

# HUMAN TRAFFICKING LAW AND POLICY

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# HUMAN TRAFFICKING LAW AND POLICY

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MATTHEW  BENDER

# *Dedications*

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*To Jeff, Elliott, and Owen, thank you for filling my life with joy, laughter, and love, and to my parents Vince and Nondus Carr, my work on behalf of victims of human trafficking is because of your support and guidance, thank you for everything.*

*To Manuel, the love of my life and my everything, and to Evelyn Gleason and Gail and Bill Milgram, who gave me the courage to fight and the strength to believe that we may one day know a world without trafficking.*

*To all the human trafficking survivors and anti-trafficking advocates that inspire us and guide our work.*

*For my parents, Maxine and Charles Warnath, thank you for all of your love and support. You taught me to see injustice and to act against it. For victims and survivors of human trafficking — an injustice of unfathomable depth — you are the inspiration for this work and the writing of this book.*



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# *Introduction*

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Labor trafficking touches many aspects of our daily lives. It touches, through supply chains, the T-shirts we wear, the cell phones we use, and the chocolate we eat and share with others. Moreover, sex trafficking intertwines with much of the global sex industry, whether through the sale of young males into brothels in Bangalore, the sale of young women into strip clubs in San Diego, or the forced prostitution of both males and females, of all ages, in states across the country and countries across the world.

Yet 20 years ago a casebook on either of these criminal activities — which are often linked together under the term “human trafficking” — would have been unthinkable. That’s because 20 years ago there was no Palermo Protocol, the international agreement adopted by the United Nations in 2000 to combat human trafficking internationally; and 20 years ago there was no Trafficking Victims Protection Act, the landmark statute Congress passed the same year as the Palermo Protocol to combat human trafficking domestically. In fact, 20 years ago the term “human trafficking” had not even entered the legal lexicon. Lawyers and judges did not think in terms of human trafficking. Nor did politicians and police officers.

Said differently, 20 years ago there was no human trafficking law.

But now there is — which is why we have put together this casebook. In it we knit together the ideas and perspectives of four attorneys who have worked in different areas of human trafficking. To the extent possible, we have each written the sections relating to areas with which we have the greatest expertise, whether as practitioners, academics, or policy makers. For Professor Carr, her work in the field and the academy led to a focus on the Trafficking Victims Protection Act, early domestic trafficking laws, approaches to working with victims of trafficking, and immigration issues. Similarly, Professor Kim’s scholarly focus and work in the field led to her concentration on victim issues, immigration issues, civil litigation, and involuntary servitude. For Professor Milgram, her work as a prosecutor of federal human trafficking crimes and as a state policy maker, along with her work in the academy, led to her focus on federal criminal prosecutions, agency responses to trafficking, and antebellum slavery and peonage. Finally, Stephen Warnath’s experience in international law and policies, including as an advisor to leaders in government and business, led to his focus on the international components of the human trafficking issue and on corporate accountability and transparency.

During the coming years we will edit and improve our work. We anticipate future revisions and welcome feedback from the many committed people working in this field today, from academics to policy makers to practitioners. We know the stories we provide in the following chapters leave out other stories and we hope that what we have omitted will soon be filled in by others who, freed from the constraints of writing a casebook, can give fuller, more nuanced accounts of how “human trafficking” went from a term few people had heard of to a term 130 countries have codified into law.

But for this first edition, we have decided to attempt something more fundamental. We have decided to attempt to bring together, in one place, the cases and statutes that have come to define human trafficking law over the past 20 years, as well as the cases and

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statutes out of which that law developed, stretching back all the way to before the Civil War.

So in the chapters that follow you will find cases from the 21st century as well as cases from the 19th and 20th centuries, just as you will find statutes ranging from the California Supply Chain Transparency Act of 2010 to the Mann Act of 1910 to the Black Codes of Reconstruction. In our view, to understand “modern-day slavery” it is helpful to understand antebellum slavery, as well as the various forms of slavery, such as peonage and debt bondage, that sprung up in between — particularly because many of these forms have reemerged in places across the globe.

You will also find in-depth discussions of how human trafficking cases are prosecuted in the criminal context, how human trafficking cases are litigated in the civil context, and what role government agencies and NGOs play in each of these contexts, both in the United States and abroad. In other words, you will find the resources to understand who is doing what with whom in the world of human trafficking.

But what you won’t find are a lot of statistics. You won’t find a lot of statistics because statistics about human trafficking are notoriously unreliable. Some organizations put the number of people currently enslaved in the world at 15 million. Other organizations estimate that number is as high as 27 million. That’s a difference of 12 million human beings, or roughly the amount of human beings that were brought to the New World to be enslaved during the over 300-year reign of the Atlantic Slave Trade.

Rather than devote our energy to navigating these numbers, we have instead decided to devote our energy to reducing them. That is, we have decided to devote our energy to collecting and arranging the legal materials that we think can best help human trafficking lawyers help human trafficking victims, as well as the legal materials we think can best help human trafficking policy makers prevent people from being trafficked in the first place. There may be disagreement about the number of people currently enslaved in the world, but there is no disagreement about the state of that number: it is too high and it, ideally, should be cut down to zero.

With this admittedly ambitious goal in mind, we offer the chapters of this casebook, none of which is meant to be an original work of scholarship nor a comprehensive account of a particular subject. Instead we have designed each chapter with a much more strictly pedagogical purpose in mind: we want to teach students how to read cases and interpret statutes as experienced human trafficking lawyers read cases and interpret statutes.

If we can do that, if we can equip students with the background knowledge and analytical framework they’ll need to “think like a human trafficking lawyer,” then perhaps just as 20 years ago a casebook on human trafficking law would have been unthinkable, 20 years from now this casebook on human trafficking law will have done some good.

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We have organized this book into five parts:

- Chapters 1–4: Part I introduces the history of slavery, abolition, and peonage, along with the laws most often used to address slavery and compelled service in the U.S. prior to passage of the Trafficking Victims Protection Act.

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- Chapters 5–8: Part II describes both U.S. and international laws and policies aimed at combating human trafficking.
- Chapters 9–12: Part III provides readers with an in-depth look at how U.S. human trafficking law and policy is implemented.
- Chapters 13–14: Part IV frames some of the debates and issues attorneys and advocates working to combat human trafficking currently face.
- The Appendix: Part V provides supporting material and an overview of state human trafficking laws and prosecutions.

### A Note about Definitions

The Palermo Protocol and the TVPA both use the term “trafficking in persons.” But for the purposes of this casebook we have decided to use the somewhat more common and succinct term “human trafficking.” In other areas, our task has been made more difficult by the fact that many people use two key terms — “domestic trafficking” and “international trafficking” — to mean different things. These phrases can be used as shorthand for the location in which trafficking takes place, whether the trafficking was transnational, the citizenship status of the victims, and the citizenship status of the traffickers. So we have chosen, where necessary, to use these terms as they have been adopted and used by government agencies and others.

We have also chosen to make two additional definitional distinctions. First, we have chosen to use “foreign national” when talking about individuals in the United States who are not U.S. citizens or who do not have permission to enter or remain in the United States. Second, we have chosen to use the term “victim of human trafficking” to describe individuals who have been exploited by traffickers. We hope these choices lend some clarity to an often times linguistically confusing area of law, and we encourage suggestions for how to lend even more clarity in the future.

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### History of Slavery Timeline

1619 The first African slaves arrive in Virginia.

1776 The Declaration of Independence declares that “all men are created equal.”

1787 The U.S. Constitution states that Congress may not ban the slave trade until 1808 (art. 1, § 9) and enacts the three-fifths compromise (art. 1, § 2(3)). The Constitution also establishes a property right in slaves (art. 4, § 2(3)). Slavery is also made illegal in the Northwest Territory, which extends from the western border of Pennsylvania through the present-day states of Ohio, Illinois, Indiana, Michigan, Wisconsin, and part of Minnesota.

*U.S. Constitution, Article 1, § 9*

The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

*U.S. Constitution, Article 1, § 2(3)*

Representatives and direct Taxes shall be apportioned among the several States which

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may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.

*U.S. Constitution, Article 4, § 2(3)*

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

*Northwest Ordinance, Article 6, 22 Journals of Congress 343 (1787)*

There shall be neither Slavery nor involuntary servitude in the said territory otherwise than in the punishment of crimes, whereof the party shall have been duly convicted; provided always that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

1793 Eli Whitney invents the cotton gin, which greatly increases the demand for slave labor.

1793 A federal fugitive slave law is enacted to enforce Article 4, § 2 of the Constitution. The law provides for private capture and return of slaves who escape and cross state lines.

1808 The federal ban on importation of African slaves (hereinafter the “1808 Slave Trade statute”), passed in 1803, goes into effect.

*1808 Slave Trade Statute: 9 Cong. Ch. 22; 2 Stat. 426*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first day of January, on thousand eight hundred and eight, it shall not be lawful to import or bring into the United States or the territories thereof from any foreign kingdom, place, or country, any negro, mulatto, or person of colour, with intent to hold, sell, or dispose of such negro, mulatto, or person of colour, as a slave, or to be held to service or labour.*

1820 The Missouri Compromise bans slavery north of the 36th parallel, except in Missouri.

1831 Nat Turner, an enslaved African American preacher, leads a slave uprising. He and his followers launch a short, bloody, rebellion in Virginia. State and federal troops quell the rebellion, and Turner is eventually hanged.

1831 William Lloyd Garrison publishes the *Liberator*, a weekly paper advocating the complete abolition of slavery. He quickly becomes one of the leading figures in the abolitionist movement.

1841 The Supreme Court decides *United States v. The Amistad*, 40 U.S. 518 (1841), which frees the Amistad captives, finding that the 49 Africans on board were kidnapped in Africa and never held as slaves.

1842 In *Prigg v. Pennsylvania*, 41 U.S. 539 (1842), the Supreme Court declares a Pennsylvania law unconstitutional that prohibits the capture of *any* African-American for

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return into slavery, except with procedural protections for suspected fugitive slaves. Prigg had captured and arrested an escaped slave in Pennsylvania and brought her back to Maryland without using the procedures in the state law. The Supreme Court found that the state law was both unconstitutional under Article 4, § 2, clause 3 of the Constitution and preempted by the Fugitive Slave Act of 1793. The Court holds that, “[t]he right to seize and retake fugitive slaves, and the duty to deliver them up, in whatever state of the Union they may be found, is, under the constitution, recognised as an absolute positive right and duty . . . uncontrollable by state sovereignty or state legislation.” 41 U.S. at 542.

1849 Harriet Tubman escapes from slavery and becomes a leader of the Underground Railroad.

1850 A debate on whether territory won in the Mexican War should be open to slavery is decided in the Compromise of 1850. California is admitted as a free state, the Utah and New Mexico territories are left to decide the issue by popular sovereignty, and Washington, D.C. prohibits the slave trade but does not abolish slavery. Controversially, the Fugitive Slave Law of 1850 is passed, which is a much harsher version of the 1793 fugitive slave law: the new law mandates fines, or imprisonment, for officials who refuse to execute a warrant for a fugitive slave or anyone who aids, harbors, or hides a fugitive slave. Furthermore, a slave’s testimony in a proceeding against his claimant is not admissible as evidence; however, to prevail, a claimant had only to offer sworn testimony of ownership.

1854 The Kansas-Nebraska Act becomes law, establishing the territories of Kansas and Nebraska, each of which may determine the slavery issue by popular sovereignty. The law thus repeals the Missouri Compromise of 1820 and renews tensions between anti- and pro-slavery factions.

1857 In the seminal case of *Dred Scott*, 60 U.S. 393 (1857), the United States Supreme Court holds that freed slaves are not citizens of the United States and that Congress does not have the right to ban slavery in the States. Also in 1857, the New Mexico Supreme Court invalidates the practice of using law enforcement to enforce peonage and debt bondage in *Jaramillo v. Romero*, 1 N.M. 190 (N. Mex. 1857).

1859 John Brown and his followers capture the federal arsenal at Harpers Ferry, Virginia (now West Virginia) in an attempted slave revolt.

1860 Abraham Lincoln elected as President of the United States. South Carolina secedes from the United States.

1861 February: The Confederate States of America is founded by the first seven states that secede from the United States (South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, Texas). A provisional army is established.

March: The Confederate States Army is founded. Lincoln is sworn in as President.

April: Confederate forces attack the U.S. military installation at Fort Sumter, and the Civil War begins.

1863 On January 1, President Lincoln issues the Emancipation Proclamation, declaring “that all persons held as slaves” within the Confederate States “are, and henceforward shall be, free.”

1864 The Senate passes the Thirteenth Amendment to the Constitution.

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1865 January 31: The House passes the Thirteenth Amendment, sending it to the States for ratification.

April 9: The Confederate Army surrenders at Appomattox Court House, ending the Civil War.

April 14: President Lincoln is assassinated.

December 6: The requisite three-quarters of states ratify the Thirteenth Amendment, abolishing slavery throughout the United States.

### *U.S. Constitutional Amendment XIII*

Section 1. 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.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

1866 March: Southern states enact so-called black codes, which limit the basic civil liberties of “colored people” (an individual with more than 1/8 African American blood). The black codes, most of which include express racial classifications, forbid “colored people” from, among other things, carrying weapons, marrying white people, selling liquor, or being vagrant.

*An Act to alter and amend the 4435th Section of the Penal Code of Georgia, Georgia, Title II, No. 240, March 12, 1866.*

SECTION 1. All persons wandering or strolling about in idleness, who are able to work, and who have no property to support them; all persons leading and idle, immoral or profligate life, who have no property to support them, and are able to work, and do not work . . . shall be deemed and considered vagrants, and shall be indicted as such; and it shall be lawful for any person to arrest said vagrants, and have them bound over for trial to the next term of the County Court, and upon conviction they shall be fined or imprisoned, or sentenced to work on the public works or roads for no longer than a year, or shall . . . be bound out to some person for a time not longer than one year, upon such valuable consideration as the Court may prescribe, the person giving bond, in a sum not exceeding three hundred dollars, payable to said Court. . . .

April 9: Largely in response to the black codes, and over the veto of President Andrew Johnson, the Civil Rights Act of 1866 is enacted. The Act states that individuals born in the United States are U.S. citizens and enjoy the right to contract, sue, give evidence, purchase and convey property, and are entitled to “the full and equal benefit of all laws and proceedings for the security of person and property,” as are enjoyed by white citizens. The right to contract is a precursor to the Fourteenth Amendment.

1867 The Peonage Abolition Act becomes law, eliminating the practice of debt bondage. Debt bondage, or bonded labor, occurs when a debtor pledges his personal labor or services to a lender in payment of his debt, but the reasonable value of his services is not applied to the liquidation of the debt, or the length and nature of the services is not defined.

1870 February 3 — The requisite number of states ratify the Fifteenth Amendment, prohibiting denial of the right to vote based upon race, color, or previous enslavement.

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### *U.S. Constitutional Amendment XV*

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

May 31 — The Enforcement Act is passed to enforce the Fifteenth Amendment, making it a misdemeanor to refuse to allow otherwise qualified people to complete the “prerequisites” for voting.

1874 The Padrone Statute, aimed at preventing Italian children from being enslaved as street musicians and beggars, prevents the involuntary servitude of all foreign-born individuals.

1875 The Page Act prohibits the importation of “alien” women from Asia for purposes of prostitution. Portions of this act will be used in the White Slave Traffic Act in 1910.

1904 In *United States v. Ah Sou*, 132 F. 878 (N.D. Wash. 1904), a Washington Federal District Court blocks the deportation of a Chinese woman, Ah Sou, because she was forced into sexual servitude. The Ninth Circuit Court of Appeals later reverses, holding that the Thirteenth Amendment does not prohibit the deportation of a slave. *United States v. Ah Sou*, 138 F. 775 (9th Cir. 1905).

1909 Congress removes race from all involuntary servitude and slavery statutes, making all prohibitions against slavery race-neutral for the first time.

1910 The White Slave Traffic Act, later known as the Mann Act, becomes law and criminalizes the interstate transport of women for “prostitution,” “debauchery,” or “immoral purposes.”

1926 League of Nations Convention to Suppress the Slave Trade and Slavery. The first international instrument to provide a definition of slavery is enacted. Article 1 defines 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.” Article 2 calls upon the Parties to undertake “(a) To prevent and suppress the slave trade” and “(b) To bring about . . . the complete abolition of slavery in all its forms.”

1930 Convention Concerning Forced or Compulsory Labour, International Labour Organization Convention No. 29. ILO Convention No. 29 defines forced labor and requires States to criminalize it. The Convention prohibits all forms of forced or compulsory labor, defined 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.”

1948 Federal criminal law is amended to enact 18 U.S.C. §§ 1581–1588, which ban peonage and involuntary servitude. The amendments are a consolidation of the 1874 Padrone Statute (formerly 18 U.S.C. § 446 (1940 ed.)) and the 1808 Slave Trade statute, as amended in 1909 (18 U.S.C. § 423 (1940 ed.)).

1948 UN General Assembly, *Universal Declaration of Human Rights*. The United Nations adopts the Universal Declaration of Human Rights in 1948 in order to strengthen human rights protection at the international level. Article 4 states: “No one shall be held in slavery

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or servitude; slavery and the slave trade shall be prohibited in all their forms.”

1950 Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*.

Article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides that: “1. No one shall be held in slavery or servitude” and “2. No one shall be required to perform forced or compulsory labour.” In addition to recognizing basic rights and freedoms, this Convention established a framework of enforcement.

1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. The Convention supplements the 1926 Convention by identifying practices similar to slavery including debt bondage, serfdom, and marriage where the woman is treated as property.

1964 The Civil Rights movement leads to enactment of the Civil Rights Act (Public Law 82-352 (78 Stat. 241)). The Act targeted “Jim Crow laws” in the South that imposed de jure segregation in all public facilities. Thus, the Act prohibited discrimination and segregation on the basis of race, color, and national origin in public accommodations engaged in interstate commerce. 42 U.S.C. § 2000a. It also prohibited discrimination by employers (of more than 25 people) on the basis of race, color, religion, sex, or national origin (§ 2000e (“Title VII”)), and discrimination by government agencies that receive federal funds (§ 2000d).

1965 The Voting Rights Act is enacted, outlawing discriminatory voting practices by prohibiting “qualifications” or “prerequisites” to voting that result in a “denial or abridgement of the right of any citizen . . . to vote on account of race or color.” Aug. 6, 1965, P.L. 89-110, 79 Stat. 437.

1988 The Supreme Court decides *United States v. Kozminski*, 487 U.S. 931 (1988), holding that “involuntary servitude,” as prohibited by 18 U.S.C. §§ 241 and 1584, means a condition of servitude where the victim was forced to work by threat of physical restraint, physical injury, or coercion by the law or legal process. “Involuntary servitude,” therefore, does not encompass psychological coercion without physical or legal coercion. *Id.* at 944.

1989 Convention on the Rights of the Child (CRC). The CRC provides that “State Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”

1998 Presidential Memorandum on Steps to Combat Violence Against Women and Trafficking in Women and Girls, 1 PUB. PAPERS 358, 259 (Mar. 11, 1998). This Presidential directive launched U.S. government’s comprehensive framework for addressing modern slavery (“3-P’s”) and created an interagency process to develop domestic and international law and policy on human trafficking.

1999 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, International Labour Organization Convention No. 182. ILO Convention No. 182 is aimed at identifying and preventing the worst forms of child labor. Article 3 of Convention 182 prohibits:

- (a) all forms of slavery or practices similar to slavery, such as the sale and



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trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced 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;

(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.

2000 The Trafficking Victims Protection Act (TVPA), *Public Law 106-386, 114 Stat. 1464*, acknowledges the modern slave trade and provides criminal and civil remedies for victims, including immigration relief and access to social services, in addition to funding for other countries fighting human trafficking. The TVPA also overturns the holding in *Kozminski* and expands the criminal law of human trafficking to acknowledge that subtle forms of coercion, and not just threats of force, actual force, and the legal process, can enslave individuals. The TVPA creates new offenses aimed at the eradication of slavery in the United States, including the crimes of forced labor and sex trafficking.

2000 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (“Palermo Protocol”). The Protocol achieves global consensus on the scope of the definition and provides a comprehensive framework for addressing human trafficking in countries around the worldwide.

2002 The Rome Statute of the International Criminal Court (Rome Statute) established the first International Criminal Court (ICC) authorized to prosecute crimes of great concern to the international community. Crimes against humanity are defined under Article 7 to include “enslavement,” “sexual slavery,” “enforced prostitution,” and “any other form of sexual violence of comparable gravity.”

2003 The TVPA is reauthorized, becoming the Trafficking Victims Prevention Act Reauthorization (TVPRA), *Public Law 108-193, 117 Stat. 2875*, and:

- Expands eligibility for T-visas generally by explicitly providing for law enforcement certification from both federal and state officials that the victim has assisted in the investigation and prosecution of the crime. (Sec. 4(a)(3), 22 U.S.C. § 7105(b)(1)(E)).
- Creates a private right of action for a victim to pursue a civil remedy against his traffickers, including damages and attorneys fees. (Sec. 4, 18 U.S.C. § 1595).
- Expands eligibility for T-visas for children by exempting them from complying with a “Reasonable request for assistance” to law enforcement if they are under 18 years of age. (Sec. 4, 8 U.S.C. § 1101(a)(15)(T)).
- The definition of “sex trafficking of children” is expanded to reach activities “in or affecting” foreign commerce. (Sec. 5, 18 U.S.C. § 1591).

2005 The TVPA is reauthorized, *Public Law 109-164, 119 Stat. 3558*, and:

- Mandates that USAID and the Departments of State and Defense incorporate anti-trafficking and protection measures into their post-conflict and humanitarian emergency assistance activities. (Sec. 101, 22 U.S.C. § 7104).

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- Creates extraterritorial jurisdiction for trafficking offenses committed by government employees, federal contractors, and subcontractors at any tier. (Sec. 103, 18 U.S.C. § 3271).
- Establishes grant programs to develop and expand assistance to U.S. citizen and foreign national trafficking victims. (Sec. 202, 42 U.S.C. § 14044a).
- Creates a pilot program for residential treatment facilities for trafficked juveniles. (Sec. 203, 42 U.S.C. § 14044b).

2005 Council of Europe Action against Trafficking in Human Beings (CAATH). CAATH mandated stronger protection and assistance provisions than were enacted in the Palermo Protocol. These included a non-punishment provision and reflection/recovery periods for victims of human trafficking.

2008 The TVPA is again reauthorized, *Public Law 110-457, 122 Stat. 5044*, and:

- Charges the State Department with developing an information pamphlet on legal rights and resources for aliens applying for employment or education based nonimmigrant visas, which the applicant must understand before being granted a visa. (Sec. 202, 8 U.S.C. 1375b).
- Strengthens visa application requirements for domestic workers coming into the U.S. with diplomats by requiring a written contract that states wages and vacation days, and the employer agrees to lawful conduct. (Sec. 203, 8 U.S.C. 1375(e)).
- Establishes a program to specifically assist U.S. citizen and Legal Permanent Residents who have been trafficked. (Sec. 213, 22 U.S.C. 7105(f)).
- The definitions of “enticement into slavery” and “sale into involuntary servitude” are broadened to include “obstruction” of enforcement. (Sec. 222, 18 U.S.C. §§ 1583, 1584).
- The definition of “forced labor” is broadened to include force, threats of force, and threats of physical restraint. (Sec. 222, 18 U.S.C. § 1589).
- “Sex trafficking of children” is broadened to include being “in reckless disregard of the fact that means of force, fraud, [or] coercion” will be used to compel commercial sex acts. (Sec. 222, 18 U.S.C. § 1591).
- In a sex trafficking prosecution of a minor, the Government does not have to prove that the defendant knew the minor was under 18 years old if the defendant “had a reasonable opportunity to observe” the minor. (Sec. 222, 18 U.S.C. § 1591).
- Criminalizes “knowingly benefiting,” financially or otherwise, from a venture that has committed peonage or trafficking offenses, and “knowing or in reckless disregard” of the fact that these offenses were committed. (Sec. 222, 18 U.S.C. § 1593A).
- Criminalizes fraud in foreign labor contracting. (Sec. 222, 18 U.S.C. § 1351).
- Creates extraterritorial jurisdiction over trafficking crimes abroad when the offender is a U.S. citizen or Legal Permanent Resident, or if the alleged offender is inside the United States. (Sec. 223, 18 U.S.C. § 1596).
- Broadens eligibility for immigration relief for children at risk of being trafficked

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## *Introduction*

by loosening the requirements for Special Immigrant Juvenile status. (Sec. 235, 8 U.S.C. 1101(a)(27)(J)).

- Enacts the Child Soldier Prevention Act, 22 U.S.C. § 2151, which limits assistance to foreign governments that either have government armed forces or government-supported armed groups that recruit use child soldiers.

2010 California Transparency in Supply Chains Act is enacted obligating large manufacturer and retailers to disclose actions to prevent and eradicate human trafficking from their supply chains.

2010 *Rantsev v. Cyprus and Russia*. The European Court of Human Rights issues opinion in Rantsev holding, *inter alia*, that Cyprus and Russia violated affirmative obligations held toward trafficking victim Ms. Rantsev.

2013 The TVPA is again reauthorized, Violence Against Women Reauthorization Act of 2013, § 1202, and:

- Authorizes the Office to Monitor and Combat Trafficking in Persons to provide assistance to countries that enter child protection compacts with the U.S. (Sec. 1202).
- Adds provisions addressing and seeking to prevent child marriage and child soldiers. (Sec. 1207, 1208).
- Strengthens the oversight of government contracts through implementation of a report investigating — among other things — abuses of foreign workers, the role of foreign labor recruiters and brokers, and the role of employers in the U.S. who commission those recruiters and brokers. Furthermore calls for effective policies and laws to ensure that foreign labor recruiters are held criminally and civilly liable for fraudulent recruiting. (Sec. 1204, 1235).
- Amends the RICO Act to include a fraud in foreign labor contracting clause. (Sec. 1211).

Includes provisions seeking to improve interagency coordination and reporting. (Sec. 1231–36).

- Authorizes appropriations for grants to state and local law enforcement to help combat trafficking, as well as appropriations for grants to help assist trafficking victims. (Sec. 1241–42, 1251–52).



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