difficult given the hidden nature of forced labor and the

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9. See Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 101-113 (2000).

10. We arrived at this estimation based on our survey of newspaper articles on 131 incidents of forced labor from January 1998 to December 2003. Of the 131 incidents, the number of people held in a situation of forced labor was reported in 105 cases. Totalling the reported numbers from these 105 cases, the survey revealed that 19,254 individuals had been subject to forced labor during this period. Our telephone survey of forty-nine social service providers revealed that the average period an individual is kept in forced labor is two to five years. This would suggest that at any given time 10,000 or more individuals are in conditions of forced labor in the United States. Though this figure is likely to be much higher, we have chosen a more conservative estimate given the absence of reliable data on the numbers of individuals in conditions of forced labor.

manner in which these figures are collected and analyzed. Data on victims of forced labor is further complicated by the U.S. government's practice of not counting the *actual* number of persons trafficked or caught in a situation of forced labor in a given year. Instead, it counts only survivors, defined by the Trafficking Act as victims of a "severe form of trafficking," who have been *assisted* in accessing immigration benefits. By this definition, the U.S. government reports that it has assisted approximately 450 survivors over the past three years.<sup>11</sup> Moreover, while the U.S. Department of Justice (DOJ) estimates 14,500 to 17,500 people are trafficked into the United States each year, it is unclear how these figures were calculated.<sup>12</sup>

### *Geographical Distribution of Victims*

Our data suggest that forced labor operations have existed in at least ninety U.S. cities over the past five years. This figure was derived from a press survey of 131 cases of forced labor and a telephone survey of forty-nine service providers across the United States. The press survey located cases of forced labor in sixty-four cities within the United States and its territories of Saipan and Guam, while service providers reported forced labor in thirty-eight cities in seventeen states, with twelve cities appearing in both surveys. The survey of service providers also revealed that the length of time victims were held in forced labor ranged from a few weeks to more than twenty years, with the majority of cases lasting between two and five years.

Our data also suggest that forced labor operations are concentrated in the states of California, Florida, New York, and Texas—all of which are transit routes for international travelers. Cities where reported forced labor occurred also tended to be in states with large populations and sizable immigrant communities. Our data is consistent with findings of the U.S. government. The U.S. Department of Justice reports that in 2003, the largest concentrations of survivors of trafficking who received federal assistance resided in California,

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11. U.S. DEP'T OF JUSTICE, REPORT TO CONGRESS FROM ATTORNEY GENERAL JOHN ASHCROFT ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS IN FISCAL YEAR 2003 16 (2004) [hereinafter REPORT FROM ATTORNEY GENERAL], available at <http://www.usdoj.gov/ag/speeches/2004/050104agreporttocongresstvprav10.pdf>.

12. *Id.* at 3. Government estimates of the numbers of victims trafficked into the United States annually has varied and, over time, the government has revised this figure downward. A report prepared at the request of the Central Intelligence Agency states that "an estimated 45,000 to 50,000 women and children are trafficked annually to the United States, primarily by small crime rings and loosely connected criminal networks." AMY RICHARD O'NEILL, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME iii (2000), available at <http://www.cia.gov/csi/monograph/women/trafficking.pdf>. However, in August 2003, the U.S. government released the *Assessment of U.S. Activities to Combat Trafficking in Persons*, in which it states: "The U.S. Government estimates that 18,000 to 20,000 people are trafficked annually into the United States." U.S. DEP'T OF JUSTICE, ASSESSMENT OF U.S. ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 3 (2003) [hereinafter ASSESSMENT], available at [http://www.usdoj.gov/crt/crim/wetf/us\\_assessment.pdf](http://www.usdoj.gov/crt/crim/wetf/us_assessment.pdf). The reports issued in 2003 and 2004 do not explain why the government estimate has dropped by over half since 2000.

Oklahoma, Texas, and New York.<sup>13</sup> In 2002, the DOJ reports that survivors of trafficking who received federal assistance resided in Texas (31%), Florida (19%), and California (14%).<sup>14</sup>

#### *Origins of Victims and Perpetrators*

The press and service provider surveys show that, as of December 2003, victims of forced labor came from thirty-nine countries, including the United States. The range of nationalities represents most regions of the developing world, as well as more developed countries like South Korea and those of Eastern Europe. The largest number of persons discovered to be in forced labor in the United States were Chinese, followed by Mexican and Vietnamese. Because no statistical sample has been drawn, it is important to note that these counts do not represent the actual distribution of nationalities of forced laborers in the United States, but the recorded nationalities may be thought of as indicative of the general pattern.

Human trafficking and forced labor are normally considered crimes that primarily involve foreign nationals, but our research recorded twenty cases involving approximately seventy-one victims who are U.S. citizens. It is possible that cases involving U.S. citizens are more likely to be detected and also more likely to gain press coverage, but until more comprehensive surveys are carried out, better estimations of the nationalities of forced labor victims will not be possible. The two combined surveys documented Chinese nationals as the largest group of victims (eleven cases with approximately 10,000 individuals). Mexican victims were the second-most numerous (twenty-five cases involving approximately 1500 individuals), followed by Vietnamese (six cases involving approximately 250 individuals).<sup>15</sup>

In contrast, the DOJ estimates that the countries of origin for the greatest number of survivors who received federal assistance in 2003 were India (38%), Vietnam (11%), Mexico (9%), Indonesia (5%), Tonga (5%), Zambia (5%), and Thailand (4%).<sup>16</sup> In 2002, the most common countries of origin were Honduras (36%) and Mexico (35%).<sup>17</sup>

Our data indicate the nationality or ethnicity of perpetrators closely matched that of victims. A common pattern is that those caught in situations of forced labor are brought into the United States and then exploited by perpetrators of the same nationality or ethnicity. Often the perpetrators are recently naturalized U.S. citizens with close ties to their country of origin. Russian-Americans, Chinese-Americans, and Mexican-Americans were all noted as perpetrators in cases in the surveys, primarily in the areas of prostitution, agricul-

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13. REPORT FROM ATTORNEY GENERAL, *supra* note 11, at 9. These concentrations reflect where survivors resided at the time they received federal assistance, not necessarily where the forced labor operations occurred. *Id.*

14. *Id.* at 9 n.1.

15. See Appendix for chart listing survey results.

16. REPORT FROM ATTORNEY GENERAL, *supra* note 11, at 10.

17. *Id.* at 10 n.1.

ture, and restaurant work. The economic sectors where longer-term U.S. citizens were found to be exploiting forced labor follow the same pattern. These sectors include prostitution and child sex exploitation (fourteen cases); agriculture (five cases); services, restaurants, and commercial (three cases); sexual abuse of children (three cases); domestic service (two cases); and mail-order brides (one case).

When the perpetrator was a U.S. citizen not of recent origin, the cases tended to concentrate in certain areas of exploitation, especially the sexual exploitation of children and the trafficking of very young children for adoption.

### *Economic and Demographic Sectors*

In our survey of press reports, forced labor was found predominantly in prostitution, domestic work, agriculture, sweatshop factories, restaurant and hotel work, and entertainment.<sup>18</sup> The DOJ data indicate similar findings; the highest concentrations of trafficking survivors who received federal assistance had been held as prostitutes, domestic servants, agricultural laborers and sweatshop factory workers.<sup>19</sup> By economic sector, the distribution of the recorded cases was fifty-eight prostitution cases (46.4%); thirty-four domestic service cases (27.2%); thirteen agricultural cases (10.4%); six sweatshop or factory cases (4.8%); five service, food, or care cases (3.8%); four sexual exploitation of children cases (3.1%); four entertainment cases (3.1%); and one mail-order bride case (0.8%).<sup>20</sup>

### *Prostitution and Sex Services*

The data from our press and service provider surveys suggest that prostitution is the sector in which the largest amount of forced labor occurs in the United States. It appears that the trafficking of women for prostitution and children for sexual exploitation are:

- highly profitable activities that are often tied to organized crime;
- driven by a demand for cheap sex services and child sex; and
- crimes that can be linked to existing migration patterns and immigrant community infrastructures that have emerged from the lack of safe and legal means of migration to the United States

Although little research exists addressing the connections between forced prostitution and existing “sex markets” in the United States, it stands to reason that these markets may encourage forced prostitution and the commercial sexual exploitation of children. These markets comprise a variety of activities, includ-

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18. In our eight case studies, the numbers of victims in each instance ranged from one to 700. Across the studies, there were 800 to 1100 individuals forced into agricultural work, 321 forced into sweatshop factory work, twenty-five to forty forced into prostitution, and three forced into domestic service. At least three, and possibly twenty-five, children were sexually exploited in addition to being forced into service sector work.

19. REPORT FROM ATTORNEY GENERAL, *supra* note 11, at 10.

20. In six cases, the press did not report the economic sector in which the forced labor occurred. Of the 131 cases of forced labor found in the survey of press reports, forty-five (36.3%) involved children. Approximately 1200 child victims (those under the age of eighteen) were exploited in these cases.

ing prostitution, pornography, striptease and erotic dancing, and peep shows, and they are sometimes under the control of organized crime networks.<sup>21</sup> While prostitution is illegal in most states of the United States, striptease is legal in many states, as is the sale of pornography, which is pervasive and constitutionally protected. For organized crime networks, the combination of legal and illegal sexual services is normally part of a larger portfolio of products and services that includes drugs and drug trafficking as well.

The connection between the demand for sex services and the sexual exploitation of women and children in the United States has not been researched in a comprehensive and conclusive way. We lack quantitative data on the magnitude of the demand for sex services, the organization of the sex service economy, and its regulation. Despite this paucity of information, there appears to be little question that traffickers would not be engaged in this lucrative trade if a considerable demand for it did not exist.

Our data suggest that sex traffickers usually recruit victims of their own nationality or ethnic background. Sex trafficking appears to be closely linked to migrant smuggling enterprises run by Asian, Mexican, and Eastern European organized crime networks, among others. Some of these operations feed victims into situations of forced labor. For example, for eighteen months, beginning in August 1996, the Cadena family trafficked twenty-five to forty women and girls from their hometown in Veracruz and forced them to work as prostitutes servicing migrant workers in the United States. It appears that the Cadenas targeted the migrant worker community by design. First, they recognized and promoted a demand for cheap sex services in communities of migrant workers and then supplied it. Second, they chose remote farms where the migrant workers were isolated, hidden from law enforcement, and unlikely to be visited by inspection teams from the Department of Labor. Finally, they were confident that neither the women nor the men, most of whom were undocumented immigrants, would report the operators to the authorities for fear of arrest and deportation.

### *Domestic Service*

According to our survey data, the second highest incidence of forced labor takes place in domestic service in U.S. homes. Two case studies of forced domestic servitude were made for this study, one involving two young women from Cameroon who were brought to a suburb of Washington, D.C., and the other involving a Thai woman who was brought to Los Angeles, California. Our study indicates that forced labor in domestic work is fueled by the following:

- the demand for cheap, exploitable household help;
- the lack of legal protections in the domestic service sector; and
- the absence of monitoring of work conditions

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21. JANICE G. RAYMOND & DONNA M. HUGHES, COALITION AGAINST TRAFFICKING IN WOMEN, SEX TRAFFICKING OF WOMEN IN THE UNITED STATES: INTERNATIONAL AND DOMESTIC TRENDS 8-9 (2001).



U.S. citizens and foreign nationals living in the United States bring thousands of domestic workers into the country, and many of them suffer abuse.<sup>22</sup> The captive servants have included women from Brazil, Ivory Coast, Ethiopia, Nepal, Ghana, and India. Such cases are driven by a burgeoning demand for cheap, docile, exploitable household labor.<sup>23</sup> Like agricultural workers, domestic workers have few legal protections.

U.S. labor law does not define household workers as “employees” under the National Labor Relations Act (NLRA), thus denying them certain protections and restricting their ability to organize for better wages and working conditions.<sup>24</sup> Another factor increasing their vulnerability is an immigration policy that allows domestic workers to be brought to the United States by their employers.<sup>25</sup> Visas normally require that domestic service workers remain with their original employer or face deportation. This requirement tends to discourage workers from reporting abuses. Additionally, some perpetrators are foreign nationals who rely on diplomatic immunity to shield themselves from punishment if their use of forced labor is uncovered.

Monitoring the working conditions of domestic service workers is also difficult because work takes place in private homes. In each of our case studies of domestic workers, the “employer” effectively isolated the worker through threats and intimidation. For example, in the case of forced domestic servitude in the Washington, D.C. area, the victims’ employers repeatedly lectured them about exaggerated dangers of life in the United States. The older survivor recalled her “boss,” Vivian Satia, telling her, “It’s not everybody can make it in America. It’s dangerous out there. . . . You can go out there and get killed.”<sup>26</sup> Satia and her sister told their captives that U.S. immigration authorities would be looking for them to arrest and deport them if they ventured outside alone.

### *Agriculture*

The agricultural sector experiences a high occurrence of forced labor in the United States. Farm workers in general are particularly vulnerable. A number of factors allow this:

- agricultural wages are stagnant and working conditions are poor;
- legal protections for agricultural workers are weak; and
- monitoring of work conditions is scant.

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22. Phuong Ly, *Pair Convicted of Enslaving Housekeeper*, WASH. POST, Dec. 21, 2001, at B1.

23. See BRIDGET ANDERSON & JULIA O’CONNELL DAVIDSON, IS TRAFFICKING IN HUMAN BEINGS DEMAND DRIVEN? 29-32 (Int’l Org. for Migration Research Series, No. 15, 2003).

24. National Labor Relations Act, 29 U.S.C. § 152(3) (2003) (“The term “employee” shall include any employee . . . but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home.”).

25. The U.S. government issues close to 4000 A-3 and G-5 visas for household employees of diplomats and employees of international agencies every year. Joy Mutanu Zarembka, *Maid to Order*, COLORLINES, Fall 2001, at 27. In addition, B-1 visas provide another option for foreign nationals and U.S. citizens with permanent residency abroad wanting to bring domestic help into the United States. *Id.*

26. David France, *Slavery’s New Face*, NEWSWEEK, Dec. 18, 2000, at 60.

Agriculture is one of the most profitable sectors of the formal economy.<sup>27</sup> The growing international demand for U.S. agricultural produce is increasing the demand for farm labor across the country. Each year more than 1.5 million seasonal farm workers cultivate and harvest produce in the United States.<sup>28</sup> Some 700,000 of these workers are migratory, following the harvest from place to place.<sup>29</sup> In spite of the expansion in agricultural production, farm worker wages and housing conditions are stagnant or declining.<sup>30</sup> Like domestic workers, agricultural workers are not “employees” under the NRLA<sup>31</sup> and are not guaranteed certain protections, making it difficult to organize and negotiate collectively with employers. When depressed wages, poor working conditions, and a lack of legal protections are combined with an increasing demand for cheap farm labor, the result is a continuum of abuses of which forced labor is the most extreme.<sup>32</sup>

Labor inspectors work to stem forced labor by enforcing labor laws, primarily the Migrant and Seasonal Agricultural Worker Protection Act (MSPA)<sup>33</sup> and the Fair Labor Standards Act (FLSA).<sup>34</sup> These laws mandate the payment of minimum wage and the regulation of deductions from workers’ pay to ensure that workers are not paid below the federal minimum wage, regardless of their immigration status. The MSPA also mandates that migrant labor contractors—companies that supply farm labor to growers—must be registered with the Department of Labor. Both immigration and labor laws hold the labor contractor rather than the grower responsible for the legal rights of workers.<sup>35</sup> It is common for growers to hire workers through farm labor contractors.<sup>36</sup> The Department of Labor can revoke the permit of a contractor who has a history of violations. Legal advocates and government labor inspectors also can pursue

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27. The U.S. Department of Agriculture forecasts record growth of U.S. agricultural exports of \$59.5 billion for the 2004 fiscal year—a six percent increase in exports for 2003. ECON. RESEARCH SERV., U.S. DEP’T OF AGRIC., ELEC. OUTLOOK REPORT AES-40, OUTLOOK FOR U.S. AGRIC. TRADE, 1 (2003), available at <http://usda.mannlib.cornell.edu/reports/erssor/trade/aes-bb/2003/aes40.pdf>. In addition, U.S. agricultural exports have grown steadily from \$49.1 billion in 1999 to \$56.2 billion in 2003. *Id.*

28. DANIEL ROTHENBERG, WITH THESE HANDS: THE HIDDEN WORLD OF MIGRANT FARM WORKERS TODAY xiii (1998).

29. *Id.*

30. See generally DAVID GRIFFITH & ED KISSAM, WORKING POOR: FARMWORKERS IN THE UNITED STATES 30-31 (1995); U.S. DEP’T OF LABOR, RESEARCH REPORT NO. 8, FINDINGS FROM THE NATIONAL AGRICULTURAL WORKERS SURVEY (NAWS) 1997-1998, at 33 (2000).

31. 29 U.S.C. § 152(3).

32. In this context, we are referring to abuses other than those detrimental to workers’ health, including death and debilitating injuries or sickness that can be caused by the dangerous working conditions.

33. See 29 U.S.C. § 1801 *et seq.* (2003).

34. See 29 U.S.C. § 201 *et seq.* (2003).

35. Griffith and Kissam observe: “Because growers can hold farm labor contractors responsible for laws governing the treatment of farm labor, enforcement agencies have shifted their attention from growers to farm labor contractors. Under these conditions, enforcement becomes a greater problem . . . .” GRIFFITH & KISSAM, *supra* note 30, at 291.

36. ROTHENBERG, *supra* note 28, at 91; Andy Furillo, *Toiling under Abuse: Farm Workers’ Struggle Goes On*, SACRAMENTO BEE, May 20, 2001, at A1 (“Instead of growers directly hiring their workers, they are now employing middlemen—farm labor contractors—to round up their pickers and pruners.”).

civil suits against employers who use forced labor and violate the MSPA and FLSA.

While the legal mechanisms exist, the Wage and Hour Division of the U.S. Department of Labor does not have the resources to effectively investigate sectors such as private households (in the case of domestic services) or the vast U.S. agriculture market.<sup>37</sup> There are insufficient resources to prosecute the volume of forced labor cases. A Department of Labor spokesperson reflected, "These cases take a lot of resources to get the evidence needed to try perpetrators. And when we do have a criminal case, we lose an investigator for a long period of time."<sup>38</sup>

We can examine the prevalence of forced labor in agriculture by looking at the example of the citrus industry in southwest Florida. Florida's economy benefits from the nearly \$1 billion generated by agricultural sales per year in this region.<sup>39</sup> During the 1995/1996 season, citrus sales alone totaled \$243.6 million, despite below-average citrus prices.<sup>40</sup> Furthermore, citrus production is rising in southwest Florida, and experts anticipate that it will increase by thirty percent from 1998 to 2008.<sup>41</sup> The increased production will rely on a growing supply of farm labor. Today, work crews composed largely of immigrants from Mexico and Central America provide this labor.<sup>42</sup> Farm workers in Florida are predominantly immigrants, almost half of whom are undocumented, reflecting a trend seen throughout the United States.<sup>43</sup>

Since the late 1990s, farm labor contractors Ramiro, Jose, and Juan Ramos have supplied labor to harvest oranges and other citrus products for some of the largest citrus growers in the United States. Between January 2000 and June 2001, the Ramos family forced approximately 700 Mexican and Guatemalan

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37. Interview by Steven Lize with anonymous official, Wage and Hour Division, U.S. Dep't of Labor, location confidential (Sept. 4, 2003). The Wage and Hour Division, Department of Labor, which is responsible for administering the Fair Labor Standards Act, has found that relying on complaints alone to investigate labor law violations is not effective in ensuring compliance. In response, the Wage and Hour Division has moved to directed investigations of employers in targeted industries. To date, about seventy percent of their investigations have been complaint-based and thirty percent have been targeted. *Id.*

38. *Id.* A Department of Labor spokesperson commented that the agency has improved its investigations by hiring more multilingual and multicultural investigators: "[B]ecause of the way investigators look, even if they speak the workers' language, the workers do not open up. So we are also trying to diversify culturally and ethnically." Interview by Laurel Fletcher and Jolene Smith with anonymous official, U.S. Dep't of Labor, location confidential (July 1, 2003). Workers also fear that if the employer is investigated, they will not be paid, will be "blacklisted," or will be deported. *Id.* The Department of Labor spokesperson recognized other threats, commenting, "It has been alleged that in rural areas, nobody will blow the whistle because they think bad things can happen to them." *Id.*

39. FRITZ ROKA & DOROTHY COOK, FARMWORKERS IN SOUTHWEST FLORIDA 3 (1998).

40. *Id.* at 3-4.

41. *Id.* at 6.

42. See GRIFFITH AND KISSAM, *supra* note 30, at 29-30; see generally U.S. DEP'T OF LABOR, *supra* note 30, at 5.

43. In a census conducted in 1997 and 1998, the U.S. Department of Labor found that eighty-one percent of all farmworkers employed in U.S. crop production were foreign-born and that seventy-seven percent were born in Mexico. Furthermore, over half (fifty-two percent) of the farmworkers were working without authorization. U.S. DEP'T OF LABOR, *supra* note 30, at 5, 22.

workers, predominantly men, to work without pay, or for far less than minimum wage, under threat of violence. They instituted this coercive control under the pretense of collecting debt owed for transport from Arizona to Florida and for work equipment, housing, utilities, and other necessities.

The extent of the problem stretches beyond Florida's citrus industry. In June 2002, the U.S. Justice Department indicted six New York agricultural labor employers on forced labor charges.<sup>44</sup> In June 2003, a federal grand jury indicted a Hawaiian man on charges of smuggling four Tongan nationals into Hawaii and forcing them to work for his pig farm and rock-wall business.<sup>45</sup> The Hawaiian man beat the Tongans with his fists, rocks, and tools and threatened them with deportation if they tried to leave.<sup>46</sup> In September 2003, a federal grand jury convicted two New Hampshire employers of forcing four Jamaican nationals to labor in their tree service business by confiscating their passports and threatening them with physical violence.<sup>47</sup> The U.S. DOJ reported that one of the employers "physically assaulted one of the men and [the other employer] ordered his dog to attack the man as he was fleeing."<sup>48</sup>

### *Sweatshops*

Sweatshop manufacturing, where employers run factories that violate labor laws, is another economic sector that utilizes forced labor in the United States. This report looks at the largest single case of forced labor—in which over 200 workers were enslaved—that arose in a sweatshop garment factory in the U.S. territory of American Samoa. It appears that this sector is vulnerable to forced labor because:

- competitive pressures on manufacturers who locate within the United States force wages down;
- manufacturers operate within the informal economy and evade monitoring or enforcement of labor laws; and
- merchandise produced in U.S. island territories carries a "Made in the U.S.A." label, yet workers enjoy fewer rights and labor protections than their counterparts on the mainland.

Most individuals associate sweatshops with less developed countries, but industry pressures on, for example, U.S. textile and clothing manufacturers, encourage employers to locate factories in close proximity to retailers.<sup>49</sup> If producers stay in the United States, they must compete with lower-wage manufacturers in other countries. Most of the U.S. garment and textile industry is concentrated around New York City and Los Angeles, California, close to the

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44. Press Release, U.S. Department of Justice, Six Indicted in Conspiracy for Trafficking and Holding Migrant Workers in Conditions of Forced Labor in Western New York (June 19, 2002), available at [http://www.usdoj.gov/opa/pr/2002/June/02\\_crt\\_360.htm](http://www.usdoj.gov/opa/pr/2002/June/02_crt_360.htm).

45. Vicki Viotti, *Waipahu Man Accused of Human Trafficking*, HONOLULU ADVERTISER, June 14, 2003.

46. *Id.*

47. Press release, U.S. Department of Justice, Jury Convicts New Hampshire Couple of Forced Labor (Sept. 2, 2003), available at [http://www.usdoj.gov/opa/pr/2003/September/03\\_crt\\_481.htm](http://www.usdoj.gov/opa/pr/2003/September/03_crt_481.htm).

48. *Id.*

49. PETER STALKER, WORKERS WITHOUT FRONTIERS 46 (2000).

creative centers of fashion design.<sup>50</sup> According to the Union of Needle Trades and Industrial Textile Employees, seventy-five percent of all New York apparel manufacturing firms are sweatshops.<sup>51</sup> That competition is pressing manufacturers who choose to remain in the United States to reduce their labor costs to a minimum. In some cases, this can mean resorting to forced labor.

Sweatshops are susceptible to forced labor because they frequently operate within the informal economy, frustrating attempts to monitor or enforce labor law regulation. Like agriculture and domestic service, sweatshop manufacturing is a sector in which there are few protections for workers and little monitoring of labor law compliance.<sup>52</sup> Forced labor in U.S. garment factories came to light in 1995, when the group of Thai captive workers in El Monte, California, was freed.<sup>53</sup> Our forced labor case study of Kil-Soo Lee, the American Samoan garment manufacturer whose workers produced garments for major U.S. clothing retailers, is an example of how weak labor protections facilitate forced-labor schemes.

Minimum wage standards in American Samoa are lower than in mainland United States. Lack of workplace inspections or labor law enforcement, combined with the workers' fear of making complaints, create a context in which forced labor may occur. The workers' fears come, in part, from the extensive control exercised by employers. The Samoan immigration board has the power to deport an immigrant worker in response to a request from an employer who wishes to terminate the worker's employment.<sup>54</sup> According to an official from the Samoan governor's office, once the immigration board has processed the worker on arrival in American Samoa and issued him or her an identification card, the board has no proactive role and becomes substantially involved in a worker's affairs only if the worker lodges an objection to a request for deportation.<sup>55</sup> Workers fear complaining and have few legal tools to help them fight back.

In addition to the international agreements it has ratified, the United States has broad and stringent laws against all forms of forced labor. The next section of this report explains this legal structure in more detail and highlights the way in which the law has continually sought to respond to the challenges of eliminating forced labor.

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50. ELLEN ISRAEL ROSEN, MAKING SWEATSHOPS: THE GLOBALIZATION OF THE U.S. APPAREL INDUSTRY 3, 137 (2002).

51. *Id.* at 227.

52. Ellen Israel Rosen observes, "Sweatshops in the United States are not simply firms that offer undesirable jobs for long hours and poor pay. They are firms paying wages that violate federally mandated minimum wage standards as well as other employment standards set forth in the Fair Labor Standards Act. Sweatshops may employ women without sufficient education for better jobs, or women immigrants, both legal and illegal, who lack language skills. Frequently, official employment and wage data fail to reflect these firms." *Id.* at 226-27.

53. *Id.* at 2.

54. *Nguyen Thi Nga v. Daewoosa Samoa*, Nos. 133-99, 68-99, 93-00 (Am. Samoa decided Apr. 16, 2002).

55. Interview by Natalie Hill with anonymous official, Am. Sam. Governor's Office, location confidential (July 25, 2003).

## IV.

## THE U.S. LEGAL RESPONSE TO FORCED LABOR

Throughout U.S. history, perpetrators of forced labor have been one step ahead of the law. In 1865, the Thirteenth Amendment of the U.S. Constitution outlawed chattel slavery and involuntary servitude.<sup>56</sup> Yet in the years following the American Civil War, Southern white landowners lured thousands of newly freed slaves and immigrants into peonage as sharecroppers on their plantations and farms. In response, the U.S. Supreme Court issued a series of opinions stating that the Constitution's prohibition against slavery was intended to go beyond situations of ownership to stamp out "any other kind of slavery, now or hereafter."<sup>57</sup> In 1874, in response to a new form of human trafficking, Congress adopted the "Padrone statute"<sup>58</sup> to combat the practice of kidnapping boys in Italy to be used as shoeblacks, street musicians, and beggars on the streets of American cities.<sup>59</sup> In 1910, in an effort to curb prostitution, Congress passed the Mann Act, which imposed stiff penalties on traffickers of women within U.S. borders.<sup>60</sup>

Still, unscrupulous employers continued to find new ways of compelling workers—many of whom were newly arrived immigrants—to work under slave-like conditions. In the early 1940s, the Supreme Court ruled that employers could not force workers to remain in their jobs,<sup>61</sup> nor could they penalize them for leaving their employment.<sup>62</sup> Congress went on to enact a federal law in 1948 specifically criminalizing "peonage,"<sup>63</sup> or the practice of holding someone captive to work off a debt, and involuntary servitude,<sup>64</sup> whereby an individual is *forced* to work against his or her will. Despite this landmark legislation, U.S. courts generally interpreted the law to mean that criminal sanctions could only be imposed against perpetrators who used physical force or threats and *not* psychological coercion or trickery to hold victims in bondage.<sup>65</sup> This limitation in the application of the law was eliminated with the passage of the Trafficking Act of 2000.

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56. U.S. CONST. amend. XIII ("Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.").

57. *Slaughter-House Cases*, 83 U.S. 36, 72 (1872).

58. Act of June 23, 1874, ch. 464, 18 Stat. 251.

59. *United States v. Kozminski*, 487 U.S. 931, 947 (1988) (quoting 2 Cong. Rec. 4443 (1874) (Rep. Cessna)).

60. See 18 U.S.C. §§ 2421-2424 (2003).

61. *Pollock v. Williams*, 322 U.S. 4, 17-18, 24 (1944).

62. *Id.*

63. 18 U.S.C. § 1581 (2003).

64. 18 U.S.C. §§ 1583-1584 (2003) (outlawing enticement and sale into involuntary servitude).

65. See, e.g., *Kozminski*, 487 U.S. 931 (1988); *United States v. Shackney*, 333 F.2d 475 (2d Cir. 1964).

*International Prohibitions against Forced Labor*

The first international agreement abolishing slavery dates to the League of Nations Slavery Convention of 1926. The convention defined slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”<sup>66</sup> It declared slavery a “crime against humanity,” and the slave trader *hostis humani generis* and an enemy of all humankind over whom any state could hold criminal jurisdiction. Thirty years later, the U.N. Supplementary Convention on Slavery proscribed slavery-like practices, including bondage, serfdom, the forcing or sale of a woman into marriage, and the sale of children into labor.<sup>67</sup>

By the early twentieth century, as chattel or legal slavery was fading as a practice, colonial powers had begun imposing mass forced labor on indigenous populations under their control. In response, the International Labor Organization (ILO) adopted Forced Labor Convention 29, which outlawed forced labor, defined, with some exceptions, 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.”<sup>68</sup> During the Second World War, forced labor persisted and took on unprecedented forms. At the height of the Nazi regime, one quarter of Germany’s workforce, comprised mostly of foreign civilians, worked as forced laborers.<sup>69</sup> During the final months of the regime, large numbers of Jewish and other prisoners held in German concentration camps were compelled to work in a range of economic sectors, including munitions and massive construction projects. The Japanese military also forced as many as 700,000 Koreans, 40,000 Chinese, hundreds of thousands of other Asians, and up to half of the 140,000 Allied prisoners to work under brutal conditions in mines, steel plants, and construction.<sup>70</sup> After the war, in 1949, the international community adopted the Geneva Conventions, imposing minimum conditions under which prisoners of war and civilians may be forced to work during times of armed conflict.

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66. Convention to Suppress the Slave Trade and Slavery, *adopted* Sept. 25, 1926, art. 1(1), 46 Stat. 2183, 2191, 60 L.N.T.S. 253, 263.

67. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *adopted* Sept. 7, 1956, art. 1(a)-(d), 7(b), 18 U.S.T. 3201, 3204-5, 3206, 266 U.N.T.S. 40, 41, 43.

68. Forced Labour Convention, *supra* note 1, at 58. The ILO Forced Labour Convention is the most widely ratified ILO convention with 139 state parties. It should be noted, however, that not all forms of forced labor are prohibited under the ILO forced labor conventions. Exemptions that would have otherwise fallen under the definition of forced labor include prison labor with restrictions, work as part of “the normal civic obligations of the citizens of a fully self-governing country,” and labor “exacted in virtue of compulsory military service laws for work of a purely military character.” *Id.* The right of a government to exact forced labor in a time of emergency is also exempted from the forced labor conventions. *Id.*

69. MICHAEL THAD ALLEN, *THE BUSINESS OF GENOCIDE: THE SS, SLAVE LABOR, AND CONCENTRATION CAMPS 1* (2002).

70. Adam Jones, Gendercide Watch, *Case Study Corvée (Forced) Labor* (2002), available at [http://www.gendercide.org/case\\_corvee.html](http://www.gendercide.org/case_corvee.html).

*International Human Trafficking and Forced Labor*

The first international agreement to prohibit human trafficking was the U.N. 1949 Convention for the Suppression of Trafficking in Persons and the Exploitation of the Prostitution of Others.<sup>71</sup> An amalgamation of late nineteenth and early twentieth-century treaties drafted to address the phenomenon of “white slavery,” the Convention defined trafficking solely in terms of prostitution, which limited its ability to combat other forms of human trafficking not linked to sexual exploitation. The 1979 International Convention on the Elimination of Discrimination Against Women went on to call on states “to suppress all forms of traffic in women and exploitation of prostitution of women.”<sup>72</sup> But it was not until 2000, when the international community adopted the Convention Against Transnational Organized Crime and the accompanying Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), that international law would really begin targeting modern forms of human trafficking.<sup>73</sup>

The Trafficking Protocol adopts a broad definition of trafficking that enshrines three concepts: (1) the movement of individuals (2) through deception or threats (3) *for the purpose of exploitation*.<sup>74</sup> Exploitation covers a wide range of practices, including sexual exploitation, forced labor, slavery or practices akin to slavery, and the removal of organs. The Trafficking Protocol calls on states to criminalize human trafficking, create measures to prevent it, and address the needs of victims. Preventative measures required by the protocol include dissemination of information, partnerships with civil society to address the issue, and poverty reduction programming.

*Domestic Legislation: The Trafficking Act*

The Victims of Trafficking and Violence Protection Act of 2000<sup>75</sup> is a bold departure from prior approaches to trafficking and forced labor in the United States. Recognizing that these crimes are global problems, the law established

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71. Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, *adopted* Mar. 21, 1950, 96 U.N.T.S. 271 (entered into force July 25, 1951).

72. Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, art. 6, 1249 U.N.T.S. 13, 17. The United States signed the agreement in 1986 but has not yet ratified it.

73. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 43, 60, U.N. Doc. A/55/49 (2000).

74. The protocol in article 3(a) defines trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, or deception, of the abuse of power or of a 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 a minimum, the exploitation of the prostitution of others or other forms of sexual slavery, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs.” *Id.* at 61.

75. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, Div. A, § 101, 114 Stat. 1464, 1466 (codified as amended at 22 U.S.C. §§ 7101-7110 (2000)) [hereinafter The Trafficking Act].



the Office to Monitor and Combat Trafficking in Persons in the U.S. State Department to oversee a wide range of efforts to end human trafficking abroad. The Trafficking Act:

- criminalizes procuring and subjecting another human being to peonage, involuntary sex trafficking, slavery, involuntary servitude, or forced labor;
- provides social services and legal benefits to survivors of these crimes, including authorization to remain in the country;
- provides funding to support protection programs for survivors in the United States as well as abroad; and
- includes provisions to monitor and eliminate trafficking in countries outside the United States.

Most important, the law distinguishes smuggling—a victimless crime by which migrants cross borders without authorization—from trafficking—a practice by which individuals are induced by force, fraud, trickery, or coercion to enter the United States and then forced to work against their will. The law clearly specifies that those caught up in trafficking and forced labor should be recognized as *victims* of a crime rather than treated as unauthorized migrants who must be returned to their countries of origin.

Labor and human rights activists welcomed the passage of the Trafficking Act in 2000 for many reasons. The new law sharpened the legal teeth of existing sanctions against involuntary servitude, peonage, and slavery by adding new crimes of human trafficking, sex trafficking, forced labor, and document servitude (withholding or destroying documents as part of a trafficking scheme).<sup>76</sup> Trafficking is defined as the prohibition against any individual who provides or obtains the labor or services of another through peonage, slavery, involuntary servitude, or forced labor. The act defines illegal trafficking as providing or obtaining the labor or services of another through peonage, slavery, involuntary servitude, or forced labor.<sup>77</sup> The law also contains a provision that sanctions trafficking adults into the sex industry through force, fraud, or coercion.<sup>78</sup>

The Trafficking Act thereby strengthened the tools for both law enforcement investigation and the prosecution of criminals trafficking people into forced labor. Thus far, the U.S. government has prosecuted 110 traffickers under the new forced labor and trafficking statutes.<sup>79</sup> As of April 2004, there were

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76. 22 U.S.C. §§ 7101(b)(2)-(3), 7102(8). The Trafficking Act definition of forced labor is narrower than that in ILO Convention 29, as it sanctions compelled labor secured through specific types of threats, rather than labor secured through the more general “menace of penalty.” ILO Convention 29 stipulates that the work of convicted prisoners should be carried out “under the supervision and control of a public authority and that the [prisoner] is not hired to or placed at the disposal of private individuals, companies or associations.” Forced Labour Convention, *supra* note 1. Like ILO Convention 29, the Thirteenth Amendment to the U.S. Constitution also recognizes punishment for a crime as an exception to slavery and involuntary servitude. The United States permits prison labor in a variety of contexts and this practice has been the subject of prior ILO studies. See, e.g., INT’L LABOUR CONFERENCE, 89TH SESSION, INT’L LABOUR OFFICE, REPORT I(B), STOPPING FORCED LABOUR: A REPORT OF THE DIRECTOR GENERAL 69 (2001).

77. See 22 U.S.C. § 7102(8)(B).

78. 22 U.S.C. § 7102(8)(A). In the case of victims under eighteen years old, there is no requirement of force, fraud, or coercion. *Id.*

79. REPORT FROM ATTORNEY GENERAL, *supra* note 11, at 18-21.

153 open investigations of trafficking cases, double the number of cases the DOJ had open in January 2001.<sup>80</sup> The investigation and prosecution of trafficking cases takes from eight months to three years from the initial law enforcement response to sentencing. Since January 2001, the DOJ has charged 110 defendants and convicted or secured sentences for seventy-seven perpetrators of forced labor or human trafficking in thirty-two cases.<sup>81</sup> The DOJ identifies twenty of these trafficking cases as involving sex trafficking or sex abuse.<sup>82</sup> It should be noted, however, that it is very difficult to classify trafficking cases as purely forced labor or sex trafficking because in many instances when the victim is a woman or child, she is both sexually abused and forced to work. The DOJ does not make statistics available on details of exploitation in each case.

The act not only strengthened laws so that traffickers could be held accountable for their crimes, but it also provided specific measures to address the unique needs of trafficking victims. To begin with, it offered temporary immigration status to victims of a “severe form of trafficking” (minors trafficked for commercial sex and trafficking of adults through deception to work against their will).<sup>83</sup> Through the T visa, nonresidents who are willing to cooperate with law enforcement to prosecute their traffickers are eligible to remain in the United States and to receive the same social service assistance offered to refugees, even where victims have entered the United States without proper immigration documents. Victims who are able to provide information to law enforcement, but who are unable to cooperate fully, are also eligible for temporary immigration relief.<sup>84</sup> Family members of victims are also eligible for protection and are given the opportunity to reunite with the survivor in the United States. The act also enabled survivors to receive housing, psychological counseling, and other social service needs.

Finally, the act enlarged the repertoire of law enforcement tools to combat trafficking. It broadened the definition of “coercion” for the new crimes of forced labor and sex trafficking to include psychological manipulation.<sup>85</sup> This means alleged perpetrators can be held accountable if they caused a victim to believe that his or her failure to comply with their orders would result in serious harm to the victim or to others. As noted above, psychological coercion was previously insufficient to prove involuntary servitude. The law also criminalized the confiscation or destruction of identity or travel documents, a practice

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80. *Id.*

81. *Id.*

82. *Id.*

83. 22 U.S.C. § 7105(b)(1)(B)-(C).

84. *See* 22 U.S.C. § 7105(b)(1). Victims of trafficking are eligible for a U visa, which provides witnesses of crimes with temporary status and permission to work. Regulations for the U visa, however, have not yet been adopted and so are not readily available. U visas, though providing less protection than the T visas available to severe victims of trafficking who cooperate with law enforcement, may be a more appropriate option for those victims who are too traumatized to provide testimony and so cannot be certified as cooperating with a prosecution. In other circumstances, a victim might not have the opportunity to cooperate if, for example, the trafficker has already been convicted (perhaps by the state) and federal prosecutors decide not to pursue federal charges.

85. *See* 22 U.S.C. § 7102(2).

traffickers often use to control their victims,<sup>86</sup> and enabled prosecutors to pursue not just the ringleaders, but all those involved in a trafficking operation, including recruiters, drivers, and other intermediaries.

Such progress notwithstanding, the Trafficking Act does have some notable shortcomings, the effects of which will be explored more fully in the following sections. Advocates and service providers criticize the framework of the Trafficking Act, which conditions benefits on the cooperation of survivors with federal law enforcement. Qualified trafficking survivors are eligible for two types of immigration relief—"continued presence" and a T visa—both of which grant authorization to work and entitle survivors to receive social service benefits, but are impossible to obtain without assistance from law enforcement personnel. Only federal law enforcement personnel may request continued presence.<sup>87</sup> Survivors may apply on their own for a T visa, but applicants over fifteen years old must document that they are cooperating with law enforcement.

Although not strictly required, an endorsement from federal law enforcement is the preferred evidence of cooperation. State and local law enforcement agencies that encounter trafficking victims are encouraged to refer these cases to the federal government.<sup>88</sup>

#### *U.S. Legal Response to Forced Labor Abroad*

The United States has used its laws and courts in an effort to eradicate forced labor beyond its borders. Under the Trafficking Act of 2000, the State Department, through its Office to Monitor and Combat Trafficking in Persons, reports annually on the efforts of countries to combat human trafficking based on compliance with a set of minimum standards, including the existence of domestic legislation outlawing trafficking and punishing traffickers.<sup>89</sup> Countries are classified into one of three categories: full compliance (Tier 1), making significant efforts to comply (Tier 2), or not in compliance and not making significant efforts to do so (Tier 3).<sup>90</sup> Tier 3 countries may be sanctioned in the form of loss of nonhumanitarian, non-trade-related assistance.<sup>91</sup>

In addition to the Trafficking Act, the Smoot-Hawley Tariff Act of 1930 and the Alien Tort Claims Act of 1789 provide additional avenues to combat forced labor outside the United States. The Smoot-Hawley Act, which defines forced labor similarly to ILO Convention No. 29, prohibits importation of goods

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86. 18 U.S.C. § 1592.

87. See 22 U.S.C. § 7105(c)(3).

88. On December 19, 2003, President George W. Bush signed a new law that makes it easier for survivors cooperating with state and local law enforcement to qualify for immigration relief and benefits. See Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-93, 117 Stat. 2875 (2003). Even with the new law, however, advocates question the wisdom of making access to benefits subject to cooperation with law enforcement because of the additional burdens it puts on survivors who are extremely vulnerable.

89. 22 U.S.C. § 7107(b)(1).

90. See 22 U.S.C. § 7107(b)(1)(A)-(C).

91. 22 U.S.C. § 7107(c)-(f).

manufactured with forced labor.<sup>92</sup> Although not widely invoked, the Smoot-Hawley Act includes a ban, adopted in 1998, on the import of all goods made with child labor. It also expresses U.S. support for the international prohibition on child labor.<sup>93</sup> The Alien Tort Claims Act enables foreign victims of slavery, forced labor, or other serious human rights violations to sue their abusers in U.S. courts for conduct that occurred outside the United States. Traditionally, this law has been used against foreign government officials. Burmese citizens, however, have recently sought to apply the statute against the U.S.-based Unocal Corporation for its use of forced labor during the construction of a natural gas pipeline across the rural Tenasserim region of Burma.<sup>94</sup>

### *Relation of the United States to International Trends*

In many ways, the United States has been at the forefront of the fight against modern slavery and forced labor. Unlike international law, U.S. domestic legislation recognizes that slavery is defined primarily by the power of an individual to control another for economic gain.<sup>95</sup> Historically, the federal government has expanded this principle by adopting laws to respond specifically to the evolving nature of forced labor and enslavement. Moreover, while the definitions and philosophy of trafficking in the U.N. Trafficking Protocol and the U.S. Trafficking Act are similar, the United States has adopted a more aggressive, proactive approach to the problem than the one outlined in the international agreement. For example, unlike the Trafficking Protocol, the Trafficking Act contains international monitoring and sanctions provisions. Similarly, while the protocol does not allow victims to seek relief from perpetrators, the Trafficking Act establishes mandatory restitution from convicted traffickers.<sup>96</sup> A recent

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92. The law prohibits the importation of “goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions.” Smoot-Hawley Tariff Act of 1930, 19 U.S.C. § 1307 (2003).

93. Unfortunately, application of international standards is hampered because Customs regulations do not define the age of a child. Donna L. Bade, *Corporate Responsibility and U.S. Import Regulations against Forced Labor*, 8 TULSA J. COMP. & INT’L L. 11 (2000). U.S. companies tend to define “child labor” according to varying standards, such as by the legal age in the manufacturing country, the legal age in the United States, or a combination of the two. *Id.*

94. *See Doe v. Unocal Corp.*, Nos. 00-56603, 00-57197, 00-55628, 00-57195, 2002 U.S. App. LEXIS 19263 (9th Cir. filed Sept. 18, 2002). Burmese villagers brought suit under the Alien Tort Claims Act and other federal laws against U.S.-headquartered Unocal Corporation for aiding and abetting the Burmese military in subjecting the villagers to forced labor, murder, rape, and torture during the building of a natural gas pipeline across the rural Tenasserim region of Burma. The federal appellate court ruled in favor of the plaintiffs to allow the case to proceed to trial in 2002. *Id.* In July 2003, however, the case was reheard *en banc* by an expanded panel of appellate judges that, at the time of writing, has not yet issued a ruling.

95. Nevertheless, there is a growing tendency in international law to expand the definition of slavery. For example, the U.N. Working Group on Contemporary Forms of Slavery provided in 1997 that “slavery” encompasses a range of contemporary human rights violations, including the exploitation of child labor, debt bondage, and traffic in persons. *See UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, FACT SHEET NO. 14, CONTEMPORARY FORMS OF SLAVERY* (1991), available at [www.unhcr.ch/html/menu6/2/fs14.htm](http://www.unhcr.ch/html/menu6/2/fs14.htm).

96. *See* 18 U.S.C. § 1593.

amendment to the Trafficking Act allows survivors to sue their former captors for civil damages for violations of the statute.<sup>97</sup>

Despite their strengths, both international and U.S. anti-trafficking laws suffer similar weaknesses when it comes to protections for victims. Although the U.N. Protocol and the U.S. Trafficking Act are explicit in recognizing that trafficked individuals are *victims of a crime* rather than illegal migrants, they are by no means consistent in this victim-centered approach. The Trafficking Protocol makes state provision of immigration relief, social services, and compensation to victims discretionary as opposed to mandatory. While the U.S. law goes further and establishes regulations to provide immigration status and social services to victims, it provides these benefits only to victims of a “severe form of trafficking” who are involved with the prosecution of their traffickers. Furthermore, conditioning immigration relief and social services on cooperation with prosecution creates the perception that victims are primarily instruments of law enforcement rather than individuals who are, in and of themselves, deserving of protection and restoration of their human rights.

The Trafficking Act also contains “definitional inconsistencies” that may weaken intended protections for trafficking survivors. For example, survivors must show they are a “victim of a severe form of trafficking”—a victim of sex or human trafficking—to be eligible for immigration relief and benefits. According to some advocates, federal authorities have failed to issue certifications to some trafficking survivors because they felt the allegations of abuse were not “severe enough.”<sup>98</sup>

## V.

### IMPLEMENTATION AND ENFORCEMENT OF U.S. LAWS

Three years after the passage of the Trafficking Act, U.S. law enforcement personnel, policymakers, and labor rights advocates are still wrestling with the legal mandates established under the new law. Our research suggests that effective implementation and enforcement of the Trafficking Act will depend on several factors, including training law enforcement officers, particularly at the local level, to identify victims and forced labor operations; improving cooperation and information sharing between federal and state agencies charged with combating forced labor; revising procedures for the handling of survivors; and finding more effective measures for providing survivors with protection, benefits, and compensation.

#### *Identifying Victims*

One of the greatest challenges U.S. law enforcement faces is developing the skills to identify victims of trafficking and forced labor. Finding victims, a federal prosecutor in the U.S. Department of Labor said, is “devilishly difficult

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97. Trafficking Victims Protection Reauthorization Act, *supra* note 88, § 4(a).

98. Interview by Laurel Fletcher with anonymous trafficking expert, nongovernmental organization, location confidential (June 4, 2003).

to do.”<sup>99</sup> There are many reasons why victim identification is complicated. Victims are usually reluctant to approach local police because they fear retribution from their traffickers or “employers.” This fear often stems from their experiences with corrupt law enforcement personnel in their countries of origin. Invariably, exploiters play on this fear by warning their captives that U.S. law enforcement is no different. Luis Rivera, an organizer for California Rural Legal Assistance, Inc.—a group that has assisted the California asparagus workers—observed that abused workers are reluctant to call the police because “they don’t trust them.”<sup>100</sup>

In some cases, “employers” have given their workers false identities as a means of passing through U.S. immigration. In one case that eventually exposed such a trafficking scheme, Lakireddy Bali Reddy, the California-based sex trafficker, arranged for a man and his sister from his hometown to fraudulently pose as the parents of two teenage sisters so that the sisters would be allowed to pass through U.S. immigration. Reddy sexually exploited the teenagers until the older sister died of asphyxiation, a result of a blocked exhaust vent in one of his apartments.

#### *Law Enforcement*

Law enforcement, particularly at the local level, must develop the capacity to identify not only victims of trafficking and forced labor but also the very operations themselves. “Police don’t know trafficking when they see it,” said Martina Vandenberg, formerly of Human Rights Watch.<sup>101</sup> Indeed, the problem is so pervasive that the DOJ has launched a federal training program to help investigators working for the Federal Bureau of Investigation (FBI), the Department of Homeland Security’s Immigration and Customs Enforcement (formerly the Immigration and Naturalization Service, or INS),<sup>102</sup> and the Department of Labor detect forced labor operations.

An example from the Reddy case study demonstrates why the DOJ training program is necessary. In 1997, the INS investigated Reddy for potential immigration fraud. The INS investigation team found the real-estate tycoon had committed no crimes. Reddy, said the INS district director, was “a professionally educated gentleman, with widespread corporate interests. . . . There was nothing to indicate any criminal conduct.”<sup>103</sup>

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99. Interview with anonymous official, *supra* note 37.

100. Telephone interview by Natalie Hill with Luis Rivera, Organizer, California Rural Legal Assistance, Inc. (July 11, 2003).

101. Interview by Laurel Fletcher with Martina Vandenberg, Attorney, Jenner and Block, formerly Researcher, Women’s Rights Division, Human Rights Watch, in Washington, D.C. (July 5, 2003).

102. The U.S. government recently restructured its immigration agency. Beginning March 1, 2003, the functions of the Immigration and Naturalization Service were transferred to the new Department of Homeland Security (within the Directorate of Border and Transportation Security and U.S. Citizenship and Immigration Services). REPORT FROM ATTORNEY GENERAL, *supra* note 11, at 15 n.1.

103. Debra Levi Holtz, *INS Investigated Landlord in ‘97*, S.F. CHRON., Jan. 21, 2000, at A19.

Similarly, in the Oklahoma factory worker case, survivors claim that the John Pickle Company (JPC) shielded its forced labor operation from the local police by using its reputation as a longstanding, profitable, and successful local employer as a screen for JPC's illicit activities. There are reports that the police even escorted "troublesome workers" to the airport, where they were sent back to India.<sup>104</sup> Apparently, at no time did the local sheriffs question Pickle's employment of the Indian men or investigate for possible criminal activity.

To date, the DOJ has no plans to provide similar training to state and local law enforcement officers.<sup>105</sup> Clearly, the sheer number of police departments in the United States—over 17,000—would make such a task daunting. Yet a more targeted approach, aimed at training local law enforcement in areas of the country where forced labor is pervasive, could go a long way toward improving detection of these operations. Witness, for example, the forced prostitution case in Florida where local police missed an opportunity to break up the prostitution ring simply because they did not know what they were looking for. According to social service providers, police responded to a phone call from one of the female victims by dispatching deputies to an address given to them by the woman caller. When the deputies arrived at the brothel, however, guards managed to dissuade them from carrying through their investigation, and they left without entering the premises. The prostitution ring was only uncovered several months later when a group of women escaped and made their way to the Mexican consulate.<sup>106</sup>

### *Fragmentation of Law Enforcement*

The approach now taken by federal and state agencies to combat forced labor in the United States is fragmentary and inconsistent. This is largely because trafficking is considered a federal crime that must be handled by federal agents. Indeed, until passage of the recent amendments to the Trafficking Act, federal agents had primary authority to certify that a survivor met the definitional threshold to be eligible to receive benefits and protections under the act. This process can be cumbersome, time-consuming, and frustrating for the survivor. Likewise, the process of seeking federal certification can involve a great risk to the survivor.

If agents are unwilling to issue such a certification, then the survivor is left exposed. Her trafficker may be aware that she has approached the authorities and seek retribution against her. Without certification, she cannot stay in the United States legally and she faces a grim choice. She must live in the United States as a permanent undocumented individual, flee to a third country, or risk returning to her home country where the trafficker continues to wield great influence and power.

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104. See Affidavit of forced labor survivor [Marshal Joseph Sures] at 15, *Chellen v. John Pickle Co.*, 344 F. Supp. 2d 1278 (N.D. Okla. 2002) (No. 02-CV-85-EA (M)).

105. ASSESSMENT, *supra* note 12, at 17-18.

106. Sean Gardiner & Geoffrey Mohan, *Smuggled for Sex*, *NEWSDAY*, Mar. 12, 2001, at A05.

Not only is the certification process coordinated through the DOJ, but the department is also responsible for keeping track of statistics under the act. Federal statistics regarding trafficking cases will not include federal cases that are not appropriately charged, for example, by a federal agency other than DOJ, nor do they include trafficking or forced labor incidents that come to the attention of the state prosecutors. Thus, there is concern among service providers that lack of coordination between federal government agencies makes it difficult to establish accurate numbers of prosecutions and may prevent survivors from accessing benefits and protection.

A related problem is that local police and state officials unable to identify a forced labor operation necessarily fail to refer such cases to federal agents. This was apparent in the California asparagus case that was never referred to federal law enforcement. JB Farm Labor, the labor contractor who hired the workers and kept them in substandard housing, withheld most of their paychecks to satisfy their transportation “debt” and threatened them with harm if they left.<sup>107</sup> Yet while these facts are strikingly similar to those of the R&A Harvesting case in Florida, a federal investigation took place only after the workers had filed a civil suit against JB Farms Labor Contractor and Victoria Island Farms. Attorneys for the workers contacted the Department of Labor about the case but did not pursue enforcement when the department could not secure assurances from the immigration authorities that they would not take action against the workers.<sup>108</sup> Drawn to the case through a newspaper article, the Department of Labor conducted an investigation, but they did so only after the 2000 season was over and the workers were no longer at the site.<sup>109</sup>

Today, there are greater protections for survivors of forced labor, largely because of the T visa program and an agreement reached between the Department of Labor and the Department of Homeland Security that protects undocumented workers from action by immigration officials in connection with labor department investigations. In 1999, the DOJ and Department of Labor created the Worker Exploitation Task Force to improve coordination and increase the prosecution of forced labor cases. In 2001, as required by the Trafficking Act, President George W. Bush created the Inter-Agency Task Force to Monitor and Combat Trafficking. The Inter-Agency Task Force includes the Secretary of State, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Homeland Security, the Director of Central Intelligence, the Director of the Office of Management and Budget, and the administrator of the U.S. Agency for International Development. The mandate of

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107. The complaint alleged that the workers were “essentially held hostage in the camps . . . with promises of future payments of owed wages . . . with direct and implied threats against the workers and their families in Mexico.” Fourth Amended Complaint at 2, *Manuel A. v. JB Farm Contractor*, (E.D. Cal. received Nov. 17, 2000) (No. CIV S-00-1162-GEB PAN).

108. Interview by Natalie Hill with Cynthia Rice, Director of Litigation, Advocacy and Training, California Rural Legal Assistance, Inc., in San Francisco, Cal. (May 14, 2003).

109. WAGE AND HOUR DIVISION, U.S. DEP’T OF LABOR, CASE NO. 2001-302-00223, VICTORIA ISLAND FARMS, REDACTED FINAL INVESTIGATIVE REPORT 1-2; WAGE AND HOUR DIVISION, U.S. DEP’T OF LABOR, CASE NO. 2000-302-00282, JOSE BAUTISTA, FARM LABOR CONTRACTOR, REDACTED FINAL INVESTIGATIVE REPORT 1-2.



this task force is to coordinate and implement executive policy in order to combat trafficking. In March 2003, the task force created a Senior Policy Advisory Group to advise the task force on important policy issues.<sup>110</sup>

There is hope that this interagency approach will make the process of investigating and adjudicating trafficking and forced labor cases more efficient and less burdensome for survivors. One encouraging sign is the creation of regional task forces under the umbrella of the Worker Exploitation Task Force throughout the United States. These task forces serve as forums for agencies to share information and coordinate approaches to specific trafficking and forced labor cases. A member of the Department of Labor explained why this interagency approach is so important:

If INS is looking at [a forced labor case], they would be looking to deport people. If we are looking at it, we are looking to pay people. If Justice is looking at it, they are looking to put people in jail. Obviously, that's a very unsatisfactory way of attacking the problem. The way you must attack the problem is to do it in an interdisciplinary way . . . (s)o that we can deal with specific cases of slavery or peonage as a whole rather than as separate agencies, so that less slips through the cracks.<sup>111</sup>

Despite this progress, government officials familiar with the work of such task forces believe coordination among members of the task force could be improved. They point to interagency rivalries, different approaches to cases based on agency priorities, and the challenges of coordinating a large number of agencies and participants. Despite these criticisms, most agree that such task forces serve an important function and emphasize that there has been more interagency cooperation around trafficking than most other issues. As one member of the Worker Exploitation Task Force noted: "I frankly think that [the task force] works reasonably well at this point. It could always work better. . . . What I've given you is the model. The closer we come to that, the better off we are."<sup>112</sup>

NGO advocates support the idea of greater federal interagency cooperation and information exchange in addressing trafficking and forced labor cases. Advocates believe that greater cooperation will lead to the development of alternative ways of providing victim relief for those cases that are not taken up by federal prosecutors. As Jennifer Stanger, Media and Advocacy Director at the Coalition to Abolish Slavery and Trafficking (CAST), has noted, only three or four of the agency's twenty or thirty trafficking cases have been chosen for federal prosecution. In an interagency scheme, Stanger would like to see the Department of Labor, as a federal enforcement agency, take a greater role in addressing trafficking cases by being able to request benefits and issue certificates of endorsement. "Trafficking," she says, "is as much a labor issue as it is a criminal one." She would like to see other federal agencies, such as the Depart-

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110. For an account of the activities of the Senior Policy Advisory Group, see *ASSESSMENT*, *supra* note 12, at 4.

111. Interview with anonymous official, *supra* note 37.

112. *Id.*

ment of Labor, “have the ability to confer victim status, especially when a case is rejected for criminal prosecution by the DOJ.”<sup>113</sup>

Ironically, as awareness about trafficking and forced labor has increased at the level of local law enforcement, new tensions have arisen between state and federal agencies. Victims who cooperate with local authorities are technically eligible for a T visa but run into problems because the Trafficking Act favors documentation of cooperation from federal law enforcement over an endorsement from state officials. The new amendments to the Trafficking Act attempt to make state endorsements equivalent to federal ones, but the new law has not yet been implemented.<sup>114</sup> Advocates are watching the certification process carefully. Without access to federal immigration and welfare benefits, victims in state prosecutions are unable to regularize their status and must fall back on state benefits—if available—or private support. The NGO advocate recounted that victims “are surviving on the good will of local citizens to take care of them, and they have no legal status.”<sup>115</sup>

NGO advocates also report that federal officials often refuse to issue endorsements of T visa applications. One service provider attributed this reluctance to the mistaken belief among law enforcement that the benefits are too generous and that “they are giving away a green card” by providing certification.<sup>116</sup> Moreover, agents may wait until the Department of Homeland Security has determined that a victim is a legitimate victim of severe trafficking, or until a prosecution has begun, to issue an endorsement, causing victims to wait months before receiving much-needed benefits. Advocates report that for some victims the dependency on federal authorities for immigration relief, compounded by the pain and discomfort of testifying about their experience, does not serve their needs and dissuades them from cooperating with law enforcement.

NGO advocates also note that middle management in federal investigatory agencies often hinders the enforcement of the Trafficking Act by downplaying the severity of crimes involving forced labor. On several occasions, such officials have reassigned experienced and knowledgeable investigators to other

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113. Interview by Rachel Shigekane with Jennifer Stanger, Media/Advocacy Director, Coalition to Abolish Slavery and Trafficking, in Los Angeles, Cal. (July 7, 2003).

114. The Trafficking Victims Protection Reauthorization Act of 2003 directs immigration officials to consider statements from state and local law enforcement officials when certifying a survivor’s compliance with a request for assistance in the investigation or prosecution of crimes attributed to the trafficker. However, immigration officials await further guidance to implement this directive. Memorandum from William R. Yates, Associate Director of Operations, to Paul Novak, Director, Vermont Service Center (Apr. 15, 2004).

115. Interview with Jennifer Stanger, *supra* note 113.

116. *Id.* In fact, the benefits to which victims are actually entitled are fairly modest. In California, for example, victims receive refugee assistance for a period of eight months. This aid consists of \$300 per month in refugee cash assistance, \$120 per month in food stamps, as well as access to medical care during this period. By way of comparison, this totals just over half of the official poverty threshold for an individual, \$748 per month. OFFICE OF THE ASSISTANT SEC’Y FOR PLANNING & EVALUATION, U.S. DEP’T OF HEALTH AND HUMAN SERVS., 2003 HEALTH AND HUMAN SERVICES POVERTY GUIDELINES (2003) (citing 68 Fed. Reg. 26, 6456-58 (Feb. 7, 2003)), available at <http://aspe.hhs.gov/poverty/03poverty.htm>.

higher priority crimes. "Think of it like a sandwich," says Jennifer Stanger of CAST. "One slice of the bread is the NGO that has been given funding to do outreach and training and to provide services. The prosecution is the other piece of bread. But the problem is, there is no sandwich meat, which is the investigative part, in the middle. These cases are only as good as the evidence that's been compiled by the investigators."<sup>117</sup> Advocates note that investigative resources are beginning to be provided but are not yet sufficient.

#### *New Approaches to Law Enforcement*

Bringing the needs of victims of trafficking and forced labor into sharp focus and prosecuting their abusers requires a reorientation of all levels of law enforcement as well as an unprecedented degree of coordination between state and federal justice departments. By any standard, it is an enormous undertaking but fortunately one that has enjoyed significant support from both the Clinton and Bush administrations.

The Trafficking Act has also helped law enforcement personnel recognize that those ensnared in trafficking and forced labor are *victims* and not criminals. "One of the important changes in these cases and one of the things that was recognized by the Trafficking Act," says an official from the DOJ section that prosecutes forced labor cases, "was that we need to treat victims as victims. In the past, too often we had to view them as criminals or people who were being quickly deported or prosecuted for prostitution. . . . The big change and the thing that has made our work much more successful is that we do treat them as victims."<sup>118</sup> This approach has paid dividends in a rapid increase, noted earlier, in the number of forced labor cases prosecuted in the past five years.

Key to this increase has been the change in the relationship between law enforcement and victims. Prosecutors understand that winning forced labor cases and appropriately punishing offenders requires the trust and cooperation of victims and witnesses. "Obviously, without the cooperation of the victims we can't win cases," said the DOJ spokesman. He added:

So it's of benefit both to the victims but also to law enforcement. I think that's an enormous change. In the past, we used to do a raid, lock up the victims and treat them as if they were as guilty as the defendants. Now, I think we try to deal with them much more humanely. We try to give them services, find them shelter and all of that so it's a much different approach that leads to happier, more cooperative victims. That makes us much more successful.<sup>119</sup>

Our case study of the Thai domestic worker trafficked into the western United States illustrates the DOJ official's point. Khai cooperated with law enforcement and testified against her former employer. She said the behavior of the federal prosecutor in her case made all the difference: "The U.S. Attorney gave me a new life. He delivered me, like a doctor delivering a baby, to a new

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117. Interview by Rachel Shigekane with Jennifer Stanger, Media/Advocacy Director, Coalition to Abolish Slavery and Trafficking, in Los Angeles, Cal. (June 9, 2003).

118. Interview by Laurel Fletcher with anonymous official, U.S. Dep't of Justice, location confidential (June 3, 2003).

119. *Id.*

life.”<sup>120</sup> For Khai, prosecution served to reveal the truth about her perpetrator. She hoped that coming forward to testify would help others. “I had to fight,” she said. “I had to tell the truth, to tell what happened.”<sup>121</sup> Because of her experience, Khai believes “justice does exist. I have a different view now on law enforcement, the courts, immigration, and prosecutors.”<sup>122</sup> As a result of her cooperation with federal prosecutors, Khai received a T visa in June 2003, which enabled her to stay and work in the United States. She is now looking forward to being reunited with her son, whom she has not seen in over ten years.

#### *Treatment of Survivors*

Much of the criticism of the United States’ approach to forced labor stems from the link between prosecution of perpetrators and serving victims. According to one top-level federal prosecutor, attitudes among prosecutors toward forced labor victims vary from “humanitarian”—where the focus is to alleviate the suffering of the victim—to “instrumental”—where victims are seen as necessary to win criminal cases. Under the Trafficking Act, prosecutors are pivotal to meeting the needs of victims for social services and fulfilling the criminal enforcement aims of the statute. Yet these aims can at times clash, leaving victims unacknowledged or underserved, perpetrators unindicted, and service providers and law enforcement agents feeling frustrated.

An illustration of this problem is apparent in the case of the Florida citrus workers. In May 2000, a Florida-based NGO, the Coalition of Immokalee Workers (CIW), began investigating the plight of migrant workers employed by R&A Harvesting. CIW got involved after R&A Harvesting employees accused the driver of a van transporting migrant workers of “stealing” workers and severely beat the driver. Shortly thereafter, CIW urged the DOJ to investigate what seemed to be a clear case of forced labor in Florida’s citrus groves. Federal investigators, however, initially declined to pursue the case because, without adequate resources to investigate, they felt they could not prove involuntary servitude without victims who would be willing to testify. In response, CIW sent one of its own members to the camp undercover to document abuses. Even with this evidence, prosecutors wanted other witnesses, all of whom were trapped in the camp and terrified to leave for fear of what their boss might do to them. A year after the assault on the van driver, in April 2001, several CIW members went to the labor camp and handed out cards with the group’s telephone number. The next day four workers called the organization asking for help to escape. Within hours, two cars driven by members of the group met the workers just outside the camp. The workers quickly jumped in and ducked down under the seats, too afraid to sit up until they were twenty miles away from their captors. The escaped captives agreed to be witnesses. With their help, prosecutors convicted Ramos, his two brothers, and a cousin of a host of

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120. Interview by Rachel Shigekane with Khai, pseudonymous Thai domestic worker/restaurant worker/trafficking victim, location confidential (June 10, 2003).

121. *Id.*

122. *Id.*

charges, including conspiracy to hold workers in indentured servitude, extortion, and firearms charges.<sup>123</sup> Despite a successful resolution, almost a year had elapsed between the time when CIW first brought the case to the attention of prosecutors and the time when prosecutors had the evidence they wanted to charge the Ramos family. Meanwhile, the workers had continued to toil under slave-like conditions.

What makes for a good prosecution does not always serve the immediate safety needs of victims. On average, the investigation and prosecution of trafficking and forced labor cases takes between eight months and three years to complete, during which time victims may remain in situations of forced labor or in fear of their captors and associates.

When victims are liberated from situations of forced labor, their treatment by law enforcement varies greatly. For example, in the forced prostitution ring case—a case that was discovered before passage of the Trafficking Act—the victims found themselves imprisoned in a detention center while their perpetrators ran free. Federal agents began raiding the Cadena brothels in November 1997, arresting both victims and perpetrators. Agents then held the victims in a detention center, while many of the criminal ringleaders evaded arrest. An FBI agent involved in the case explained: “We couldn’t let the witnesses loose because they want to go home—we’d lose them all. It just happened that way.”<sup>124</sup> To ensure that the victims were not deported, the investigating border patrol agent had to call immigration authorities every day to ensure the witnesses would not be deported. “Had we missed a day,” the FBI agent said, “we would’ve lost them.”<sup>125</sup>

This detention was bad for both the victims and law enforcement. The prosecution team needed to earn the trust of the women freed from forced labor so they would testify against their captors. Yet their detention confirmed to them what the perpetrators had always told the women: if they were caught by the authorities, they would be “in prison for the rest of [their] lives.”<sup>126</sup>

#### BENEFITS, PROTECTION, AND COMPENSATION

Because of the passage of the Trafficking Act, law enforcement can now offer immigration protection to victims and thus assuage their fear of deportation. For example, federal officials used the “continued presence” provision of the Trafficking Act to bring approximately 200 Vietnamese workers to the United States from American Samoa in connection with the Kil-Soo Lee case. Lee, a Korean businessman who owned a garment factory on the island, with-

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123. According to federal government sources, violations of the Trafficking Act could not be charged in this case because of the time frame of the events.

124. Interview by Steven Lize with anonymous Special Agent, Federal Bureau of Investigations, location confidential (May 2, 2003).

125. *Id.*

126. *International Trafficking of Women and Children: Hearings Before the Near E. & S. Asian Affairs Subcomm., U.S. Senate Foreign Relations Comm.*, 106th Cong. (2000) [hereinafter *Hearings*] (statement of Maria, pseudonymous trafficking survivor), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106\\_senate\\_hearings&docid=F:63986.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_senate_hearings&docid=F:63986.wais).

held food, locked the gates of the plant, and forced the victims to work there ostensibly to pay off their transportation “debt” to him. In a massive effort, law enforcement coordinated with social service providers to arrange transportation and housing for the victims to resettle in Hawaii and in the mainland United States. With the assistance of legal and social service providers, these victims are currently in the process of applying for T visas and making plans to be reunited with family members. Alternatives to detention of victims are clearly vital to achieving the humanitarian and law enforcement goals of the Trafficking Act.

Yet for every victim who is willing to come forward and testify for prosecutors, there are many who are unable or unwilling to do so. As a result, the victims will not receive immigration relief or other benefits under the Trafficking Act. Jennifer Stanger estimates that only fifty percent of their clients wish to cooperate in the prosecution of their perpetrators. “Even though somebody has been beaten and abused,” she says, “it may not be a priority for them to see . . . [the perpetrator] go to jail.”<sup>127</sup> Some survivors simply desire to return home and never see their traffickers again. Many advocates believe that immigration relief and permission to work should be granted to survivors automatically and not linked to cooperation with a prosecution.

Survivors of forced labor often fear pressing charges against their former captors because it could result in harm to themselves and their families. For example, after U.S. authorities arrested Lakireddy Bali Reddy in January 2000, journalists reported that many of the parents of Reddy’s victims living in Velvadam, India, were fearful of reprisals.<sup>128</sup> In May 2000, a group of assailants attacked a long-time critic of Reddy and his family while they were asleep at their home in Velvadam and doused the residents with acid. Days later, the critic died from his injuries. A five-year-old victim was badly burned and the legs of the third victim, a woman, were also disfigured. Shortly after the Indian authorities launched an investigation into the attack, a key witness was killed. The motivation for the attack still remains unclear.

In July 2000, U.S. immigration authorities took the unusual step of bringing some of the families of Reddy’s victims to the United States for their protection. Yet the Reddy victims were threatened in California, too. Soon after two of Reddy’s victims were liberated from their former captor, two men dressed as police officers—at least one of them carrying a gun—attempted to gain entry to the domestic violence shelter where the victims were housed. One of the women collapsed. Both women were then rushed to a local hospital for treatment. Authorities later moved them to a local Air Force base while service providers looked for suitable housing.

Even after perpetrators have been convicted, survivors and their families may remain in danger, whether they return to their home countries or remain in the United States. Several of the perpetrators charged in the forced prostitution

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127. Interview with Jennifer Stanger, *supra* note 113.

128. See *Chanipoyina Seetha na kuturæ kadu*, ANDHRA JYOTHI, Jan. 22, 2000.

case escaped to Mexico, where they lived in the same town as the victims and their families and continued to threaten and harass the former captives. One witness testified: "They have even threatened to bring our younger sisters to the United States and force them to work in brothels, as well."<sup>129</sup> Similarly, in the case against R&A Harvesting, a witness still feels that his life could be in danger. He believes there were more perpetrators involved than the three men arrested for the attack and that these men may harm him one day. "I still don't like to go out, like at night to the dances in town," he said. "I keep thinking that someone could be one of the Ramos guys looking for revenge. I live with that fear."<sup>130</sup> Similarly, Khai, the Thai domestic worker, is desperate to have her son and daughter leave Thailand before her captor completes her sentence. "[My captor] is in prison now," she said. "After she is released, I believe something will happen because law enforcement is different in Thailand." Her former "employer" had once told Khai, perhaps as a warning, that a "hit man" could be hired in Thailand for \$200 to \$300.

Vulnerability of family members abroad causes much anxiety and grief for forced labor victims in the United States. For victims, pursuing justice raises the stakes, because the threats of perpetrators—often powerful members of the communities in which they live and recruit—are quite credible. Several Indian workers who were trafficked for forced labor at John Pickle Company (JPC) reported that "Gulam" Pesh Imam, an executive with Al-Samit International, the company that had recruited them, threatened their families. After the Indian workers began escaping the JPC factory, an Al-Samit agent reportedly phoned JPC to ask one of the Indian lead workers about the whereabouts of one of the escaped workers.<sup>131</sup> The Al-Samit agent allegedly said that the police in India were looking for the escaped worker and that "[the worker's] brother had been taken by the police and beaten up."<sup>132</sup> "If Gulam [Pesh Imam] knows I am coming [home], he will arrange to have someone meet me at the airport," one of the workers told the American court.<sup>133</sup> "Gulam has shown that he is a violent man. . . . Many families in India have been threatened or contacted by Gulam or his agents. I have no doubt that if I were to return my family and me would be in danger."<sup>134</sup>

Despite these real dangers and the Trafficking Act's mandate to protect trafficking survivors, federal authorities have been unable to protect family members of survivors from retribution in their countries of origin. U.S. law enforcement has no authority to intervene directly when acts of retribution take place beyond U.S. borders. While family members have the option of relocating to the United States through the T visa process, that process can take years and

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129. *Hearings, supra* note 126.

130. Interview by Steven Lize with anonymous van driver/witness, location confidential (April 10, 2003).

131. See Affidavit of forced labor survivor [Marshal Joseph Soares] at 11, *Chellen* (No. 02-CV-85-EA (M)).

132. *Id.* at 11-12.

133. *Id.* at 17.

134. *Id.*

is not suited to addressing crisis situations. Emergency relocation is available but not routinely used. Unfortunately, help at the local level in the country of origin, where it could be most effective, is seldom an option. Corruption or indifference of local police and government authorities in the country of origin frequently leave family members and repatriated survivors with nowhere to turn for help. The influence of the perpetrator may hold sway over a survivor across international boundaries and across the span of years. Khai, the Thai woman forced to do domestic work, is painfully aware that her perpetrator's release date of 2006 is quickly approaching and that she only has one year to arrange for family members to flee Thailand and seek safety in other countries. Thus, the inability to meet a global problem with a global response may leave victims of forced labor reluctant to step forward and thus jeopardize future arrests and prosecutions of perpetrators.

Police indifference and victims' fear of retribution are compounded by the stature of traffickers in source countries. In at least five of the eight case studies researched for this report, the perpetrators held positions of great wealth and influence in their home countries. The Reddy family in Velvadam, India; the Satia family in Cameroon; and the Cadena family in Veracruz, Mexico, are all very wealthy families who are well-respected by economically and politically powerful groups in their respective communities. Survivors reported that "Gulam" Pesh Imann, an executive of Al-Samit International, the recruitment company responsible for bringing the Indian men to work at John Pickle Company, was said to have connections to organized crime in India.<sup>135</sup> Supawan Veerapool, who enslaved Khai, the Thai domestic worker, was the common law wife of Thailand's ambassador to Sweden and has connections at the highest levels of Thai government.

A consequence of forced labor is that, when freed, survivors are usually left with little or no resources to rebuild their lives. While no comprehensive figures are available, some survivors have sued their former captors to collect the money they are owed. The record so far has been mixed. The American Samoan garment workers, for example, thought they had secured a victory after Lee reached an agreement in 1999 with the Department of Labor to pay the workers back wages. Lee went so far as to deposit the wages in the workers' bank accounts. Then he sent employees to accompany workers to the bank and they forced the workers to return the money, threatening to fire those who refused and to return those who sought legal help to Vietnam. In a subsequent class action suit, workers won judgments in the range of \$3000 to \$7683, in addition to \$2500 each for damages.<sup>136</sup> In the criminal case against Reddy, he was required to pay \$2 million in restitution to four victims.<sup>137</sup>

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135. Affidavit of forced labor survivor [Uday Dattatray Ludbe] at 19, *Chellen* (No. 02-CV-85-EA (M)).

136. *Nguyen Thi Nga v. Daewoosa Samoa*, Nos. 133-99, 68-99, 93-00 (Am. Samoa decided Apr. 16, 2002).

137. Matthew Yi, *Guilty Plea in Smuggling of Girls*, S.F. CHRON., Mar. 8, 2001, at A21.



Others have not been so fortunate. A judge ordered the Ramos family to pay the U.S. government \$3 million, but the former captives received nothing. In the forced prostitution case, a federal judge ordered the perpetrators to pay \$1 million to the women they had forced to work as prostitutes. The ringleader pled poverty and paid nothing, but subsequently attorneys for the women have managed to recover small sums.

The Trafficking Act currently directs violators to pay restitution to their former captives. Under the act, survivors may recover funds for “‘any costs incurred’ for physical, psychiatric, or psychological care, and . . . ‘any other losses suffered.’”<sup>138</sup> Recent changes to the Trafficking Act allow survivors of forced labor to sue their perpetrators and collect damages. In cases in which prosecutors win convictions, survivors are able to use a criminal judgment to establish their claims once the criminal proceeding is concluded. Even if federal criminal charges were never filed, survivors now may file suit in a federal court and thus avoid relying on state laws that may not be tailored to address forced labor and trafficking violations.

Survivors of Reddy’s trafficking and forced labor scheme filed a civil suit to gain compensation from him for their losses. The goal of the suit was to strip Reddy of his wealth and thus diminish his standing in both California and India. The parties settled the case shortly after trial began in April 2004. The sister of the victim who died in Reddy’s apartment and her family received \$8.9 million. They also received a portion of the \$2 million in restitution money awarded in the earlier criminal case. Two other survivors who were not sex victims received \$60,000 each.

## VI.

### HEALTH AND MEDICAL CONSEQUENCES OF FORCED LABOR

Those subjected to forced labor are at significant risk of developing health related problems, ranging from minor to life threatening. Because forced labor is largely hidden from public view, its health and medical consequences have never been systematically studied in the United States. Yet our case studies, as well as morbidity and mortality studies of refugee populations and workers in industry and agriculture, provide a general picture of the health needs of victims of forced labor. The health status of forced labor victims can be considered in four discrete but interdependent phases: pre-departure, journey, forced labor, and post release.

#### *Pre-departure*

Our study found that most victims of forced labor who were trafficked into the United States came from impoverished areas of the world. Poverty is an important indicator of health, and many diseases, such as tuberculosis (TB), hepatitis B and C, and sexually transmitted diseases, are more prevalent in impover-

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138. United States v. Julian, 242 F.3d 1245, 1247 (10th Cir. 2001) (quoting § 2259(b) of the Trafficking Act) (emphasis omitted).

ished populations where access to adequate health care is limited or nonexistent. Because many forced labor victims circumvent formal medical screenings for migrants, many will arrive in the United States without proper immunizations and bearing communicable diseases. Studies have found that even legal migrants to the United States have caused TB caseloads to increase, largely because those infected had not received proper care in their home countries. In one study, thirty-one to forty-seven percent of migrant farm workers tested on the East and West Coasts of the United States were TB positive, and those groups were six times more likely to develop TB than the general population.

### *Journey*

Smuggling and some forms of trafficking of migrants constitute the most dangerous forms of migration.<sup>139</sup> These illegal processes can take place within a country, across a single border, or through multiple borders. During the journey, which may last only a day or a matter of months, trafficked and smuggled migrants are exposed to grave risks of injury or death. In addition, in long and complicated journeys, these migrants may be exposed to illnesses and diseases, including malaria, or find preexisting illnesses become aggravated along the route.

Trafficked and smuggled migrants enter the United States by several different modes of transportation, including aircraft, boat, and overland vehicles, all of which can pose potential health risks. People who are hidden among cargo shipments during transport risk injury or death by drowning, freezing, or suffocating, or by being crushed or exposed to toxic materials.<sup>140</sup> The potential for health complications is further exacerbated by overcrowding, lack of food, poor sanitation, severe dehydration, and environmental extremes.<sup>141</sup> In May 2003, for example, seventeen undocumented migrants from Mexico and Central America perished from asphyxiation and heat stroke inside an abandoned tractor-trailer located in southern Texas.<sup>142</sup> As many as one hundred people had been packed inside the trailer.<sup>143</sup>

In transit, power is displaced between traffickers and migrants to create an ongoing relationship of dependency that can complicate a survivor's recovery in the post-release phase. This is particularly true for young trafficking victims who have been kidnapped or entrusted to the care of traffickers by their parents or other family members. Traffickers often confiscate personal identification

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139. INTER-AM. COMM'N OF WOMEN, ORG. OF AM. STATES & WOMEN, HEALTH & DEV. PROGRAM, PAN-AM. HEALTH ORG., JOINT FACT SHEET, *TRAFFICKING OF WOMEN AND CHILDREN FOR SEXUAL EXPLOITATION IN THE AMERICAS* (2001) [hereinafter JOINT FACT SHEET].

140. Brian D. Gushulak & Douglas W. MacPherson, *Health Issues Associated with the Smuggling and Trafficking of Migrants*, 2 J. IMMIGRANT HEALTH 67, 71-72 (2000).

141. *Id.*

142. Nick Madigan, *2nd Group of Trapped People Is Found in a Truck in Texas*, N.Y. TIMES, May 17, 2003, at A13; Simon Romero, *Scene of Horror and Despair in Trailer*, N.Y. TIMES, May 16, 2003, at A20.

143. Romero, *supra* note 142.

and travel documents to prevent victims from trying to escape.<sup>144</sup> Traffickers confiscated the documents of victims in four of our eight cases studies.<sup>145</sup> In the remaining four, the victims did not have any identification documents to begin with. During the journey, traffickers may use threats and beatings to maintain control over their victims. Should victims require medical treatment because of an illness or physical abuse, it is almost always the trafficker or smuggler who decides if it will be provided or not.

### *Forced Labor*

Once trafficked migrants reach their destination in the United States, they continue to face a variety of health risks. Because many have entered the country illegally or their captors keep them isolated through violence or intimidation, victims remain hidden and continue to depend on their trafficker or “employer” for shelter, food, and safety. Forced labor victims are likely to enter and be held in high-risk, poorly regulated work environments. Those who work in the sex trade are at risk of contracting AIDS or other sexually transmitted diseases. While published evidence is limited, some media reports indicate children of forced labor victims are taken from their parents and returned to their parents’ place of origin.<sup>146</sup>

Victims of forced labor increase their susceptibility to ill health because they often are forced to live in overcrowded housing with poor sanitation. In the case against Kil-Soo Lee, one survivor, Tuyen, described thirty-six workers sharing one to two showers and two to five toilets. There was no hot water or toilet paper. The bathroom facilities were not maintained and some remained permanently broken. Some mornings, the lines to use the facilities were so long that not everyone had an opportunity to do so before having to be present for work. Those who missed out had to wait for a meal break to use the toilet or to wash their face. Drinking water was only available in the bathroom.<sup>147</sup>

A similar situation prevailed in the Florida citrus harvesting case, where forty or more workers slept in a large trailer. Worse yet were the living conditions of the Florida forced prostitution victims. The women and girls were made to live and work in filthy, rubbish-strewn trailers, duplexes, and houses that were located in isolated agricultural areas accessible only by dirt roads running through citrus groves.<sup>148</sup> The windows of the women’s living quarters were broken or boarded up.<sup>149</sup> Inside, there were soiled mattresses on the floor.<sup>150</sup>

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144. Donna M. Hughes, *The “Natasha” Trade: The Transnational Shadow Market of Trafficking in Women*, 53 J. INT’L AFF. 625, 636 (2000).

145. In the Los Angeles domestic service case, the victim’s trafficker confiscated her passport soon after her plane landed in Los Angeles. Similarly, the assistant manager in the American Samoa garment factory confiscated the travel documents of his Vietnamese workers.

146. *Trafficking of Migrants: Hidden Health Concerns*, MIGRATION & HEALTH NEWSL. (Int’l Org. for Migration, Geneva, Switz.) Feb. 2000.

147. Interview by Natalie Hill with Tuyen, pseudonymous forced labor victim, location confidential (June 10, 2003); *Nguyen Thi Nga v. Daewoosa Samoa*, Nos. 133-99, 68-99, 93-00 (Am. Samoa decided Apr. 16, 2002).

148. Gardiner, *supra* note 106.

149. *Id.*

The women were forced to service strangers and sleep on those same mattresses each night.<sup>151</sup> The mattresses were separated from each other, if at all, only by hanging sheets.<sup>152</sup> Garbage and used condoms littered the brothels.<sup>153</sup>

### *Mental Health*

The psychological consequences of forced labor remain largely unexplored. Despite the paucity of research data, we do know that when people enter exploitative work situations against their will, they risk losing their sense of personal efficacy and control, attributes that mental health professionals have long considered essential to good mental and physical health.<sup>154</sup> Under the control of their traffickers or “employers,” victims may experience feelings of isolation, shame, and betrayal. They may fear being sent home without any money, especially if deceived by a promise of bona fide employment.<sup>155</sup> They may experience or witness repeated threats and verbal abuse, involuntary confinement, torture, and sexual assault. A manager at the Daewoosa garment factory in American Samoa, for example, frequently sexually abused female Vietnamese workers by slipping into their sleeping quarters at night. Removed from their family and friends, forced labor victims lack a social support network to help cope with these traumatic assaults. Some, like the victims in the Florida forced prostitution ring, turn to drugs and alcohol, where available, as a coping mechanism. “I would go to bed drunk because it was the only way I could fall asleep,” one victim said.<sup>156</sup>

All of these conditions can cause forced labor victims to lose their sense of control and become increasingly dependent on those who hold them captive, if merely to survive. Captivity brings the victim into prolonged contact with the perpetrator and creates a special type of relationship, one of coercive control. “In situations of captivity,” writes psychiatrist Judith Herman, “the perpetrator becomes the most powerful person in the life of the victim, and the psychology of the victim is shaped by the actions and beliefs of the perpetrator.”<sup>157</sup> “The methods of establishing control over another person,” she adds, are “the organ-

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150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. Psychologists dealing with trauma survivors have long postulated that personal efficacy and control is a major determinant of recovery. *See generally*, JUDITH HERMAN, TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE—FROM DOMESTIC ABUSE TO POLITICAL TERROR 74-95 (1992). Another way of examining this phenomenon is through the “control of destiny” hypothesis, developed by Leonard Syme, which holds that control over one’s destiny refers to the ability “to influence the events that impinge upon their lives.” S. Leonard Syme, *Social and Economic Disparities in Health: Thoughts about Intervention*, 76 *MILLBANK Q.* 493, 495 (1998). According to the research of Syme and others, a greater sense of control in one’s life often leads to better health outcomes. *See id.* at 493-505.

155. Melanie Orhant, *Article 1: Trafficking in Persons*, in *REPRODUCTIVE HEALTH AND RIGHTS—REACHING THE HARDLY REACHED* 3 (Elaine Murphy & Anne Hendrix-Jones eds., 2002), available at <http://www.path.org/files/RHR-Article-1.pdf>.

156. Quoted in Gardiner, *supra* note 106.

157. HERMAN, *supra* note 154, at 74-75.

ized techniques of disempowerment and disconnection . . . [so as] to instill terror and helplessness and to destroy the victim's sense of self in relation to others."<sup>158</sup> As victims become more isolated, they grow "increasingly dependent on the perpetrator, not only for survival and basic bodily needs but also for information and even for emotional sustenance."<sup>159</sup>

Lakireddy Bali Reddy used techniques of disempowerment and disconnection to create dependency among the teenage girls he trafficked into the United States. Because of their age and low-caste status, the girls were already susceptible to the power and dominance of a higher caste male who was older than most of their fathers. Reddy frequently rewarded the younger girls with gifts and favorable treatment. If girls exhibited maturity, they would cease to receive such favorable treatment. Since Reddy was constantly bringing younger girls into his estate, it was to a survivor's distinct advantage not to "grow up." For this reason, according to one of the attorneys in the case, the psychological and emotional development of one of the survivor's has been grossly stunted.<sup>160</sup>

Over a period of time, Reddy brought his favorite girls to Berkeley, California to provide him with sex and to work in his restaurants and apartment buildings. Once in the United States, Reddy's control over the girls intensified—they were now in a foreign land under fraudulent circumstances where they did not speak the language or understand the customs. Housed in Reddy's apartments and fed at his restaurants, the girls were prevented from going to school and having contact with people outside of the Reddy network. To reinforce his control, Reddy frequently beat the girls or threatened to turn them in to the authorities. One of Reddy's victims, a girl who had been brought to Berkeley at a very young age, exhibited a great loyalty to him. She, in fact, helped to hold down other girls while Reddy raped them. This ultimately caused some confusion for police investigators who apparently mistook her for a possible perpetrator and held her in jail for over a month.<sup>161</sup> Court records show that some of Reddy's victims still bear psychological scars, including depression, recurring nightmares, and panic attacks, as a result of their captivity, sexual abuse, and dependency.<sup>162</sup>

In the case of Khai, the Thai domestic worker, the trafficker used similar methods of intimidation and separation, including reminding Khai of her employer's higher socio-economic status. Khai's employer, Veerapool, would often jab a finger at her and say, "Do you know who you are? Do you know who I am?"—the implication being that Khai was from a lower class and that the perpetrator was an important and respected person.<sup>163</sup> Veerapool also

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158. *Id.* at 77.

159. *Id.* at 81.

160. Interview with Rachel Shigekane with Nancy Hormachae, in Berkeley, Cal. (June 25, 2003).

161. *Id.*

162. *United States v. Lakireddy Bali Reddy*, No. CR 00-40028-01 SBA (filed June 21, 2001) (citing Pre-sentencing Report, at paras. 79-80).

163. Interview with Khai, *supra* note 120. See generally, KATHRYN MCMAHON & JENNIFER STANGER, COALITION TO ABOLISH SLAVERY & TRAFFICKING, SPEAKING OUT: THREE NARRATIVES OF WOMEN TRAFFICKED TO THE UNITED STATES 14 (2002).

trained her to be physically “lower” than she was. If her employer sat in a chair, the domestic servant had to sit on the floor. The servant served her employer’s party guests as she served her employer, on her knees, to reinforce her lowly status. In an effort to isolate her, the employer forbade Khai to talk to neighbors or shopkeepers. Khai was allowed to answer the telephone but not to make outgoing calls.

Louisa Satia and her husband used the same kind of tactics to denigrate and isolate sixteen-year-old Maryse<sup>164</sup> in their Washington, D.C., apartment. Maryse’s employers forbade her to leave the apartment complex, warning that they would deport her if she did. One morning, as Maryse was sending the children off to school, she stopped to talk to a man at a bus stop near the apartment complex. Louisa happened to see the encounter and later beat Maryse.<sup>165</sup> On other occasions, Louisa would forcibly cut Maryse’s hair, put glue and soft drink in her hair, and spray cleaning liquid in her eyes.<sup>166</sup> Louisa’s husband also sexually assaulted Maryse by exposing his genitals to her, attempting to take off her clothes, and trying to touch her breasts.<sup>167</sup> In an effort to keep her from communicating with her parents, her employers confiscated Maryse’s letters and tried to convince her that her parents were indifferent to her situation.<sup>168</sup>

#### *Physical Health*

The physical consequences of forced labor are many and varied. Because forced labor is largely a clandestine practice, it is also likely that many of these health problems go untreated for long periods of time. Perpetrators of forced labor frequently use violence as a means of “breaking” and controlling their workers. Vietnamese workers at the garment factory in American Samoa reported that Samoan guards and workers frequently beat them if they complained about their working conditions. The factory managers, the workers said, encouraged the beatings as a form of punishment or as a way to maintain order. In one incident, a Samoan worker, in the process of beating several workers, thrust a PVC pipe into the left eye of a female employee, causing her to lose the eye. Violence-related injuries associated with forced labor include bruises, broken bones, head wounds, stab wounds, and oral and dental injuries.<sup>169</sup>

The Mexican women forced to work as prostitutes in Florida suffered serious physical injuries as a result of the violence they endured at the hands of their traffickers and “clients.” The traffickers repeatedly raped girls in order to “initiate” them to sexual servitude.<sup>170</sup> Customers also threatened and beat the wo-

164. Pseudonym used to protect the survivor’s identity.

165. Summary of the Investigation, Dep’t of Justice, at 6(A)(14), *United States v. Satia*, 2003 WL 21436987 (4th Cir. 2003) (No. AW-00-0590).

166. *Id.* at 6(A)(12).

167. *Id.* at 6(A)(13).

168. Interview by Steven Lize with anonymous Assistant U.S. Attorney, location confidential (July 10, 2002).

169. JOINT FACT SHEET, *supra* note 139.

170. Sean Gardiner & Geoffrey Mohan, *Smuggled for Sex*, *NEWSDAY* (Mar. 12, 2001), at A05.

men. "Most of the clients had weapons," a victim recalled, "and if I did not do what they wanted me to do sexually, they beat me."<sup>171</sup> Several of the victims became pregnant and were forced to have abortions.<sup>172</sup>

Because they are at the mercy of their captors, victims of forced labor are rarely in control of their own health-care decisions. Women and men who are forced into prostitution face the risk of contracting HIV because they may lack the power to insist on the use of condoms.<sup>173</sup> Women who become pregnant while in captivity lack access to appropriate prenatal care or are forced to abort. Some resort to unsafe abortions.<sup>174</sup> Women can suffer severe consequences as a result of undiagnosed and untreated gynecological infections and complications, including pelvic inflammatory disease, chronic pelvic pain, ectopic pregnancy, and sterility.<sup>175</sup>

Forced labor victims who become malnourished in captivity are at risk of developing long-term illnesses. Our study found that perpetrators of forced labor failed to provide their workers with adequate nutrition and at times withheld food as a form of punishment. In February 2002, *The New York Times*, quoting an unpublished report from the Department of Labor, wrote that the Vietnamese workers at the American Samoa garment factory looked like "walking skeletons" and that their "diet, consisting primarily of watery broth of rice and cabbage, is of a type and quantity that may lead to malnutrition."<sup>176</sup> The newspaper revealed that the factory management "admits that they withhold meals from employees as a form of punishment when workers complain about food."<sup>177</sup> A nutritional expert who testified on behalf of the workers in the civil case before the High Court of American Samoa argued that because of the absence of fresh vegetables and fruit, the meals failed to meet U.S. Department of Agriculture nutritional guidelines.<sup>178</sup>

According to one of the garment workers, the first in the serving line might get some solid ingredients in the soup but the last in line would get only broth. She described sending word to new workers to bring seeds with them so that they could plant vegetables. They grew cabbages but it was not enough to feed them. Another garment worker described meals of rice, cabbage, and potatoes that did not provide him with enough nutrition to do the work that was expected of him and left him hungry.<sup>179</sup> Likewise, the asparagus harvesters testified that although they were provided between two to three meals per day, they were at

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171. *Id.*

172. *Id.*

173. JOINT FACT SHEET, *supra* note 139.

174. *Id.*

175. *Id.*

176. Steven Greenhouse, *Beatings and Other Abuses Cited at Samoan Apparel Plant that Supplied U.S. Retailers*, N.Y. TIMES, Feb. 6, 2001, at A14 (citing Department of Labor report dated December 14, 2000).

177. *Id.*

178. *Nguyen Thi Nga v. Daewoosa Samoa*, Nos. 133-99, 68-99, 93-00 (Am. Samoa decided Apr. 16, 2002).

179. Interview by Natalie Hill with Anh Dung, pseudonymous forced labor victim, location confidential (June 10, 2003).

times fed spoiled eggs and meat, the food was often over or undercooked, and they often went hungry.<sup>180</sup>

The Oklahoma factory workers also reported suffering from malnourishment. At the Pickle plant, the owner John Pickle allegedly maintained complete control over the food purchases and rationed the daily food allowance. The cooks lacked the appropriate utensils to cook meals for fifty-two workers.<sup>181</sup> Workers testified that the cooks were made to cut whole apples into fourths and serve half-glasses of milk as a way to ration food.<sup>182</sup> When the workers complained, Pickle and his agents allegedly told the workers to be quiet and accept it or they would be sent back to India.

Forced labor victims working in agriculture, construction, and manufacturing are at risk of developing repetitive strain injuries, chronic back pain, and visual and respiratory problems if they fail to receive proper medical care.<sup>183</sup> If these conditions remain untreated, they can become debilitating and require long-term treatment and rehabilitation.

#### *Access to Health Care*

Perpetrators of forced labor maintain near total control over their victims, including access to health care. Perpetrators expressly cultivate a fear of law enforcement and other “outsiders” among laborers.<sup>184</sup> Even if movement is less restricted, victims often decide not to seek health care or risk the consequences of “breaking the rules” because they fear reprisals from their captors. Three survivors of the California asparagus worker case and the Florida citrus worker case had no access to medical care in the labor camp where they were housed. In each case, armed guards patrolled the camp at night to ensure that no one tried to leave. No health professionals visited the camp, and workers used their own painkillers and other medications to ease their ailments. In the case of the Oklahoma factory workers, victims reported suffering from work-related injuries but were denied access to proper medical care. In one instance, a worker stated he became ill and received no medical help. Even when a fellow American worker tried to take him to the doctor, the company owner allegedly stopped them and forced the worker to stay and work. Some workers claim they suffered injuries, such as eye infections or vision impairment, for which they were denied treatment.<sup>185</sup>

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180. Plaintiffs’ and Workers’ Declarations in Support of Motion for Temporary Restraining Order and Leave to File Using Fictitious Names, *Manuel A. v. JB Farm Labor Contractor*, (E.D. Cal.) (filed May 25, 2000) (No. CIV S-00-160-GEB PAN); Interview by Natalie Hill with Juan, pseudonymous forced labor victim, location confidential (Apr. 27, 2003).

181. See Affidavit of forced labor survivor at 12 [Bharathakumaran Nair], *Chellen* (No. 02-CV-85-EA (M)).

182. *Id.*

183. Orhant, *supra* note 155, at 1.

184. JOINT FACT SHEET, *supra* note 139.

185. See Affidavit of forced labor survivor [Uday Dattatray Ludbe] at 17, *Chellen* (No. 02-CV-85-EA (M)); Affidavit of forced labor survivor [Bharathakumaran Nair], *supra* note 181.



Even if victims have a means of leaving their premises, they may be reluctant to seek professional care because they are unfamiliar with U.S. currency, unsure of how to use local transport, unable to speak English, or fear health providers may report them to immigration or labor officials.<sup>186</sup> While Khai, the Thai domestic worker, traveled almost daily from her employer's house to the restaurant, she was forbidden to speak to any neighbors or shopkeepers she might encounter en route or near the restaurant.<sup>187</sup> Because of the clandestine nature of forced labor, victims may receive regular but unsanitary and inadequate care under the strict supervision of their employer.<sup>188</sup> Finally, without access to proper health care, victims can potentially pass on communicable diseases to members of the community where they are held captive.

#### *Post-release*

The most immediate needs of those who survive forced labor are safety and housing. Some survivors may require immediate hospitalization or specialized medical care, but most will be able to forgo medical screening and medical care until after they have settled into their new surroundings. It is important, however, that survivors undergo screenings to identify any preexisting or acquired health problems. Health professionals who are familiar with migrant health issues usually are best suited to conduct screenings, as diseases common in a survivor's country of origin may not be commonly recognized in the United States. Screening should include questions about the patient's labor conditions, housing, past and current medical history, and nutrition.<sup>189</sup> Social and cultural factors will significantly influence how survivors present health problems to service providers. If a survivor is from a country where similar health services are not available, she may find it difficult to trust care providers.<sup>190</sup> Alternatively, services may not correspond to the kind of help survivors think they need.<sup>191</sup>

While forced labor victims may suffer mental health effects including post-traumatic stress disorder (PTSD) as a result of their enslavement,<sup>192</sup> the nature, severity, and prevalence of these effects after release from captivity require further research. Studies of groups of undocumented migrants indicate that the

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186. Karen Aroian, *Mental Health Risks and Problems Encountered by Illegal Immigrants*, 14 ISSUES OF MENTAL HEALTH NURSING 379-97 (1993).

187. Interview with Khai, *supra* note 120.

188. Orhant, *supra* note 155, at 3-4.

189. *Id.* at 6.

190. Federico Allodi & Glenn R. Randall, *Physical and Psychiatric Effects of Torture*, in THE BREAKING OF BODIES AND MINDS: TORTURE, PSYCHIATRIC ABUSE, AND THE HEALTH PROFESSIONS 72-75 (Eric Stover & Elena O. Nightingale eds., 1985).

191. Harvey M. Weinstein et al., *Rethinking Displacement: Bosnians Uprooted in Bosnia and California*, in 7 NEGOTIATING POWER AND PLACE AT THE MARGINS: SELECTED PAPERS ON REFUGEES 62 (Juliene G. Lipson & Lucia Ann McSpadden, eds., 1999) ("While some refugees seek psychological assistance and family disruption does occur, the majority of the Bosnians focus on rebuilding their lives and suppressing troubling thoughts.").

192. The National Institute of Mental Health defines PTSD as an "anxiety disorder that can develop after exposure to a terrifying event or ordeal in which grave physical harm occurred or was threatened." NAT'L INST. OF MENTAL HEALTH, FACTS ABOUT POST-TRAUMATIC STRESS DISORDER (2002), available at <http://www.nimh.nih.gov/publicat/ptsdfacts.cfm>.

prevalence of psychiatric disease, including depression and suicide, is higher in these populations.<sup>193</sup> In the case of children, the Organization of American States and the Pan-American Health Organization reports that “traumatic sexualization, betrayal, powerlessness, and stigmatization involved in sexual exploitation are particularly damaging to child and adolescent development and can lead to various types of psychiatric morbidity . . . .”<sup>194</sup>

Children who witness acts of violence or repeated sexual abuse are at significant risk of developing PTSD, among other disorders.<sup>195</sup> Psychologists have noted, for example, that one of Reddy’s victims may be plagued with psychological problems for the remainder of her life because of the sexual abuse she suffered and because Reddy forced her to watch as he sexually abused her older sister.<sup>196</sup> People diagnosed with PTSD tend to relive the ordeal repeatedly through nightmares, flashback episodes, and memories. They may also avoid reminders of the event and experience excessive alertness. Other common symptoms include emotional numbness, depression, irritability, inability to sleep, difficulty concentrating or completing tasks, and outbursts of anger. These symptoms can be severe and last long enough to have a significant adverse effect on the individual’s daily life.<sup>197</sup>

Despite the suffering from trafficking, Florrie Burke, a mental health expert with Safe Horizon, notes that traditional psychotherapy may not be appropriate for survivors: “Many times they’re not ready for it right away. That comes later, when they’re ready to deal with it. Sometimes all someone wants is a paying job, and processing [the experience] comes later.”<sup>198</sup> Forced labor survivors who seek mental health services need to perceive the physician or therapist as part of a secure environment. Finding culturally appropriate mental health services presents another challenge, as Nancy Hormachea, an attorney in the Reddy case, noted: “All the survivors [in the Reddy case] had psychological issues, yet it has been nearly impossible to provide them with good therapy. Western-style therapy is foreign to them and not culturally appropriate . . . . Most refused to go because they didn’t like it and they couldn’t keep their scheduled appointments. I’m not sure that they derived any benefit from it. There has to be another model for psychotherapeutic help.”<sup>199</sup> According to Hormachae, many of Reddy’s victims felt stigmatized by the very fact that they were experiencing emotional difficulties and in need of therapeutic assistance. “You have to understand that . . . [there] are derogatory sayings about people who seek [psycho-

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193. For a discussion of depressive syndromes and affective disorders among refugees, see U.S. DEP’T OF HEALTH & HUMAN SERVS., *PROMOTING MENTAL HEALTH SERVICES FOR REFUGEES: A HANDBOOK ON MODEL PRACTICES* (1991), available at <http://aspe.hhs.gov/pic/pdf/3928.pdf>.

194. JOINT FACT SHEET, *supra* note 139.

195. POST-TRAUMATIC STRESS DISORDER IN CHILDREN 19 (Spencer Eth & Robert S. Pynoos eds., 1985).

196. *United States v. Lakireddy Bali Reddy*, No. CR 00-40028-01 SBA (filed June 21, 2001).

197. NAT’L INST. OF MENTAL HEALTH, *supra* note 192.

198. Interview by Jolene Smith with Florrie Burke, Senior Director, Safe Horizon, in New York, N.Y. (Aug. 11, 2003).

199. Interview with Nancy Hormachea, *supra* note 160.

logical] help [in the village] where these girls come from,” Hormachae said.<sup>200</sup> “They are seen as being ‘crazy’ and described as being like ‘a chained, rabid dog.’”<sup>201</sup>

People who survive forced labor and participate in the T visa program must agree to participate actively in the prosecution of their trafficker or employer. But a decision to participate in potentially contentious legal proceedings should not be taken lightly. Studies of torture survivors indicate that to achieve a favorable therapeutic outcome, survivors must have “an acceptable self-concept and see the world as a fairly secure and predictable place.”<sup>202</sup> Courtrooms are hardly safe and secure environments for the recounting of traumatic events. Judges can—and often do—admonish witnesses who stray from the facts, which in turn can frustrate victims intent on telling their story publicly. The adversarial nature of trials also can result in unanticipated and unexpected events in the courtroom. The sight of the defendant, a long-repressed memory, or the sight of a loved one or co-worker can devastate even the most confident witness. So can the hardscrabble of cross-examination as defense attorneys set out to poke holes in a witness’s testimony or impugn his or her credibility. Witnesses may also feel that the court does not “respect” them, especially if they have to endure an intense cross-examination. Based on research on victims and witnesses who have appeared before the International Criminal Tribunal for the Former Yugoslavia, the level of fear or concern experienced by witnesses throughout the pretrial process depends on the stability and safety of the witness’ living conditions; the amount of time that had passed between the end of the war and their participation in the trial; fear of reprisals that might affect a witness’s children; and whether the witness lived in the same town as the accused and his family.<sup>203</sup> To avoid further trauma, all of these factors need to be considered when attorneys approach forced labor survivors to testify against their former traffickers and/or employers.

## VII.

### SOCIAL AND LEGAL SERVICES

While the Trafficking Act has greatly amplified the federal government’s role in investigating and prosecuting forced labor cases in the United States, the job of providing basic social and legal services to survivors has fallen squarely on the shoulders of NGOs and social service agencies. With limited resources, these groups must identify forced labor survivors, attend to their immediate needs for physical safety and housing, refer them for health care, facilitate their access to protection and rehabilitative services, and help them return to their countries of origin or begin new lives in the United States. Yet according to our

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200. *Id.*

201. *Id.*

202. Allodi, *supra* note 190, at 75.

203. ERIC STOVER, *THE WITNESSES: WAR CRIMES AND THE PROMISE OF JUSTICE IN THE HAGUE* 62 (2003).

survey of forty-nine social service providers, fewer than half of these agencies are able to meet these needs.

### *Identifying Survivors*

Social service providers and legal advocates must be able to assess whether a person seeking their assistance is a survivor of forced labor. Yet most of these professionals, through no fault of their own, lack the skills to do so. Until recently, service providers and legal advocates encountered relatively few, if any, forced labor survivors in their daily work. With the passage of the Trafficking Act in 2000, however, that situation has changed rapidly; so much so that a growing number of service agencies and advocacy groups are developing criteria to help their staff distinguish forced labor survivors from other types of clients.

Survivors gain their freedom and come to service providers and legal advocates in a variety of ways. In six of our case studies, victims received initial assistance from either a “Good Samaritan” or a local social service agency. In the case of Khai, the enslaved Thai domestic worker, it was a Good Samaritan who first brought Khai to the Thai Community Development Center (CDC), a nonprofit organization in Los Angeles serving Thai immigrants. The CDC helped Khai find shelter and later a permanent home and a job. The organization also referred Khai’s case to federal prosecutors and throughout the trial served as her liaison with the office of the prosecutor.<sup>204</sup> In some cases, forced labor survivors are discovered by chance. Over time, however, one NGO has learned how to investigate forced labor operations in agriculture. Laura Germino with the Coalition of Immokalee Workers (CIW) explains how her organization uncovered a recent forced labor operation: “The guy first called in to say his employer owed him money. The crew-leader hadn’t paid him. So we invited [the laborer] to come to the meetings. We began trying to get the money back for him, and during the course of the *cobro* [recovery of unpaid wages], we learned that there was a slavery operation.”<sup>205</sup>

Some forced labor victims have even been liberated by local law enforcement personnel, as happened in the Reddy case. Local law enforcement agents could play a more active role in identifying and ending forced labor operations, but most lack training in the identification of forced labor operations and continue to view people in such situations as illegal immigrants and undocumented workers. In more isolated areas of the United States, local law enforcement complaisance has benefited employers who use forced labor. In recent years, there has been a growing recognition among government agencies and private organizations that finance anti-trafficking efforts of the role nongovernmental organizations, such as members of the Freedom Network, can play in educating

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204. Interview by Rachel Shigekane with Erica Tumbaga, Case Manager, Coalition to Abolish Slavery and Trafficking, in Los Angeles, Cal. (June 9, 2003).

205. Interview by Steven Lize with Laura Germino, Anti-Slavery Campaign Coordinator, Coalition of Immokalee Workers, in Immokalee, Fla. (June 7, 2003).

and training local police to identify and refer victims of forced labor to appropriate service providers and federal authorities.

*Safety, Housing, and Protection*

The first priority in assisting survivors of forced labor is to ensure their safety. Not all survivors are at the same risk of harm, so their security needs vary. In most parts of the United States, service providers, community groups, and advocates have taken the lead in protecting forced labor survivors, including managing survivors' privacy and housing to shield them from retribution or unwanted contact with an alleged perpetrator's defense attorneys.

"The important thing," says Laura Germino of the CIW, "is to place survivors in a community [group] that will 'ground' them, . . . make them feel safe and comfortable, . . . and help them understand the process of the federal investigation and prosecution."<sup>206</sup> In the case of the Florida citrus pickers, Germino's organization provided peer counseling for the liberated workers, while the local Catholic Church gave them clothes and toiletries. Another local religious organization provided housing and paid for their phone calls to their families in Mexico. This coordinated effort created a safe environment that enabled the workers to speak freely about their experience to federal investigators.

Not all efforts to coordinate security arrangements for survivors have gone smoothly. In the case against JB Farm Labor Contractor/Victoria Island Farms, the asparagus harvesters' attorney had initially contacted the U.S. Department of Labor (DOL) for assistance in investigating violations of federal labor law. Before revealing the identity of any of the parties, the attorney asked the local DOL representative for assurances that the workers would not be detained and deported by the Immigration and Naturalization Service (now U.S. Immigration and Custom Enforcement). In the end, the DOL acknowledged it could not provide such assurances and the attorney, wishing to protect her clients, declined to involve the DOL.<sup>207</sup>

Social service agencies report that finding appropriate housing for survivors has been one of their greatest challenges. In 2004, for example, the Coalition to Abolish Slavery and Trafficking (CAST) was finally able to open its first shelter for forced labor survivors—indeed, it was the first of its kind to be inaugurated in the United States.<sup>208</sup> Before that time, the organization had housed clients in two apartment units and, when those units were filled, in hotels and shelters operated by other groups.

Housing for survivors of forced labor must serve two purposes. First, it should provide a safe and comfortable environment. Second, the facility should serve as a protective barrier that screens survivors from unwanted intrusions. The facility's staff should function as "survivor advocates" by assisting their clients' access to needed services and helping them to make decisions about

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206. *Id.*

207. Interview with Cynthia Rice, *supra* note 108.

208. See CAST News 6 (Coalition Against Slavery and Trafficking, L.A., Cal.) Fall 2003, at 3.

their future. If the survivor wishes to cooperate with law enforcement, the staff should be able to help facilitate such interviews.

As a rule, forced labor survivors should not be placed in shelters for the homeless or with victims of domestic violence. Survivors have reported feeling extremely uncomfortable in homeless shelters, especially if fellow lodgers have substance abuse or mental health problems. Similarly, women liberated from forced prostitution have reported feeling shunned or discriminated against in shelters for domestic violence victims.<sup>209</sup> Such facilities are often poorly equipped to meet the needs of forced labor survivors.

Nalini Shekar, the director of a shelter in northern California which has housed both victims of domestic violence and trafficking, said that programs designed for domestic violence victims, such as support groups, may not be appropriate for trafficking survivors who have been socially isolated and under the control of a trafficker for a significant amount of time. Such shelters, she added, often lack adequate security measures to protect trafficking survivors from perpetrators, particularly if they are part of a highly organized, extensive, and well-financed trafficking network.<sup>210</sup> Many of Shekar's concerns were borne out in the Reddy case by the attempt of an intruder to break into the shelter and find two of the survivors.

Forced labor survivors are not the only ones in need of protection. Persons who witness violent incidents involving forced labor or human trafficking as well as private citizens and organizations that help survivors escape risk retaliation from perpetrators. In the Florida citrus pickers case, the perpetrators or their associates reportedly menaced the homes of several staff members of CIW who had help liberate the workers. Despite repeated requests, the local police failed to answer the organization's calls for protection. Only after the NGO reported the threats to the justice department prosecutor who headed the investigation did local law enforcement, in conjunction with federal agents, monitor the situation more closely.

### *Prosecution and Benefits*

Forced labor survivors (and their service providers) are often caught in a bind when they try to balance their desire for justice and benefits with their needs for privacy and security. The Trafficking Act requires that forced labor survivors share information about themselves (and possibly others in a similar situation) with federal law enforcement agents in order to receive federal benefits. But in doing so, survivors may be increasing their vulnerability in at least two ways. First, by alerting law enforcement to their presence, survivors with-

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209. Interview by Natalie Hill and Rachel Shigekane with Kathleen Kim, Skadden Fellow, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, and Mie Lewis, AED, New Voices Fellow, Asian Pacific Islander Legal Outreach, Co-chairs of the Bay Area Anti-Trafficking Task Force, in San Francisco, Cal. (June 16, 2003).

210. Interview by Rachel Shigekane with Nalini Shekar, in Oakland, Cal. (July 17, 2003). Shekar noted that forced labor survivors tend to stay in a shelter for a year or more, while victims of domestic violence stay an average of three to nine months. *Id.*

out legal immigration status risk deportation if their account is found to lack credibility. Second, alleged perpetrators who are defendants in criminal proceedings have a right to review information provided by survivors to federal investigation. As a result, survivors and their families may be at a greater risk for retaliation. According to CAST's Jennifer Stanger, these dilemmas have had "a chilling effect" on survivors who wish to apply for T visas but are reluctant to place themselves at greater risk. "Rather than cooperating with government authorities," says Stanger, "victims of trafficking may be reluctant to come forward if they believe that this information may be turned over to their traffickers or be used to have them removed."<sup>211</sup>

Both our governmental and nongovernmental informants agreed that all forced labor survivors should have a legal advocate. As an attorney in the Reddy case put it: "I think it's in the victim's best interest to have a consistent figure in her life who's going to be advocating for her and helping her navigate through this really confusing minefield."<sup>212</sup>

In the best of worlds, the survivor should be assisted by one agency that offers both legal and social services. In this way, the survivor will receive both social services, such as housing, clothing and transportation, and legal counseling on immigration status and work authorization. There are a small number of service providers linked through the Freedom Network, a national coalition of anti-trafficking organizations, which have adopted an empowerment model of working with survivors. The empowerment model encourages self-sufficiency and increased self-esteem so that survivors may make informed decisions of their own choosing. For example, network member CAST has developed a management system that addresses a wide range of survivor needs, including access to mental and physical health, housing, legal counseling, education, and employment. CAST case managers work with survivors in one of two modes: "intensive" cases receive the most comprehensive, personalized, and individualized attention. For example, a CAST case manager will routinely accompany a survivor who is receiving "intensive" case management to medical appointments. Other cases are handled on an "information and assistance" basis and receive less frequent and individualized attention.<sup>213</sup>

CAST will provide assistance to survivors for as long as they desire such help. For example, Khai, the former indentured domestic worker, continues to receive "intensive case management" at CAST two years after her liberation. Khai's case manager has helped her put together a successful T visa application; stabilize her employment; make arrangements to bring her son over from Thailand; apply for federal benefits, including food stamps, health care and Refugee Cash Assistance; and ensure that she keeps her medical appointments and understands her physician's instructions.<sup>214</sup>

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211. Interview with Jennifer Stanger, *supra* note 117.

212. Interview by Laurel Fletcher with anonymous Assistant U.S. Attorney, location confidential (June 3, 2003).

213. Interview with Erica Tumbaga, *supra* note 204.

214. *Id.*

*T visas*

By the end of the Fiscal Year 2003, the U.S. Department of Justice reports that a total of approximately 450 survivors have accessed immigration benefits under the TVPA by receiving a continued presence visa and/or by receiving a T visa.<sup>215</sup> In 2003 alone, 297 of these T visas were issued.<sup>216</sup> Such progress notwithstanding, legal and social service providers point to several flaws in the special immigration program. To begin with, the application process is slow and cumbersome. Law enforcement may wait several months before issuing the endorsement survivors need to prove eligibility for immigration relief. On average, it takes the federal agency administering the program four to twelve months to process and approve a T visa application. Access to agency personnel also is restricted. The agency maintains only a general telephone number, which, according to users and advocates, requires callers to navigate complicated electronic voice instructions and wait on hold for long periods of time. Service providers say that rectifying these problems would help make the agency more “user-friendly” for all concerned.

*Language and Culture*

Service providers and legal advocates are learning to be sensitive to the varied backgrounds of survivors and the ways in which they interpret their experiences. Many survivors have minimal formal education, so it can be difficult for them to understand the roles of law enforcement and service providers or to fathom the complexities of the U.S. legal and welfare systems. The survivors of Reddy’s abuse, for example, had never used public transportation or managed their personal finances, let alone navigated a complex criminal justice system, before they were freed. Not only do service providers need to translate these systems for their clients, they also may need to educate clients’ families and communities in their home countries and in the United States.

Service providers and legal advocates must be aware of the difficulties their clients might face from the local migrant community once they denounce their captors. When it was discovered that Khai and the Thai Community Development Center had contacted federal authorities to report Supawan Veerapool’s abuse, many members of the local Thai community accused Khai of being disloyal and ungrateful to a generous patron who had arranged for her to come to the United States. “I felt that eighty percent of the community was against me,” Khai recalled in an interview for this study. “They regarded Supawan as a ‘high soul’ . . . and couldn’t believe how bad Supawan really is. . . I felt like I did the right thing. But in Thai culture, I am seen as ungrateful.”<sup>217</sup>

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215. REPORT FROM ATTORNEY GENERAL, *supra* note 11, at 16. As of September 30, 2003, approximately 374 continued presence requests had been granted and as of November 30, 2003, approximately 757 T visa applications had been received, 328 of which were granted, thirty-eight of which were denied and the remaining of which were pending. *Id.* Note that some survivors applied for and received both continued presence and T visas. See Appendix for chart.

216. *Id.* at 15.

217. Interview with Khai, *supra* note 120.



Finally, service providers and law enforcement alike find it difficult to communicate with survivors because of language differences. Some social and legal service providers have in-house interpreters or are themselves proficient in the language of the survivor. But, as our study found, the need for interpreters is a pressing problem for many service agencies and federal and local investigators. CAST case manager Erica Tumbaga said language capacity was one of the greatest challenges faced by her organization. Even though federal agents have access to official language specialists, they are not easily mobilized in a timely manner, which can delay investigations. In the case against R&A Harvesting, the lead federal investigator assigned to the case did not speak Spanish, which restricted his ability to gather criminal intelligence and corroborating evidence. He thus had to rely on another, Spanish-speaking agent, which meant the investigation took longer as the two men had to double up for interviews.<sup>218</sup>

### *Reintegration*

Reintegration is hard to achieve for many of those freed from forced labor. Service providers point to several barriers, including language and cultural differences, the effects of trauma, poor job skills, and a lack of education. Reintegration, for some, may mean repatriation to their country of origin where they may face stigmatization because of their experience.

Yet despite these challenges, many victims of forced labor have successfully reintegrated into society. Khai, the domestic servitude survivor, has done well in adjusting to a life of freedom in Los Angeles. "Khai is really one of our success stories," her case manager said. "She is a pretty stable person. Her English is good. She has housing and a job and a good relationship with her family. And the experience had not wholly traumatized her emotionally."<sup>219</sup> Khai agrees: "I have freedom now. I eat what I want. I am not afraid. I don't worry that people are watching over me. I feel like an ordinary person. I think that this is good."<sup>220</sup>

## VIII.

### CONCLUSIONS / RECOMMENDATIONS

#### *Lessons Learned and Future Challenges*

The U.S. government has recognized the problems of forced labor and human trafficking, and its actions to combat these abuses, both in the United States and overseas, constitute a significant platform on which to build. Already there have been important successes in enforcing laws that bring perpetrators of human trafficking and forced labor to justice. There has also been a marked change in approach and practice. Those caught in forced labor are now more likely to be recognized as victims of crime, with rights and needs that are specific to the nature of the abuse and exploitation they have endured. NGOs, ser-

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218. *Id.*

219. Interview with Erica Tumbaga, *supra* note 204.

220. Interview with Khai, *supra* note 120.

vice agencies, legal advocacy groups, worker organizations, and other community-based groups are now accumulating invaluable experience in supporting victims of forced labor and trafficking and in participating in multisector efforts to combat these crimes. Yet these actions will not be fully effective until the United States raises public awareness about human trafficking and creates transnational law enforcement networks to tackle the problem head on. While much remains to be done, this study provides lessons to be learned, which can be built upon to strengthen U.S. efforts to eradicate forced labor.

#### *Domestic Laws Can Create Strong Legal Platforms*

Passage of the Trafficking Act in 2000 was a watershed event, providing a comprehensive legal framework to tackle human trafficking in the United States. The legislation established a comprehensive set of regulations to ensure that criminal traffickers are prosecuted and that their victims are treated as such. The record to date shows that the new law enforcement tools have paid off: the number of investigations and prosecutions of traffickers has increased dramatically. Key to this success is providing immigration benefits and social services to survivors of trafficking and forced labor. Greater cooperation would occur if the government issued regulations for the U visa established by the TVPA to allow survivors who provide limited assistance to law enforcement personnel to receive temporary legal status and benefits. There remains a need to refine U.S. laws to close gaps in enforcement and care for survivors of forced labor. For example, increased opportunities for regularized migration would help decrease vulnerability of workers to forced labor, and gender-sensitive migration policies would protect women in potentially exploitative situations.

#### *Training Is Critical*

Law enforcement, NGOs, worker organizations, government monitoring agencies, and service providers are learning more and more about the signs of trafficking and forced labor. This study finds that identification of victims increases as those likely to encounter survivors gain expertise in the various signals of forced labor conditions. Furthermore, expertise in identifying and supporting survivors strengthens eradication efforts by increasing law enforcement knowledge about forced labor and trafficking operations as well as by empowering survivors to seek justice and rebuild their lives.

The numbers of professionals with trafficking and forced labor expertise is still relatively small, but growing. Their experiences serve as a vital resource for the creation of training materials as well as their dissemination. Building up the numbers of trained and seasoned professionals is crucial to minimizing inadvertent risk of harm to victims or rescuers through inappropriate interventions, such as confronting a trafficker while the victim is still under her or his control. With time, training should be extended both in breadth and depth to more agencies and professionals in order to identify, liberate, and support survivors. In particular, worker and employer organizations are important audiences to target

for training on the signs of forced labor. Because victims are often isolated, these sectors may have access to victims and could function as monitors.

#### *Witness and Survivor Protection*

The safety of survivors is critical to creating conditions under which they will be able to rebuild their lives and, if they choose, to cooperate fully with law enforcement. This study links the effective response of U.S. law enforcement and service providers to the promotion of witness cooperation. Research found that housing that required forced labor survivors to live in homeless shelters or with victims of domestic violence was inappropriate. Creation of temporary housing specifically for survivors of trafficking and forced labor has just begun and promises to address many of the special needs of survivors emerging from servitude.

While law enforcement has been able to protect survivors in the United States, it has proved difficult to provide effective protection to family members of survivors abroad. NGOs and worker organizations, working transnationally, may prove to be an effective tool for protecting forced labor survivors and their families. NGOs and worker organizations in origin countries could form part of an early warning system by monitoring the status of families of witnesses as well as survivors who return home. These groups could alert government authorities at home and in the United States about reported threats or abuse. Calling attention to problems early would send an important message to traffickers and their associates not to harm victims and families. It would also inform survivors and their families that the United States values their safety and in this way could help garner victim trust and cooperation.

#### *Social Services Provision to Survivors*

A wide range of social services are needed to assist trafficking survivors. This study found that most experienced and successful service providers cover a host of needs, often working with clients for a long period. In particular, seasoned service providers have learned to screen survivors of forced labor and trafficking for specific needs resulting from their forced labor situation. It is important that survivors receive a health screening soon after their liberation and access to safe and secure shelter. Those forced into prostitution, for example, run a high risk of having contracted sexually transmitted diseases and having endured physical assault. Psychologically, victims may lose their sense of personal efficacy and control and experience feelings of shame, betrayal, and isolation. Providers work with survivors to provide emotional support and, when appropriate, counseling.

Another proven practice of service providers is to identify a lead agency and point of contact that will remain responsible for coordinating between service providers and, when a survivor is cooperating with law enforcement, between prosecutors and investigators. The multiple and varied needs of survivors favor a multisector, holistic approach to service so that the survivor's needs for housing, health care (mental and physical), legal services, language and job

skills may be addressed in a coordinated manner. In the best of worlds, the survivor should be assisted by one agency offering both legal and social services. In this way, the survivor would receive both social services, such as housing, clothing, and transportation, and legal counseling on immigration status, work authorization, and, possibly, their role in prosecution. There are a small number of service providers that have adopted an empowerment model when working with survivors. The empowerment model encourages self-sufficiency and increased self-esteem so that survivors take greater control over their lives and may make informed decisions concerning their futures.

This study found agreement among law enforcement, legal advocates, and social service providers that all forced labor survivors should have legal representation. Survivors face numerous and daunting legal issues. If cooperating with law enforcement, survivors are helped by having legal counsel who advise and support them in recounting their experiences. Similarly, legal advocates take responsibility for ensuring that survivors receive the immigration and other benefits to which they are entitled. Securing benefits helps to stabilize survivors' lives and promotes rehabilitation.

#### *Research*

Knowledge of the criminal aspects of forced labor and human trafficking in the United States is still very limited. This study shows that law enforcement, social service providers, and legal advocates have gained most of their understanding about trafficking and forced labor on a case-by-case basis. Organized research will inform and strengthen the response by sectors already involved in combating forced labor as well as promote inclusion of other groups, such as medical professionals and worker and employer organizations. The recent amendment to the Trafficking Act directs numerous agencies including the National Research Council of the National Academies, the Secretary of Health and Human Services, and the Attorney General to undertake and support research on trafficking. We suggest attention be directed to the economic dimensions and health aspects as established by the new law, and that research in these areas be tailored appropriately.

To target activities and resources where they are most needed, research is needed in states or geographical regions where forced labor trafficking cases are emerging, on companies that profit from the flow of the products of forced labor into their product supply chains, and on those economic sectors in which there is a tendency for trafficking and forced labor to occur. These sectors include prostitution and pornography, domestic services, agriculture, factory production, and restaurant and hotel services. At present there is little understanding of the elasticity of demand for forced labor in different sectors.

Further research on the needs and experiences of survivors is also important. This is clear in the lack of reliable data on the health status of forced labor survivors in the United States. Future research should identify the precise health and medical consequences of forced labor: the nature of the maladies and their durations, the best practices to identify and administer services to survivors, and

the level of recovery to be expected following treatment. This information should be used to develop screening protocols to help health care professionals identify preexisting or potential health problems. Research should be conducted to determine what kinds of follow-up health care would be needed for survivors who choose to return to their countries of origin. Researchers should solicit the active participation of survivors, so that future programs will meet the needs of survivors from diverse cultural backgrounds.

#### *Recommendations*

Forced labor remains a widespread problem in the United States because there is public ignorance of the crime, a lack of sensitivity to victims, insufficient legal action, and a public demand for cheap goods and services. Yet for all its severity and breadth, forced labor can be stopped. The record of accomplishments is striking, particularly considering that the Trafficking Act has been in effect for less than five years. It is clear, however, that much remains to be done. In particular, the U.S. government should:

1. *Start a broad-based awareness-raising campaign, with special attention to reaching immigrant communities in the United States.* Private citizens have reported cases of forced labor, suggesting that raising awareness among the general public can increase identification of victims. Furthermore, public awareness about the link between the demand for cheap products and services and the crime of forced labor can foster public pressure on companies and industry to take responsibility for the treatment of workers in the production of components or ingredients in the products they sell in the United States. The U.S. government should also encourage worker and employer organizations to promote awareness about forced labor and trafficking within their constituencies. More research needs to be conducted on the demand for commercial sex services so as to design a public awareness campaign to combat forced labor in this sector.

2. *Improve institutional capacity to respond to forced labor and trafficking.* This means training government officials involved in identification, investigation, and prosecution of perpetrators of trafficking and forced labor. Better coordination of law enforcement activities and policies also should be promoted between federal, state, and local level authorities. In addition, more resources should be devoted to enable service agencies to serve existing clients and to conduct outreach that might result in identifying more forced labor survivors.

3. *Ensure better protection for workers in sectors vulnerable to forced labor and trafficking.* Increased legal protections and monitoring of working conditions in agriculture, domestic labor, sweatshops, and food service would promote safer work environments. The government should promote accountability in those sectors, especially agriculture and garment manufacturing, which use subcontracting systems that violate labor laws and practices. In particular, there is a need for the Department of Labor to deepen its monitoring and enforcement activities in low-wage sectors. This is another key area in which worker and employer organizations may become involved by disseminating information and promoting compliance with fair labor standards.

4. *Correct aspects of immigration policy that encourage the practice of forced labor.* The U.S. government should eliminate the visa requirement that mandates a worker to remain with one particular employer. This would go a long way toward reducing the vulnerability of low-wage workers, such as domestic laborers, to exploitation.

5. *Strengthen protection and rehabilitation programs for survivors.* To address short-term needs of survivors, the U.S. government should create incentives for survivors to come forward and cooperate with law enforcement personnel. This includes developing mechanisms to protect victims and family members vulnerable to retaliation and threats by traffickers in home countries. U.S. authorities should also review eligibility requirements for immigration relief as well as their administration to ensure these are consistent with the goal of supporting and protecting survivors. Increased public and private support to social service agencies is required in order to provide adequate, safe housing to survivors upon liberation from captivity. Once survivors feel safe and secure, they are more likely to aid law enforcement personnel in the prosecution of suspected traffickers.

## APPENDIX

Reported Country of Origin of Victims of Forced Labor	Number of Cases	Estimated Number of Individuals
Mexico	25	ca 1,500
United States	20	ca 71
China	11	ca 10,000
Thailand	9	ca 150
India	9	ca 70
Bangladesh	8	ca 200
Russia	8	ca 100
Vietnam	6	ca 250
Honduras	5	ca 70
Philippines	5	ca 200
Korea	4	ca 6
Guatemala	3	ca 5
Indonesia	3	4
Cambodia	2	30
Cameroon	2	3
Estonia	2	15
Ghana	2	2
Kenya	2	2
Malaysia	2	5
Zambia	2	2
Albania	1	1
Brazil	1	1
Czech Republic	1	10
Ecuador	1	1
Ethiopia	1	3
Guyana	1	1
Haiti	1	1
Hungary	1	13
Jamaica	1	2
Kryghistan	1	1
Latvia	1	5
Micronesia	1	2
Nigeria	1	2
Peru	1	8
Romania	1	10
Tonga	1	4
Ukraine	1	29
Uzbekistan	1	1
Yugoslavia	1	1

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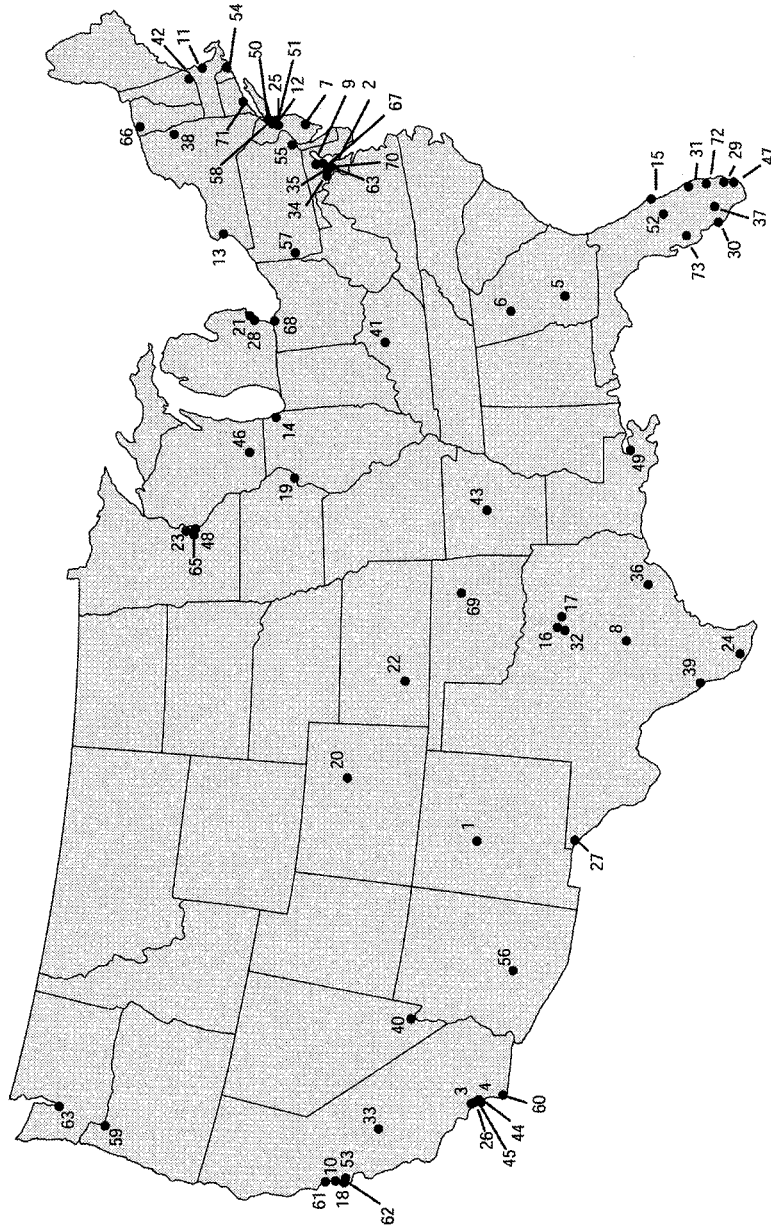
*HIDDEN SLAVES*

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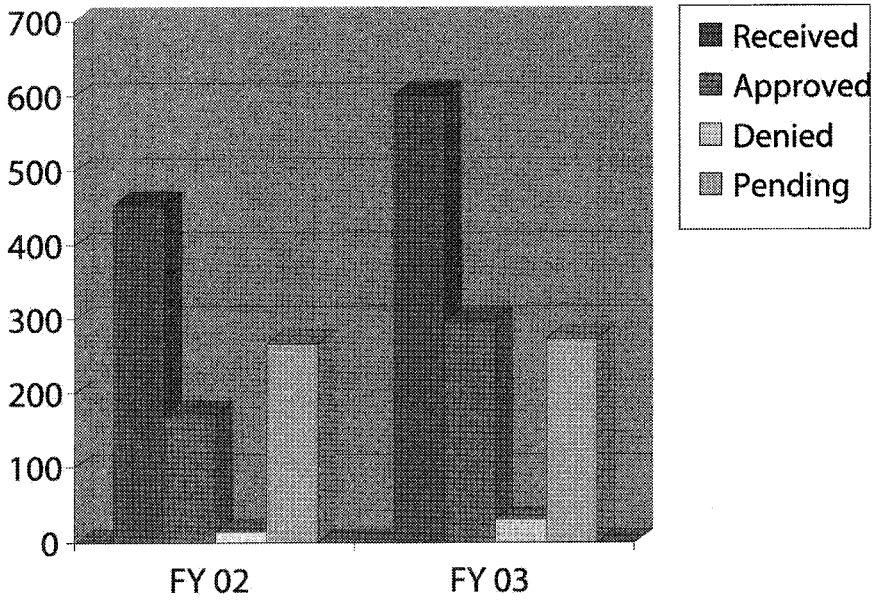
Specific Nationality Not Reported		
Asia	6	ca 10,000
Southeast Asia	4	ca 30
“Hispanic”	2	ca 70
Eastern European	1	1



U.S. CITIES IN WHICH FORCED LABOR INCIDENCES WERE REPORTED.



RATES OF T VISA APPLICATION APPROVAL.



Number of Applications	FY 2002	FY 2003
Received	453	601
Approved	172	297
Denied	13	30
Pending	268	274