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LOSING SIGHT OF THE UNDOCUMENTED VICTIM:
BARRIERS TO HUMAN TRAFFICKING DETERRENCE IN THE
ERA OF IMMIGRATION REFORM

Undergraduate Honors Thesis

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INTRODUCTION

Though the United States leads as one of the world's most advanced nations, slavery continues to exist within its borders. Human trafficking, a form of modern enslavement for sex and/or labor, remains prevalent in the U.S. today. As a portion of trafficked persons are foreign nationals, immigration policy complicates legislation on the issue. The following research aims to investigate the complex relationship between immigration law and victim protection in human trafficking policy. In addition to reviewing the broad implications of current legislation, this study examines specific policies and procedures to determine how the legal process differs between citizen and noncitizen trafficking victims. Building off prior scholarly work on the subject, it takes into account changes in policy since the start of the Trump Administration. Newly published data, along with government and non-governmental organization (NGO) reports, provide supplemental evidence to past academic findings. Conclusions are based on a comparative study of current law and legal procedure with regard to citizenship status, as well as qualitative insight from experts in the field.

Subsequent findings support the general conclusion that increasingly strict immigration enforcement reduces the ability of human trafficking policy to adequately protect undocumented victims. Modern immigration policy is expansive and strongly worded; its position as a hot topic political issue has made migration crime a focus for law enforcement, but the heightened attention toward migrant prosecution has sparked unintended consequences in the realm of anti-trafficking. Provisions protecting noncitizens in human trafficking policy are far less comprehensive than those relating to illegal immigration as a crime. Therefore, they often fall short in an era of prioritizing immigration enforcement. Victims may fail to be identified as such,

and poor implementation of certain policies can lead to the criminalization of undocumented survivors. Furthermore, strict immigration policy can actually hinder the ability of law enforcement to investigate and prosecute those responsible for human trafficking.

This paper argues that the Trump Administration's crackdown on illegal immigration has unintentionally created or exacerbated problems faced by undocumented victims of human trafficking. Though legal and implementary reform is necessary to better protect this sub-group, research shows that many of the issues caused by increasingly strict immigration policy are compounded by anti-immigrant expressions by government officials in the media, in addition to actual changes in the letter of the law. Finally, this paper argues that increasing public awareness, educating potential victims on their status and legal rights, and training law enforcement—specifically those agencies related to immigration—to better identify and address trafficking situations would effectively mitigate many of the problems discussed hereafter.

REVIEW OF LITERATURE

HUMAN TRAFFICKING IN THE UNITED STATES

A form of modern enslavement, human trafficking is defined as “the recruitment, transportation, transfer, harboring, or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of 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.”¹ While this definition appears comprehensive, its real world application is often less broad.²

Trafficking victims are generally exploited for sex and/or labor. The nature of the crime has made it difficult for institutions to collect accurate data on the prevalence of human trafficking. The majority of historical estimates are no longer considered credible in the academic community.^{3,4} Estimates on the number of human trafficking victims vary widely between sources. The U.S. Department of State Trafficking in Persons Report has attempted to gather and analyze global data on trafficking since 2001. In 2017, the report identified roughly 100,400 victims around the world.⁵ This statistic differs largely from that of the International Labour Organization (ILO), a respected agency of the United Nations, which estimates a global number closer to 21 million.⁶ Several factors explain the discrepancy between organizations. Difficulty accessing transient populations and failure to recognize trafficking situations, particularly in cases of forced labor, can result in a wide data gap.^{7,8}

¹ United Nations. Human Rights Council. Office of the High Commissioner. *Human Rights and Human Trafficking*. Geneva: UN Human Rights Council, (2014): 2.

² Haynes, Dina Francesca, “(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act.” *Georgetown Immigration Law Journal* (Posted 2007, last modified 2013):1-31.

³ Farrell, Amy and Jessica Reichert. “Using U.S. Law Enforcement Data: Promise and Limits in Measuring Human Trafficking.” *Journal of Human Trafficking* 3, no. 1 (2017): 1-22.

⁴ Weitzer, Ronald. “Sex Trafficking and the Sex Industry: The Need for Evidence-Based Theory and Legislation.” *Journal of Criminal Law and Criminology* 101, no. 4 (2011): 26.

⁵ U.S. Department of State. Office of the Undersecretary for Civilian Security, Democracy, and Human Rights *Trafficking in Persons Report, 2018*. Washington D.C.: U.S. Department of State, 2018.

⁶ United Nations. ILO (International Labour Organization). *Statistics on forced labour, modern slavery and human trafficking*. Geneva: ILO, 2014.

⁷ Fedina, Lisa, and DeForge, Bruce R. “Estimating the Trafficked Population: Public-Health Research Methodologies May Be the Answer.” *Journal of Human Trafficking, Vol. 3* (2017):1, 21-38. DOI: 10.1080/23322705.2017.1280316.

⁸ Farrell, *Using U.S. Law Enforcement Data*, 1-22.

Furthermore, trafficking is often underreported.⁹ The Polaris Project, a non-profit NGO, works to eradicate trafficking through a victim protection centered approach. Data from the Polaris hotline shows more than 10,600 victims in the United States alone.¹⁰

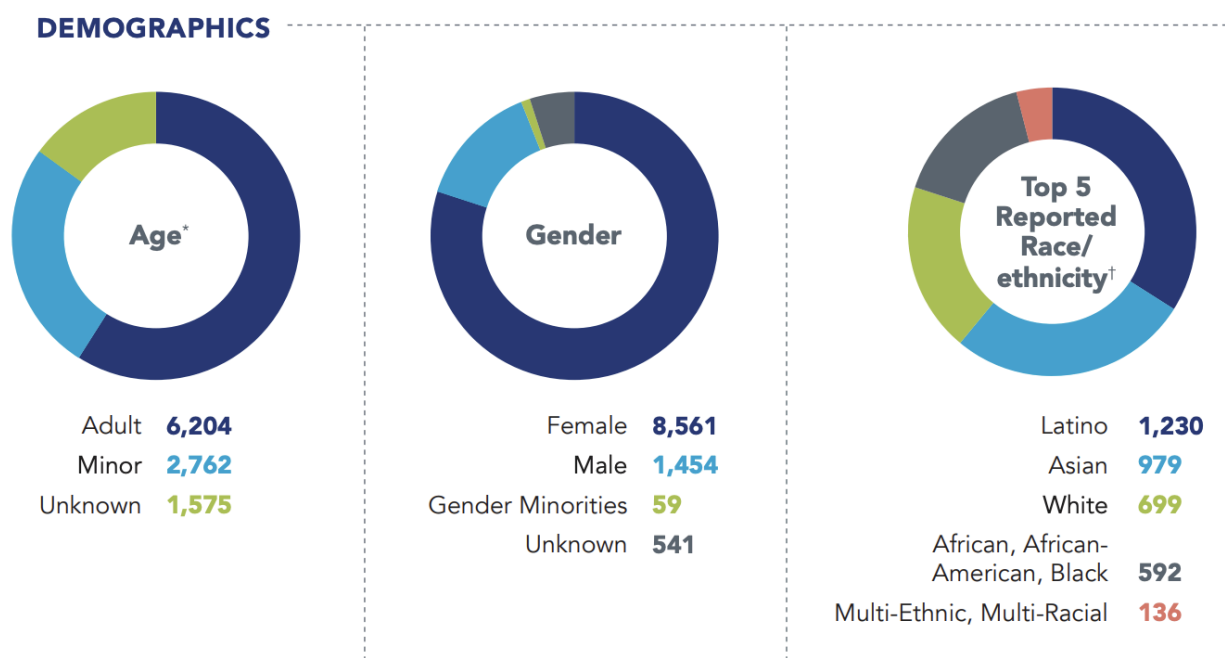


Figure A

Figure A shows the demographic spread of human trafficking victims in the United States based on data from the human trafficking hotline.¹¹ Minors are subject to a different set of laws and legal procedures, so this research pertains only to victims over the age of 18. Though male and non-gender specific persons suffer from the practice of human trafficking, a large majority of victims are female, so the gendered pronoun she/her will be used for the purpose of this article.

⁹ Ibid., 2.

¹⁰ Polaris. "Growing Awareness. Growing Impact." *Polaris*. Last modified 2017.

¹¹ Ibid.

Trends in Trafficking Data

In the last decade, data shows a rise in the number of persons trafficked for sex and/or labor in the United States. In 2017, Polaris reported a 13% increase in identified cases of human trafficking.¹² The Department of Justice (DOJ) confirmed 8,003 open cases between 2016 and 2017—2,348 more than the previous year. Of these cases, 34% involved foreign victims.¹³

Though available data appears to reflect a rise in human trafficking over the past decade, this trend lacks statistical significance. The absence of comprehensive long-term data makes it difficult to establish a verifiable pattern. The reported increase in trafficking may be due to increased efforts and improved means of collecting data by government agencies and NGOs, as well as an increase in victim aid programs. Additionally, an unknown and potentially substantial number of foreign trafficking victims are mistakenly categorized as migrant criminals, further skewing the data.¹⁴ To determine a legitimate trend, more standardized data is needed in this field.

While the lack of data makes it difficult to measure the broad scale of human trafficking in the U.S. over time, government agencies, scholars, and NGOs continue to analyze the effects of specific policies. A study of relevant laws reveals the successes and failures of various approaches.

¹² Ibid.

¹³ U.S. Department of State, *Trafficking in Persons Report, 2018*, 445.

¹⁴ Haynes, *(Not) Found Chained to a Bed in a Brothel*, 2.

U.S. Policy on Human Trafficking

In accordance with the Palermo Protocol, a global anti-trafficking treaty established by the United Nations, Congress passed the Trafficking Victims Protection Act (TVPA) in 2000. The TVPA was the first piece of major legislation on this issue and continues to lay the groundwork for federal anti-trafficking policy. The bill was passed with three goals in mind: to prevent further human trafficking, to prosecute traffickers, and to protect trafficked victims.¹⁵ The original Act established human trafficking as a federal offense with severe penalties.¹⁶ Additionally, it set up The Office to Monitor and Combat Trafficking in Persons to gather information and publish the annual *Trafficking in Persons Report* and the Task Force to Monitor and Combat Trafficking to help implement the policy.^{17, 18} To address the immigration issue faced by foreign victims, the TVPA created the T Visa. Noncitizens who were able to prove they were victim to a severe form of trafficking and would suffer extreme hardship if removed from the United States were eligible for such a visa.¹⁹ Adults who met the standard for a T Visa were also required to assist law enforcement in the investigation and/or prosecution of their trafficker.²⁰ Upon meeting these requirements, adult T Visa recipients could remain in the U.S. for up to four years and become eligible for permanent citizenship.^{21, 22}

¹⁵ Polaris. "Current Federal Laws." *Polaris*.

¹⁶ Trafficking Victims Protection Act, Public Law 106-386 (2000).

¹⁷ *Ibid*.

¹⁸ Polaris, *Current Federal Laws*.

¹⁹ Trafficking Victims Protection Act (2000)

²⁰ NHTRC (National Human Trafficking Resource Center). *T Nonimmigrant Status and the Trauma Exception*. Washington, D.C.: National Human Trafficking Hotline, May 2015.

²¹ Polaris, *Current Federal Laws*.

²² Trafficking Victims Protection Reauthorization Act, U.S.C. H.R. 898 (2013).

In 2003, Congress passed the first Trafficking Victims Protection Reauthorization Act (TVPRA) with added provisions allowing victims to sue their traffickers in Federal Civil Court. The revised Act also allowed human traffickers to be charged under the Racketeering Influenced Corrupt Organizations (RICO) statute.²³ The TVPRA was reauthorized again in 2005 with additional grants and pilot programs focused on providing aid to minors and strengthening international trafficking regulations.²⁴

The 2008 TVPRA was perhaps most influential with regard to noncitizen trafficking victims. This reauthorization included important changes to the T Visa and other work and education based visas. Up until 2008, trafficking victims were compelled to cooperate with law enforcement in the investigation and/or prosecution of their trafficker. This placed an undue burden on foreign victims, who, unlike their American counterparts, could be pressured into reliving their experience and potentially facing their abuser if they wanted to remain in the country. In effort to correct this injustice, the 2008 reauthorization added a “trauma exception”.²⁵ This provision gave the Secretary of the Department of Homeland Security (DHS) and the Attorney General power to relieve a victim of her obligation to assist law enforcement if doing so would cause her physical or psychological trauma.²⁶ Additionally, the 2008 reauthorization broadened the definition of trafficking to make prosecution easier and required all unaccompanied undocumented children be screened as potential victims.²⁷

In 2010, U.S. Citizenship and Immigration Services (USCIS) amended the T Visa issuance policy, allowing USCIS agents to determine whether to exempt victims from

²³ Trafficking Victims Protection Reauthorization Act, U.S.C. H.R. 2620 (2003).

²⁴ Trafficking Victims Protection Reauthorization Act, U.S.C. H.R. 972 (2005).

²⁵ Trafficking Victims Protection Act, Public Law 110-457 (2008).

²⁶ NHTRC, *T Nonimmigrant Status and the Trauma Exception*.

²⁷ Polaris, *Current Federal Laws*.

cooperating and assisting law enforcement in the investigation and/or prosecution of their trafficker. To be eligible for a trauma exception, victims had to submit a statement describing the trauma and provide credible evidence in support of their claim.²⁸ Victims whose trauma exceptions were approved remained eligible for a T Visa.

The latest version of the TVPRA, reauthorized in 2013 as an amendment to the Violence Against Women Act (VAWA), strengthened former anti-trafficking initiatives and established additional rules and policies. The legislation requires requests for continued presence, such as T Visas, to be addressed in no more than 15 days and decided in no more than a month.²⁹ This provision aims to protect victims from spending excessive time in legal limbo while their requests are being processed. Furthermore, the 2013 Amendment increases federal collaboration with state and local law enforcement to more efficiently prosecute traffickers.³⁰ The law includes new provisions to prevent child marriages, reduce the purchase of goods made using slave labor, provide aid to at-risk populations in the wake of humanitarian crises, increase reporting on trafficking to Congress, and implement numerous other anti-trafficking measures.³¹ The current law has helped countless victims and succeeded on many fronts, however, areas of the TVPRA still call for improvement.

²⁸ Ibid.

²⁹ Trafficking Victims Protection Reauthorization Act, (2013).

³⁰ Polaris, *Current Federal Laws*.

³¹ Trafficking Victims Protection Reauthorization Act, (2013).

Issues in Current Policy

Misidentification and Criminalization of Trafficking Victims

Although the TVPRA offers a comprehensive definition of what it means to be a victim of human trafficking, law enforcement often fails to accurately identify victims as such. According to case studies conducted by Dina Haynes with the New England School of Law, DHS inspectors are not adequately trained to recognize when they are questioning traffickers or trafficking victims.³² In the current political climate, agents are more likely to deem someone an illegal alien, prostitute, or criminal than to certify them as a victim of human trafficking when they have no clear proof of their victimhood status.³³ Due to the nature of the crime, however, many victims find producing evidence of their situation difficult to impossible.

Despite popular misconceptions, not all trafficking victims are brought into the U.S. against their will. Many victims freely consent to be smuggled across the border in hope of a better life, only to be forced into human trafficking once they arrive. Though such persons have knowingly committed a migration crime, their standing as illegal immigrants does not and should not negate their status as victims of human trafficking. However, the political spotlight on immigration enforcement leads legislators and DHS agents to try and distinguish victims who voluntarily contracted to cross the border from those who were brought into the U.S. against their will.³⁴ As a result, despite having been exploited through force, fraud, or coercion, many

³² Haynes, *(Not) Found Chained to a Bed in a Brothel*, 3.

³³ *Ibid*, 7.

³⁴ Chacón, Jennifer M. “Tensions and Trade-Offs: Protecting Trafficking Victims in the Era of Immigration Enforcement.” *University of Pennsylvania Law Review* 158 U. Pa. L. Rev. 1609 (2010): 1612.

human trafficking victims are deemed criminals themselves.^{35,36} Misidentified or criminalized victims lack the protections and aid of the TVPRA, leaving them open to detention, prosecution, and further exploitation.

Criminal Prosecution vs. Victim Protection Models

Anti-trafficking legislation generally favors one of two models: criminal prosecution-based policy or victim protection-based policy. Federal law and many states' laws tend to lean toward the former. While the TVPRA includes provisions designed to aid and protect trafficking victims, American policy surrounding the issue favors a prosecution-centered approach.³⁷

Criminal prosecution models aim to reduce trafficking by catching and punishing those who perpetuate the industry. Such policies focus on jailing traffickers, and they maintain that strict law enforcement will dissuade others from participating in illicit activities. In the United States, the crimes of illegal immigration and racketeering are used by law enforcement as a base for human trafficking investigations and prosecutions.³⁸ For this purpose, substantial, strongly worded policy exists in these areas. While victim protection policies are also in place, they exist to a far lesser extent. As a result, criminal prosecution is regularly elevated above victim protection.³⁹

³⁵ Ibid., 1609-1653.

³⁶ Haynes, *(Not) Found Chained to a Bed in a Brothel*, 1-31.

³⁷ Trafficking Victims Protection Reauthorization Act, (2013).

³⁸ Haynes, Dina Francesca. "Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers." *Human Rights Quarterly* 26, no. 2 (2004): 3.

³⁹ Ibid., 1-46.

In a system that does not prioritize victim protection over prosecution, law enforcement is more likely to pursue easier convictions such as prostitution, illegal immigration, and unauthorized labor rather than difficult trafficking cases that can require international effort.⁴⁰ This further exacerbates the problem of victim criminalization. Models that fail to prioritize protection can inadvertently lead to the opposite of their intended effect. Policies that create a hostile environment for victims discourage them from voluntarily coming forward with information or testimony against their trafficker, hurting prosecutorial efforts.⁴¹

While victim protection models also strive to lock up traffickers, victim aid is the primary goal. Unlike most prosecution-based policies, in victim protection models, noncitizens are not compelled to work with law enforcement in order to receive help in the form of social services, protection, legal assistance, etc.⁴² Proponents of victim protection models assert that providing a secure environment for trafficking victims empowers witnesses to come forward with information and testimony. Policies with a strong central focus on human rights are widely supported by NGOs, international governmental organizations (IGOs), and the United Nations.

Although U.S. policy leans heavily toward criminal prosecution, modern human trafficking legislation has tried to incorporate a more victim-centered approach. The 2013 TVPRA established new victim aid programs and strengthened existing programs. Initiatives like the Enhanced Collaborative Model Task Force help communities adopt victim protection and assistance policies, educate officials on identifying trafficking victims, and coordinate investigations and prosecution with higher levels of government.⁴³ The aforementioned trauma

⁴⁰ Ibid., 17.

⁴¹ United Nations. Human Rights Council. Office of the High Commissioner. *Report of the Special Rapporteur on violence against women, its causes and consequences*. Geneva: UN Human Rights Council.

⁴² Haynes, *Used, Abused, Arrested and Deported*, 24-25.

⁴³ U.S. Department of State, *Trafficking in Persons Report, 2018*, 443.

exception also serves victims by providing an avenue for foreign nationals to avoid deportation without having to assist law enforcement in the criminal prosecution of their trafficker.⁴⁴ Though the real-world application of some such policies may not be entirely successful (to be later discussed), victim protection in anti-trafficking law has greatly improved in the last two decades.

At the moment, the future of the VAWA is in question. The Act expired during the 2018-2019 government shutdown and was temporarily extended by Congress as part of a short term spending bill, only to expire again on February 19, 2019.^{45, 46} The Violence Against Women Reauthorization Act (VAWRA), which revives the VAWA and increases some of its former protections, has been introduced by the House and is currently moving through Congress.^{47, 48} The reauthorization faces several political obstacles, and its ultimate fate is unknown. However, given previous support from both sides of the political spectrum, there is reason to believe that, at minimum, the VAWRA's original protections will be reinstated.

MODERN IMMIGRATION POLICY IN THE UNITED STATES

While the aforementioned difficulties collecting accurate data on human trafficking victims make it hard to determine what percentage of the group is undocumented, available research suggests that a significant number of victims are not United States citizens.⁴⁹ The DOJ

⁴⁴ NHTRC, *T Nonimmigrant Status and the Trauma Exception*.

⁴⁵ Gathright, Jenny. "Violence Against Women act Expires Because Of Government Shutdown." *NPR.Org*. December 24, 2018.

⁴⁶ U.S. Congress. *All Information (Except Text) for H.R.1585 - Violence Against Women Reauthorization Act of 2019*. Washington, D.C.: Congress. Gov.

⁴⁷ *Ibid*.

⁴⁸ Cruz, Erica. "Congress Debates Reauthorization of Expired Violence against Women Act." *American Immigration Council, Immigration Impact*. March 20, 2019.

⁴⁹ U.S. Department of Homeland Security. U.S. Citizenship and Immigration Services. *Number of*

reported that, from 2016 to 2017, 34% of the 8,003 people with open cases in government granted victim services programs were foreign nationals.⁵⁰ Over the last 5 years, roughly 1,000 people a year have applied for a T Visa.⁵¹ Because many undocumented persons purposely avoid government interaction, it is likely that several thousand noncitizen trafficking victims reside in the U.S.

Immigration policy can substantially affect the degree to which noncitizens benefit from trafficking victim protection programs. Therefore, recent policy changes and historical trends in immigration enforcement are pertinent to the research at hand.

Political Trends in Immigration Enforcement

Throughout the modern era, immigration has been a hot topic in American politics. The extent to which immigrants may enter the U.S., whether legally or illegally, has varied with popular opinion. The strength of immigration enforcement policy in any given year can be measured using several factors, including statistics on deportation, distribution of government resources, and migrant arrests. *Figure B* shows the number of persons deported annually since 2001.⁵² The graph distinguishes between persons with and without criminal records at the time of their removal.

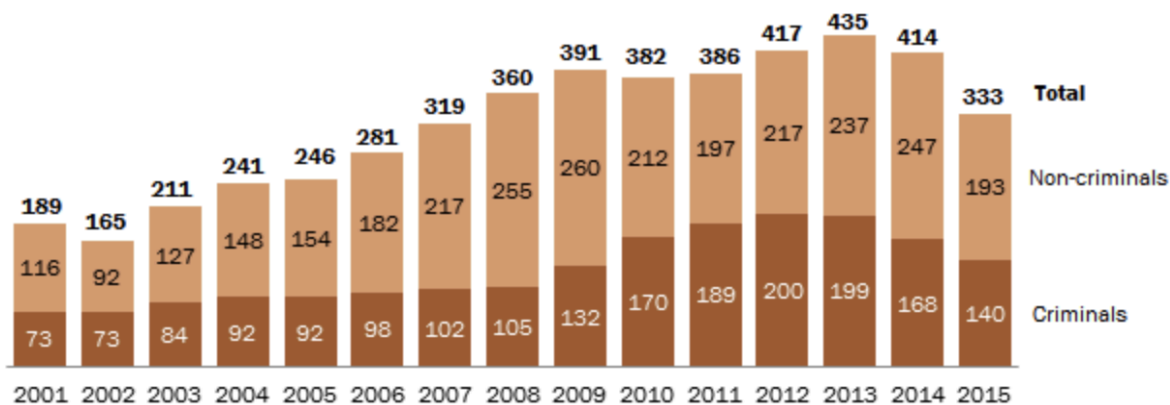
Form I-914, Application for T Nonimmigrant Status by Fiscal Year, Quarter, and Case Status, 2008-2018.
Washington, D.C.: Department of Homeland Security, 2018.

⁵⁰ U.S. Department of State, *Trafficking in Persons Report, 2018*, 445.

⁵¹ U.S. Department of Homeland Security, *Application for T Nonimmigrant Status by Fiscal Year*.

⁵² Gonzalez-Barrera, Ana, and Mark Hugo Lopez. "U.S. Immigrant Deportations Fall to Lowest Level Since 2007." *FACTANK News In The Numbers*. Pew Research Center. Last modified December 16, 2016.

In thousands, by fiscal year



Source: Data for 2001-2004 come from U.S. Department of Homeland Security, *Yearbook of Immigration Statistics: 2010*. Data for 2005 to 2014 come from U.S. Department of Homeland Security, *Yearbook of Immigration Statistics: 2014*. Data for 2015 come from U.S. Department of Homeland Security, *Yearbook of Immigration Statistics: 2015*.

PEW RESEARCH CENTER

Figure B

Between 2001 and 2015, data from the Pew Research Center and DHS show an upward trend in immigrant deportation. The Obama Administration deported a total of 2.8 million immigrants — 800,000 more than the Bush Administration.⁵³ Between 2014 and 2015, Congress and President Obama shifted the focus of immigration enforcement to persons who have been convicted of a crime, posed a danger to society, or have recently crossed the border; as a result, deportation numbers dropped for the first time in nearly a decade.⁵⁴

Data from the last 10 years also show a massive increase in government spending and personnel across all areas of immigration enforcement. Between 2006 and 2016, the federal budgets for both U.S. Customs and Border Patrol (CBP) and Immigration and Customs

⁵³ Gonzalez-Barrera, *U.S. Immigrant Deportations Fall to Lowest Level Since 2007*.

⁵⁴ *Ibid.*

Enforcement (ICE) nearly doubled.⁵⁵ The increasing level of government spending on immigration enforcement indicates the growing political weight of the issue.

Current and Projected Policy

Since the 2016 presidential election, public interest and debate over immigration policy has continued to intensify. Throughout his campaign, President Trump vowed to crack down on illegal immigration by increasing the budget for border security and migrant law enforcement and to deport two to three million undocumented persons.⁵⁶ While these goals have largely not been met, President Trump's aggressive narrative on immigration has had a noticeable impact.

The Trump Administration has requested a substantial increase in the budget for immigration enforcement and border security, including an additional \$1.8 billion to ICE and \$2.9 billion to CBP from 2017 to 2018.⁵⁷ This budget expansion coincided with a rise in personnel in both departments.

Despite the large fiscal investment in immigration enforcement, President Trump has fallen notably short of his deportation goal. In 2016, ICE deported roughly 240,000 illegal immigrants—close to half as many as were removed by the Obama Administration in 2012.⁵⁸ Deportations continued to decline in 2017, falling by another 30,000.⁵⁹ Though deportation

⁵⁵ American Immigration Council. "The Cost of Immigration Enforcement and Border Security." *American Immigration Council*. Last modified January 25, 2017.

⁵⁶ CNN, "Donald Trump: We need to get out 'bad hombres,'" *YouTube Video File*. October 19, 2016.

⁵⁷ U.S. Department of Homeland Security. *FY 2018 Budget-in-Brief Fiscal Year 2018*. Washington, D.C.: Department of Homeland Security, 2018.

⁵⁸ Miroff, Nick. "Deportations slow under Trump despite increase in arrests by ICE." *The Washington Post*. Last modified September 28, 2017.

⁵⁹ U.S. Department of Homeland Security. U.S. Immigration And Customs Enforcement. *Fiscal Year 2017 ICE Enforcement and Removal Operations Report*. Washington, D.C.: Department of Homeland Security, Last modified December 13, 2017.

levels have decreased, the number of ICE arrests have risen by 43% since President Trump took office.⁶⁰ Deviating from President Obama’s initiative to focus deportation efforts on dangerous criminals, Trump signed an executive order on January 25th, 2016 directing ICE to remove as many undocumented migrants as possible.⁶¹ This action led to a substantial increase in non-criminal administrative arrests, with ICE arresting roughly 15,500 persons with no prior criminal charges or convictions for civil violation of immigration law.⁶² Overall, the total number of administrative arrests rose by 30% between FY2016 and FY2017.⁶³ ICE’s efforts to detain a high number of illegal aliens are further reflected by the notable rise in weekly arrests (Figure C).⁶⁴

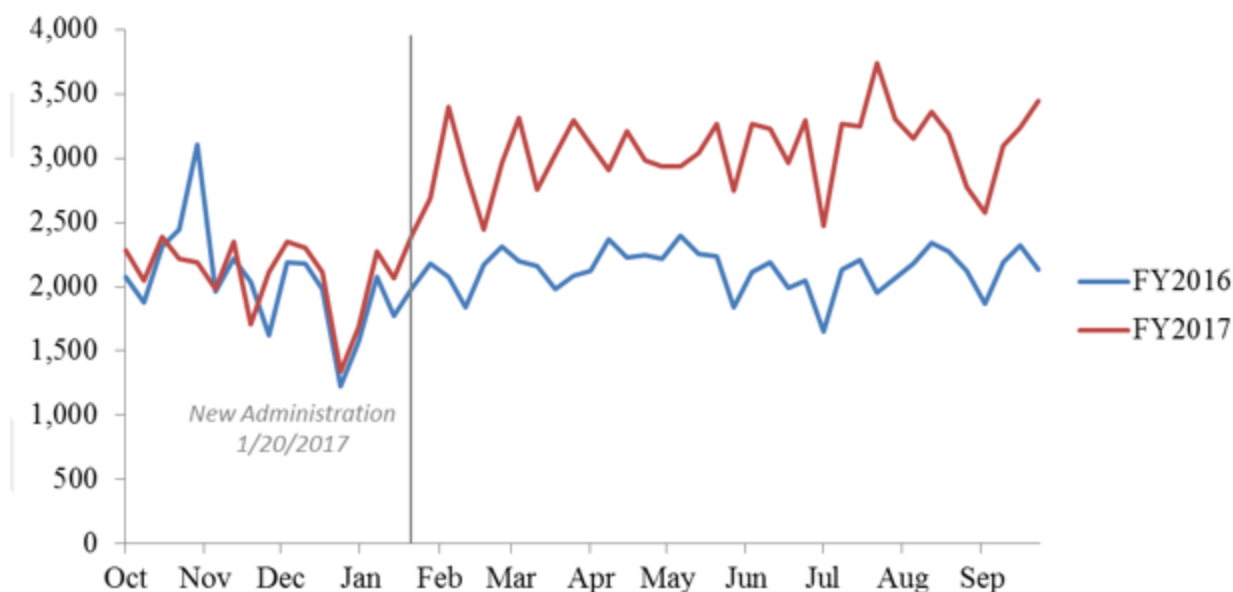


Figure C

⁶⁰ Mirhoff, *Deportations slow under Trump despite increase in arrests by ICE*.

⁶¹ Bialik, Kristen. “ICE arrests went up in 2017, with biggest increases in Florida, northern Texas, Oklahoma.” *FACTANK News In The Numbers*. Pew Research Center. Last modified February 8, 2018.

⁶² U.S. Department of Homeland Security, *Fiscal Year 2017 ICE Enforcement and Removal Operations Report*.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

Despite the increase in administrative arrests, data shows a decrease in deportation levels under the current administration. This may be due to several factors, including a backlog of 600,000 cases in the Federal Immigration Court System resulting from the rise in arrests and litigation.⁶⁵ In general, comparative data indicates a recent tightening of immigration policy that can be expected to last through the Trump Administration.

THE RELATIONSHIP BETWEEN IMMIGRATION POLICY AND HUMAN TRAFFICKING

Human trafficking is an international industry, therefore, immigration policy can affect the success of anti-trafficking laws with regard to both victim protection and criminal prosecution. The TVPRA's goal of protecting migrant victims puts it naturally at odds with policies aimed at enforcing immigration law.⁶⁶ As a result of these competing interests, humanitarian objectives can fall to the wayside.⁶⁷ In addition to hindering victim protection measures, stricter immigration policy can unintentionally increase human trafficking.

According to the Global Commission on International Migration, higher levels of immigration restriction and border control can result in the development of more sophisticated criminal trafficking organizations.⁶⁸ These organized crime rings replace small smuggling operations that are no longer capable of meeting demand in a high risk environment.⁶⁹ Large

⁶⁵ Miroff, *Deportations slow under Trump despite increase in arrests by ICE*.

⁶⁶ Chacón, *Tensions and Trade-Offs: Protecting Trafficking Victims in the Era of Immigration Enforcement*, 1609.

⁶⁷ *Ibid.*, 1609-1610.

⁶⁸ United Nations. Global Commission On International Migration (GCIM). *Migrations in an interconnected world: New directions for action: Report of the Global Commission on International Migration*. Geneva: The Global Commission on International Migration, October 2005.

⁶⁹ *Ibid.*

scale criminal networks are more equipped to successfully exploit immigrants for trafficking once they have crossed the border.

Furthermore, stricter immigration policy makes immigrants more likely to seek out smugglers for assistance crossing the border. This leaves them more vulnerable to exploitation upon arrival in the U.S. Immigrants who enter into contractual agreements with smuggling operations are often forced into sex work and/or unpaid labor as a means to pay off their debt, transforming a voluntary smuggling agreement into a forced trafficking situation.⁷⁰ Even with victim protection laws in place, lack of citizenship poses a multitude of problems for both current and former victims of human trafficking.

Noncitizen Status As a Tool for Trafficking

Substantial data confirms the relationship between rigid immigration policy and reporting on crime. Undocumented citizens are far less likely to approach law enforcement with information or call for help when they fear that revealing their noncitizen status will result in their own arrest or deportation.^{71, 72} This creates a chilling effect and proves harmful to society on multiple fronts.

Trafficking organizations use fear of deportation as a primary means of maintaining control over enslaved persons.⁷³ Criminal trafficking rings can intimidate victims into working for free, enduring extreme abuse, and even committing other crimes on behalf of the organization

⁷⁰ Chacón, *Tensions and Trade-Offs: Protecting Trafficking Victims in the Era of Immigration Enforcement*, 1615.

⁷¹ Burnet, John, *New Immigration Crackdowns Creating 'Chilling Effect' On Crime Reporting*. NPR Morning Edition. May 25, 2017. Washington, D.C.: National Public Radio, Inc.

⁷² American Civil Liberties Union (ACLU). "New ACLU Report Shows Fear of Deportation is Deterring Immigrants From Reporting Crimes." *ACLU*. Last modified May 3, 2018.

⁷³ Chacón, *Tensions and Trade-Offs: Protecting Trafficking Victims in the Era of Immigration Enforcement*, 1609.

by threatening to expose them as illegal aliens. Many victims feel as though they can neither escape their situation nor contact law enforcement for assistance without risking being returned to the place from which they fled.⁷⁴ Therefore, increasingly strict immigration enforcement can unintentionally perpetuate the practice of human trafficking.

This chilling effect also applies to formerly trafficked persons. Once an undocumented victim has escaped her situation, she is significantly less likely to voluntarily contact the police with information or testimony against her trafficker if she fears deportation. Public crackdowns on illegal immigration intimidate noncitizens, leaving the crimes committed against them underreported.⁷⁵ Accordingly, immigration policy that fails to protect victims who come forward from being criminalized themselves reduces law enforcement's ability to investigate and prosecute dangerous criminals.⁷⁶

T Visas and Victim Compulsion

Undocumented trafficked persons may be eligible to gain legal status by way of a T Visa. Created under the TVPRA, this special form of visa grants temporary citizenship up to four years and gives those who qualify the opportunity to get a green card.⁷⁷ To receive a T Visa, applicants must 1) prove they were victim to a severe form of trafficking, and 2) assist law enforcement in the investigation and/or prosecution of their trafficker.⁷⁸ Immigrants applying for a T Visa may

⁷⁴ Haynes, *(Not) Found Chained to a Bed in a Brothel*, 4.

⁷⁵ ACLU, *New ACLU Report Shows Fear of Deportation is Deterring Immigrants From Reporting Crimes*.

⁷⁶ *Ibid.*

⁷⁷ U.S. Department of Homeland Security. U.S. Citizenship and Immigration Services. *Victims of Human Trafficking: T Nonimmigrant Status*. Washington, D.C.: Department of Homeland Security, Last modified May 10, 2018.

⁷⁸ U.S. Department of Homeland Security, *Victims of Human Trafficking: T Nonimmigrant Status*.

request a trauma exception to their requirement to participate in their trafficker's criminal prosecution.⁷⁹

Though this path to citizenship seems well-structured, the notable lack of temporary visas granted each year suggests that, in practice, these requirements place a substantial burden on undocumented survivors. The TVPRA authorizes Congress to approve 5,000 T Visa applications annually, however, no more than 848 have ever been granted to victims in a given year.⁸⁰ Several problems arise in the process of obtaining a T Visa. First, the existence of the program is not widely publicized, so many victims are unaware of this potential path to citizenship.

The first step in receiving a T Visa is to contact law enforcement. Once contact has been initiated, officials must determine whether the person was actually a victim.⁸¹ The burden of proof is on the victim, and escaped survivors are not always able to prove their story, especially when their trafficker has not yet been investigated by law enforcement. In her analysis entitled "Used, Abused, Arrested and Deported: The Case for Extending Immigration Benefits to Protect Victims of Trafficking and Secure Prosecution of Traffickers," Prof. Dina Haynes states, "If law enforcement officials decide not to speak with the victim, decide not to initiate an investigation, or decide not to prosecute, the victim may be hard pressed later to meet her burden of proving that she 'cooperated with law enforcement officials.'"⁸² Simply by beginning the T Visa application process, victims reveal their illegal status to authorities and put themselves at risk if

⁷⁹ NHTRC, *T Nonimmigrant Status and the Trauma Exception*.

⁸⁰ U.S. Department of Homeland Security. U.S. Citizenship and Immigration Services. *Questions and Answers: Victims of Human Trafficking, T Nonimmigrant Status*. Washington, D.C.: Department of Homeland Security.

⁸¹ Trafficking Victims Protection Act, Public Law 106-386 (2000).

⁸² Haynes, *Used, Abused, Arrested and Deported*, 23.

the application is not approved. Undocumented survivors who fail to receive a T Visa are often treated as criminals, leading them to be jailed or deported.⁸³

If a trafficking victim meets the first requirement, they must then aid law enforcement in the investigation and prosecution of their abuser. Over the past few decades, American victims of sexual assault have been granted certain exceptions from such requirements due to the traumatic nature of the crime. Victims who have sustained psychological trauma might be mentally unable to participate as required, and, in some cases, such participation might cause them further harm. While undocumented persons experience the same trauma, some studies suggest that many feel compelled to assist law enforcement in order to gain citizenship.⁸⁴

To resolve this inequality, the option of obtaining a “trauma exception” was made available in 2008. To be granted exempt status, a healthcare professional must determine that a victim has suffered severe psychological and/or physical damage as a result of the trafficking. Qualifying symptoms include overwhelming psychological distress, post-traumatic stress disorder, depression, anxiety, significant dissociative reactions, impaired daily functioning, debilitating physical injuries, etc. Though the addition of a trauma exception denotes an effort to rectify this problem, many still feel that the modern justice system “place[s] pressure on victims to collaborate in prosecution efforts in exchange for their own classifications as crime victims rather than criminals.”⁸⁵

Not all perspectives on the T Visa provisions are negative. Experts on the law enforcement side feel that the process is both fair and essential to effectively combating human

⁸³ Ibid., 23-24.

⁸⁴ Chacón, *Tensions and Trade-Offs: Protecting Trafficking Victims in the Era of Immigration Enforcement*, 1623.

⁸⁵ Chacón, Jennifer M. “Human Trafficking, Immigration Regulation, and Sub-Federal Criminalization.” *New Criminal Law Review*, vol. 20 (2017): 124.

trafficking.⁸⁶ High ranking federal agents have stated that, in their experience, the requirement to cooperate with law enforcement is not overly invasive or burdensome to victims.⁸⁷ Successful prosecution in trafficking cases relies heavily on victim testimony. Therefore, many maintain that the T Visa application requirements are necessary to reduce trafficking as a whole.

SUMMARY OF KEY LITERATURE

Though data remains weak in the area of human trafficking, all agree that it continues to pose a major problem within the United States. Trafficking equates to a modern form of slavery, threatening the most basic of human rights. Over the last two decades, policymakers have implemented anti-trafficking legislation in effort to counter the industry. Such laws have proven monumental with regard to both victim protection and criminal prosecution, but they are not without their weaknesses. Throughout the years, the TVPRA has been reauthorized and amended multiple times with the purpose of addressing unforeseen failings and new challenges.

While U.S. anti-trafficking policy has provisions for victim protection, American law tends to focus on criminal prosecution. This approach can lead police to pursue easier arrests, discourage undocumented victims from contacting law enforcement, and increase the potential for authorities to misidentify victims as migrant criminals. Furthermore, it can unintentionally strengthen the effectiveness of deportation threats used by traffickers to coerce their victims. Overall, available literature supports the conclusion that harsher immigration policy may have, in some cases, hindered the success of human trafficking victim protection law for noncitizens.

⁸⁶ Rogers, Dave. Interview with Alexandra Harten. Phone interview, Los Angeles, February 20, 2019.

⁸⁷ Ibid.

A study of policy revealed a gradual strengthening of immigration enforcement up until 2014, when President Obama shifted the goal of law enforcement to deporting dangerous criminals as opposed to prosecuting large numbers of illegal immigrants. In the two years following, deportation rates dropped and reporting on crime increased.⁸⁸ However, this position was short-lived. In the past two years, the Trump Administration has promoted a heavily prosecutorial immigration policy. The following research more closely examines the effect of this policy on undocumented victims of human trafficking.

ARGUMENT

In light of existing data and literature, this study investigates three questions and proposes changes designed to reduce the inadvertently damaging effects of stringent immigration enforcement on anti-trafficking initiatives. First, this research examines how, specifically, the Trump Administration's crackdown on immigration has affected and potentially reduced the ability of anti-trafficking laws to protect foreign victims on U.S. soil. Second, it evaluates the degree to which the problems associated with tightening immigration policy are due to the anti-immigrant appearance of the government and law enforcement in the media, as opposed to official changes in the letter of the law. Lastly, this study looks into how such problems might be solved by improving public education and law enforcement training.

Overall, findings support the assertion that increasingly strict immigration policy can prove unintentionally harmful to both victim protection and prosecutorial efforts. These

⁸⁸ Lopez, Mark Hugo and Gretchen Livingston. "III. Reporting Crimes to the Police." *Pew Research Center; Hispanic Trends*. Last modified April 7, 2009.

problems result from the public's perception of immigration policy as well as actual changes to the law itself. Increasing public awareness and education and improving law enforcement training in departments not normally designed to screen for trafficking would effectively enhance anti-trafficking efforts and mitigate some of the problems here discussed.

IMMIGRATION AND ANTI-TRAFFICKING IN THE TRUMP ERA

Immigration policy has grown to be one of the most prominent issues of debate in modern politics. As such, the law receives scrutiny from the public, press, and law enforcement. The debate on immigration was particularly high-profile throughout the 2016 Presidential Election. As a highlight of his campaign platform, Donald Trump promised to crack down on immigration with plans to deport an unprecedented number of illegal aliens.⁸⁹ Though many of these plans have not come to fruition, the current administration has made a notable effort to tighten immigration policy. This paper argues that President Trump's approach to immigration reform unintentionally reduces the effectiveness of anti-trafficking law in the realm of both victim protection and criminal prosecution.

Most pertinent to this research is the Trump Administration's stance on the criminalization of undocumented migrants already residing within the United States. Shortly after taking office, the President signed an executive order redefining ICE's goal such that the agency was called to arrest and remove as many illegal aliens as possible.^{90,91} This diverges from the previous administration, which had moved to shift law enforcement's focus toward persons

⁸⁹ CNN, *Donald Trump: We need to get out 'bad hombres'*.

⁹⁰ Exec. Order No. 13768. Fed. Reg. 8799, (January 30, 2017)

⁹¹ Pierce, Sarah, Jessica Bolter and Andrew Selee. "Trump's First Year on Immigration Policy: Rhetoric vs. Reality." *Migration Policy Institute (MOI)*. Last Modified January 2018.

convicted of dangerous crimes.⁹² Though ICE has never been asked to meet a specific arrest quota, the agency's goal under the current administration is clear: increase the number of undocumented immigrants arrested and removed. This focus on quantity proves harmful to anti-trafficking efforts on several fronts.

Immigration policy that prioritizes arrest numbers can result in a chilling effect that is detrimental to both victim protection and trafficker prosecution endeavors.^{93, 94} The heightened fear of getting arrested regardless of one's time as a law-abiding member of American society discourages present-day victims from contacting law enforcement to ask for help or report information on a crime.⁹⁵ Since 2016, reporting on crime has decreased, along with the number of undocumented victims voluntarily seeking out authorities.⁹⁶ Thus, President Trump's sweeping approach to immigration enforcement has magnified the chilling effect in a way that is detrimental to both trafficking victims and to society as a whole.

Furthermore, the elevated pressure on ICE to boost arrest numbers inadvertently incentivizes law enforcement to maximize migrant administrative arrests, reducing the likelihood that individuals will be comprehensively investigated as potential victims of human trafficking. Investigations into trafficking take substantially longer than citizenship determinations, require more resources, and sometimes never result in arrest. Therefore, it is easier to prosecute someone as an unlawful resident than it is to consider them a potential human trafficking victim and move to arrest their trafficker.⁹⁷ It is fair to assume that any good officer would never knowingly ignore

⁹² Gonzalez-Barrera, *U.S. Immigrant Deportations Fall to Lowest Level Since 2007*.

⁹³ Foer, Franklin. "How Trump Radicalized ICE." *The Atlantic*. September 2018.

⁹⁴ Burnet, *New Immigration Crackdowns Creating 'Chilling Effect' On Crime Reporting*.

⁹⁵ Theodore, Nik. *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*. Chicago: University of Chicago, May 2013.

⁹⁶ Engelbrecht, Cora. "Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation." *The New York Times*. June 3, 2018.

⁹⁷ Rogers, *Interview*.

an apparent case of human trafficking in favor of an easy arrest. However, the current policy discourages agents from pursuing long, often dead-end trafficking leads and pushes them to close as many cases as possible. As a result, undocumented victims are more likely to be misidentified and arrested as migrant criminals. Furthermore, foreign nationals are more commonly trafficked for labor.^{98,99} As a crime, labor trafficking is substantially more difficult to identify and prosecute than sex trafficking. This contributes to the problem of victim criminalization.^{100,101}

IMMIGRATION IN THE PUBLIC EYE

Legislative reform is important. However, the public's perception of government policy on an issue can be just as impactful as formal changes to the letter of the law. While much of society keeps up with policy on popular issues in a broad sense, members of the general public rarely know the textual intricacies of existing legislation—especially when it comes to expansive policy like immigration. Instead of reading through pages of legal code, most people get their understanding of the law from the news. Therefore, the government's position on an issue and how the attitude of leadership towards immigrants is reflected in the media can largely determine the public's impression of what the law comprises.

Since the 2016 election, the Trump Administration's stance on immigration has been a constant subject of media attention. Despite judicial checks forcing revision or abandonment of some of his more extreme attempts at policy reform, President Trump's attitude on immigration

⁹⁸ Lagon, Mark. Interview with Alexandra Harten. Phone interview, Los Angeles, October 29, 2018; February 23, 2019.

⁹⁹ Febrey, Annick. Interview with Alexandra Harten. Phone interview, Los Angeles, February 8, 2019.

¹⁰⁰ Ibid.

¹⁰¹ Febrey, *Interview*.

remains unchanged. From the start, he has sought to turn public sentiment against immigrants by casting them as violent criminals, rapists and drug traffickers, despite ample evidence that immigrant communities generally have less crime, and undocumented immigrants are significantly less likely to commit a crime.^{102, 103} Many undocumented trafficking victims may not know their rights under the TVPRA or comprehensively understand immigration law as it pertains to them, but, thanks to extensive news coverage of Mr. Trump's more outrageous hostile statements, they are surely aware of this administration's attempts to demonize illegal aliens.¹⁰⁴ The public's perception of current immigration policy as exceptionally strict and aggressive is a significant contributing factor to the chilling effect previously discussed. Though laws that let victims get help without risking deportation are in place, their existence is largely overshadowed by the public perception that law enforcement agents in the Trump Era will pursue all possible arrests. This narrative reduces undocumented trafficking victims' propensity to take advantage of their legal rights and resources.¹⁰⁵

Furthermore, the anti-immigrant attitude of government and law enforcement in the media hinders agents' ability to effectively do their jobs. The nature of human trafficking makes it a particularly sensitive crime to investigate. Law enforcement's success in combating trafficking schemes is largely dependent on agents' capacity to build trust with victims and members of the surrounding community.¹⁰⁶ The Trump Administration's public commitment to tightening immigration policy through law enforcement makes it more difficult for agents to

¹⁰² "Drug dealers, criminals, rapists": What Trump thinks of Mexicans," *BBC News-Video Top Stories*, August 31, 2016.

¹⁰³ Bernat, Francis. "Criminology and Criminal Justice, Immigration and Crime." *Oxford Research Encyclopedias*, Oxford: Oxford University Press, April 2017.

¹⁰⁴ Foer, *How Trump Radicalized ICE*.

¹⁰⁵ Stephan, Summer. Interview with Alexandra Harten. Phone interview, Los Angeles, January 16, 2019.

¹⁰⁶ Rogers, *Interview*.

foster meaningful relationships with witnesses. Such relationships are imperative when it comes to prosecuting traffickers, and the added difficulty establishing trust hinders anti-trafficking efforts.¹⁰⁷

Despite objections from experts, President Trump often publicizes inaccurate claims about human trafficking in effort to support his position on stricter enforcement and border security.¹⁰⁸ The President has given several false statements on the nature of trafficking in attempt to increase funding and promote his campaign promise to build a wall along the entirety of the southern border.¹⁰⁹ Such baseless claims perpetuate the myth that most trafficked persons are smuggled across the border against their will.¹¹⁰ Reinforcing this image of human trafficking victims as people who were violently kidnapped also increases the probability that immigrants who enter the U.S. voluntarily and are later subjected to trafficking schemes will not recognize their own status as victims. Furthermore, such claims support the broad idea that stricter immigration policy reduces human trafficking, which, as this study shows, is often not the case.

Overall, the current narrative surrounding both immigration and human trafficking in the media hinders anti-trafficking efforts. Fact-checking political statements, publicizing accurate information on the nature of human trafficking and, most importantly, making known the legal rights of undocumented trafficking victims are all imperative to the success of both victim protection policies and criminal prosecution in today's political climate.

¹⁰⁷ Ibid.

¹⁰⁸ Davis, Kristina. "Border wall impact on human trafficking debated."

¹⁰⁹ Ibid.

¹¹⁰ Lagon, *Interview*.

VICTIM EDUCATION AND LAW ENFORCEMENT TRAINING

The problems addressed in this research are, for the most part, known by experts in the field. In an effort to fix admitted systemic failings, many laws and provisions have been established to protect undocumented victims and reduce the chilling effect caused by strict immigration policy. However, these measures only help when law enforcement is trained to accurately identify victims and victims are aware of their status and legal rights.

Many foreign victims, particularly in cases of labor trafficking, do not realize they are victims at all. Other cultures can have varying concepts of debt; traffickers often use this to manipulate victims by making them feel indebted and compel them into servitude as repayment for said debt.^{111, 112} This leads victims to believe that their bondage is owed and prevents them from recognizing their situation as part of a trafficking scheme.¹¹³ Persons unaware of their status as trafficking victims cannot take advantage of the rights and protections afforded to them. Furthermore, it is significantly harder for law enforcement to identify a person as a trafficking victim when they do not perceive themselves as such. Increased public education on what it means to be trafficked, particularly with regard to labor, would help victims take advantage of the laws and programs designed to protect them.

Even when victims are aware of their situation, many do not understand the extent of their legal rights.¹¹⁴ A large number of undocumented persons falsely believe that as unlawful residents, they have little to no rights under the American legal system.¹¹⁵ Pathways exist for

¹¹¹ Stephan, *Interview*.

¹¹² Tenorio, Christopher. Interview with Alexandra Harten. Phone interview, Los Angeles, March 12, 2019.

¹¹³ Stephan, *Interview*.

¹¹⁴ *Ibid.*

¹¹⁵ Tenorio, *Interview*.

victims of trafficking and domestic violence to file lawsuits against their perpetrator and receive government aid without being punished for lack of citizenship. Many undocumented immigrants are unaware of such options. As a result, threatening to reveal a victim's illegal status to authorities is one of the most effective means of compulsion used by traffickers.¹¹⁶ Additionally, the option to gain citizenship through a T Visa is not widely broadcasted. As long as victims mistakenly believe they will be prosecuted and likely deported upon contacting law enforcement, anti-trafficking efforts with regard to both victim protection and criminal prosecution suffer.

Many factors can make victims unreliable sources on the facts of their own situation. Therefore, much of the burden to accurately identify and evaluate trafficking schemes rests on law enforcement.^{117, 118} This can prove to be quite challenging. While sex trafficking is generally, though not always, easier to spot, instances of labor trafficking can be extremely difficult to catch. As previously mentioned, many foreign nationals trafficked for labor are unaware of their status as victims. Immigrants without valid work visas often work for less pay voluntarily, and it can be difficult to find the line between a labor laws violation by an employer and forced coercion by a trafficker.¹¹⁹ Law enforcement agents in the field of anti-trafficking are trained to better assess these situations, because investigating such cases is the focus of their job. In contrast, ICE's focus is migration crime. Because ICE agents are not specifically trained to look out for trafficking, and their primary job is to arrest and remove unlawful residents, they are more likely to miss cases in which the trafficking is not apparent.¹²⁰ Enhanced training and a

¹¹⁶ Febrey, *Interview*.

¹¹⁷ Tenorio, *Interview*.

¹¹⁸ Rogers, *Interview*.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

basic model to screen for human trafficking in all areas of law enforcement—especially ICE—would significantly reduce the chances of victim criminalization.

RESEARCH METHODOLOGY

As previously discussed, several factors make it difficult to conduct quantitative research on undocumented victims of human trafficking as a subject group. Existing data on trafficking in the United States comes primarily from non-profit anti-trafficking organizations. Well-known victim aid programs such as Polaris' Human Trafficking Hotline allow such institutions to collect demographic data on the large number of victims with whom they interact. Because trafficking victims make up a transient population, standard methods of gathering information are generally not effective.

Annual government publications such as the *Trafficking in Persons Report* are able to provide some statistics based on data collected by federal agencies, law enforcement, and the court system. However, these figures are limited due to the fact that many victims—especially those who are undocumented—are never identified by an agent of the government. As a result, some publicly issued statistics appear notably small in comparison to the information put forth by private and semi-private trafficking institutions.

Acknowledging these limitations, this argument stems from a synthesis of established scholarly studies and a comparative analysis of trends in available data. Research is primarily supported by personal interviews with authorities in the field. For the purpose of building a well-rounded study, interviews were conducted with high-ranking experts in both the public and private sector. The goal of this research design was to compile a holistic group of sources

including experts from both major political parties, in both public and private positions, and from both the law enforcement side and the victim protection side of anti-trafficking efforts. Though limited in number, the following sources contribute diverse perspectives on human trafficking in the United States. Several have both served in government and worked for NGOs. The following list includes experts who have held prominent positions in government and law enforcement, federal and state prosecutors, and senior executives to victim-centered anti-trafficking non-profit organizations. The below referenced experts are highly knowledgeable on the subject of human trafficking, and their personal experience in the field makes them qualified to testify on behalf of this research.

The Honorable Mark P. Lagon was appointed by George W. Bush to serve as the U.S. Ambassador-at-Large and Director of the Office to Monitor and Combat Trafficking in Persons. Following his time in government, Amb. (ret.) Lagon became Executive Director and CEO of the Polaris Project, one of the leading non-profit anti-trafficking organizations. Additionally, he has served as President and CEO of Freedom House, a global human rights organization, and has been published in more than 60 journals, newspapers, and books as an authority on humanitarian issues.

Annick Febrey, Esq., works as Director of Government and Corporate Relations at the Human Trafficking Institute. Prior to this role, she served as a senior associate at Human Rights First, a non-profit organization campaigning against human trafficking. She has testified before Congress and has been quoted by multiple news outlets as an expert in anti-trafficking.

Christopher Tenorio, Esq., serves as a Federal Prosecutor for the Department of Justice, Civil Rights Division. During his time as a trial attorney, Mr. Tenorio received the Attorney General's John Marshall Award—the highest award for a federal prosecutor in litigation—for his

role in prosecuting the largest modern-day slavery case in the United States at the time. While working as counsel to former Attorney General Eric Holder, Mr. Tenorio oversaw the Civil Rights Division and served in President Clinton's White House Interagency Working Group on Human Rights. Since then, he has continued to prosecute federal trafficking crimes, lead task forces, and teach internationally on the investigation and prosecution of human trafficking cases.

Special Agent Dave Rogers acts as Director of Law Enforcement Operations at the Human Trafficking Institute. Prior to his job at the Institute, Special Agent Rogers served as the FBI's National Program Manager for Human Trafficking within the Civil Rights Unit, overseeing the FBI's anti-trafficking work across the United States. He also worked as an Advanced Instructor at the FBI Academy in Quantico and now trains specialized units on human trafficking.

District Attorney Summer Stephan currently serves in San Diego County. Prior to her appointment, she acted as Chief of the Sex Crimes and Human Trafficking Division, a special victims unit she spearheaded. In addition to decades of experience as a state prosecutor, she chaired the San Diego County Human Trafficking Advisory Council and has won multiple awards for her extensive work in anti-trafficking.

In addition to the aforementioned experts, the research design for this study originally included interviews with victims and survivors of human trafficking. Unfortunately, due to issues of privacy and confidentiality, time limitations, and Institutional Review Board approval requirements, such interviews were not possible. Considering that the experience of undocumented victims is a focal point of this thesis, this research was admittedly hindered by an inability to speak with victims and survivors. Findings are based on data and experience collected by those working in anti-trafficking, which makes this study somewhat one-sided.

Without testimony from those who were actually affected by the policies here discussed, these conclusions are limited by the need for further research. Personal testimony on the real-world experiences of undocumented trafficking victims would serve as a valuable addition to future studies in this area.

In summation, supporting evidence to the stated claims derives from official government data, published statistics from private and semi-private organizations, federal legislation and legal code, prior scholarly studies, and testimony from experts in the field.

EVIDENCE

Overall, research findings support the conclusion that the Trump Administration's movement to tighten immigration policy negatively impacts anti-trafficking efforts, and increased attention toward educating vulnerable populations and training law enforcement is necessary to reduce the resulting problems.

According to Annick Febrey, Esq., the Trump Administration does not engage in the same way the Obama Administration, or even the Bush Administration, engaged with NGOs.¹²¹ Acknowledging that President Trump wants to be tough on trafficking, Ms. Febrey stated, “The administration doesn’t see the connection between [trafficking] and their immigration policies.”

¹²² The current government has decreased financial support in the area of human trafficking, making it more difficult to counter the detrimental effects of increasingly strict immigration enforcement. According to experts, the biggest obstacle to the success of anti-trafficking is a lack

¹²¹ Febrey, *Interview*.

¹²² *Ibid.*

of funding.¹²³ Despite already receiving a disproportionately small stake of the annual DOJ budget, government funding toward anti-trafficking task forces dropped from \$15.8 million to \$2.8 million between 2016 and 2017. This budget cut resulted in the elimination of nine out of eleven Enhanced Collaborative Model (ECM) task forces designed to coordinate law enforcement agencies, victim service providers, and various levels of government.¹²⁴ Furthermore, the DOJ designated \$11.2 million for 18 victim services providers in 2017, as opposed to \$19.7 million for 33 providers in 2016.¹²⁵ Victim services providers did see a notable rise in open cases, however, the percentage of undocumented victims utilizing these services remained stagnant (34%).^{126, 127}

Government data also shows that, since President Trump took office, it has become increasingly difficult for foreign victims to obtain a T Visa. The number of T Visas granted fell from 750 to 672 between 2016 and 2017.¹²⁸ Furthermore, the 2018 Trafficking in Persons Report states that “NGOs reported increased obstacles to obtaining a T Visa, noting a rising number of requests for additional evidence by adjudicators, including requests that referred to outdated regulations.”¹²⁹ The heightened difficulty getting a T Visa suggests that the current climate on immigration has, in fact, hindered the ability of undocumented victims to utilize measures designed to protect them.

¹²³ Rogers, *Interview*.

¹²⁴ U.S. Office of the President. Office of Management and Budget (OMB). *2016 President's Budget Office Of Management and Budget Summary Fact Sheet*, Washington D.C.: Office of Management and Budget, Last modified February 1, 2015.

¹²⁵ U.S. Department of State, *Trafficking in Persons Report, 2018*, 445.

¹²⁶ *Ibid.*, 445.

¹²⁷ U.S. Department of State, *Trafficking in Persons Report, 2017*, 448.

¹²⁸ U.S. Department of State, *Trafficking in Persons Report, 2018*, 445.

¹²⁹ *Ibid.*, 445.

Evidence also supports the conclusion that President Trump's call for law enforcement to crackdown on illegal immigration inadvertently incentivizes agents to go for easy administrative arrests in lieu of pursuing lengthy, often dead-end trafficking leads. While the number of arrests for civil violations of immigration law has grown significantly, the number of human trafficking investigations has decreased.¹³⁰ In 2017, DHS opened 196 fewer cases involving potential trafficking than in the previous fiscal year.¹³¹ The DOJ saw a slight increase in trafficker convictions, however, 94% of these convictions were for cases of sex trafficking in which the majority of victims tend to be U.S. citizens.¹³² Undocumented victims are often trafficked for labor, and cases of labor trafficking are significantly more difficult to identify and prosecute.¹³³ ¹³⁴ Agents directed to focus on migrant administrative arrests risk missing already hard-to-spot trafficking schemes.¹³⁵ This increases the potential for victim criminalization.

Experts on the criminal prosecution side confirm that a strict, volume-oriented approach to immigration enforcement results in a noticeable chilling effect on reported crime. Undocumented persons who believe they will be arrested and/or deported for lack of citizenship are less likely to report a crime.^{136, 137, 138} While it is difficult to collect quantitative data on the number of crimes reported annually by noncitizens, anecdotal evidence from law enforcement officers and relevant studies on the broader chilling effect phenomenon support this assertion. Houston Chief of Police Art Acevedo reported that President Trump's call to federal agents to increase arrests, coupled with the passage of Texas state laws tightening immigration, has

¹³⁰ U.S. Department of Homeland Security, *Fiscal Year 2017 ICE Enforcement and Removal Operations Report*.

¹³¹ U.S. Department of State, *Trafficking in Persons Report, 2018*, 443.

¹³² U.S. Department of State, *Trafficking in Persons Report, 2018*, 444.

¹³³ Febrey, *Interview*.

¹³⁴ Rogers, *Interview*.

¹³⁵ *Ibid.*

¹³⁶ Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*.

¹³⁷ Burnet, *New Immigration Crackdowns Creating 'Chilling Effect' On Crime Reporting*.

¹³⁸ Rogers, *Interview*.

already resulted in a noticeable chilling effect.¹³⁹ Similarly, Special Agent Dave Rogers stated, “When I was in the private sector, and even when I was in the government, I would have undocumented workers tell us that, because of enforcement efforts, they're not willing to seek out benefits available to them under the law.”¹⁴⁰

A 2013 study of Latino communities found that 70% of undocumented immigrants are less likely to contact law enforcement if a crime is committed against them.¹⁴¹ 44% of research subjects declared they were less likely to contact police if they fall victim to a crime for “fear that police officers will use this interaction as an opportunity to inquire into their immigration status or that of people they know.”¹⁴² Furthermore, 45% answered that they are less likely to offer voluntary information on a crime because they are afraid the police will ask them or people they know about their immigration status.¹⁴³ Additionally, evidence from the past two years shows that fewer immigrants are reporting domestic violence due to fear of deportation.¹⁴⁴ Though the aforementioned data is not specific to the area of human trafficking, findings support the existence of a chilling effect in populations with a high number of undocumented persons. The current approach to immigration enforcement makes victims more afraid to reveal their noncitizen status, and the resulting effect reduces the ability of law enforcement to protect victims and prosecute traffickers.¹⁴⁵

Evidence suggests that the anti-immigrant appearance of the government and law enforcement further contributes to this chilling effect.^{146, 147} Though President Obama deported

¹³⁹ Burnet, *New Immigration Crackdowns Creating 'Chilling Effect' On Crime Reporting*.

¹⁴⁰ Rogers, *Interview*.

¹⁴¹ Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, 6.

¹⁴² *Ibid.*, 6.

¹⁴³ *Ibid.*, 6.

¹⁴⁴ Foer, *How Trump Radicalized ICE*.

¹⁴⁵ Tenorio, *Interview*.

¹⁴⁶ *Ibid.*

¹⁴⁷ Rogers, *Interview*.

more illegal aliens than any other U.S. president, according to prominent news outlets, his tone on immigration policy in the media was significantly friendlier than that of his successor.^{148, 149, 150} When publicly addressing the issue, Obama's rhetoric was non-confrontational and laudatory of immigrants as a broad group. Though he maintained the need for immigration enforcement and even referenced a crisis at the border, the Obama Administration publicly encouraged law enforcement to focus on "felons not families, criminals, not children."¹⁵¹ In contrast, President Trump's attitude on immigration policy, as presented through social media and public statements, is considerably harsher in tone. According to a study by the Harvard Kennedy School of Government, 96% of statements on immigration made by the Trump Administration were negative in tone.¹⁵² The current President's inflammatory language on the issue often demeans undocumented immigrants and perpetuates the false notion that they are a group composed mostly of criminals.¹⁵³ Despite having removed less illegal immigrants annually, President Trump conveys a visibly less sympathetic attitude toward illegal aliens in the media than President Obama.

District Attorney Summer Stephan confirmed that undocumented trafficking victims are often unaware of the extent of their legal protections, therefore, news media dictates much of their understanding of current policy on the issue.¹⁵⁴ The anti-immigrant narrative put forth by

¹⁴⁸ Nakamura, David. "Three Presidents, three speeches-- and an immigration debate that has grown coarser." *The Washington Post*. Last modified January 8, 2019.

¹⁴⁹ Bowden, John. "Flake: Obama has a better 'tone' than Trump." *The Hill*. Last modified November 3, 2018.

¹⁵⁰ Bennett, Brian and Christi Parsons. "Obama softens tone on immigration reform." *Los Angeles Times*. Last modified October 24, 2013.

¹⁵¹ Nakamura, *Three Presidents, three speeches-- and an immigration debate that has grown coarser*.

¹⁵² Patterson, Thomas E. "News Coverage of Donald Trump's First 100 Days." *HARVARD Kennedy School. Shorenstein Center on Media, Politics and Policy*. Last modified May 18, 2017.

¹⁵³ Stracqualursi, Veronica. "Trump re-ups 'infestation' rhetoric in immigration debate." *CNN politics*. Last modified, July 2, 2018.

¹⁵⁴ Stephan, *Interview*.

the Trump Administration makes such victims less trusting of law enforcement, thus making it more difficult for agents to build witness relationships upon which criminal investigations often rely.¹⁵⁵ According to Special Agent Rogers, the long process of building trust among victims and members of a community is imperative to successfully catching and prosecuting traffickers. This trust is easily lost, and Rogers voiced that factors outside of law enforcement's control, such as President Trump's nomination in 2016, have shifted things with regard to these relationships.¹⁵⁶ Overall, expert opinions support the claim that the strong anti-immigrant appearance of the current Administration hinders trafficking criminal prosecution efforts.

President Trump himself has made false statements about the nature of human trafficking in the United States as an attempt to gain support for his promised border wall. Bradley Myles, current CEO of Polaris, remarked that "such claims are not only inaccurate and misleading, they also harm our efforts to educate the public on the true nature of this crime."¹⁵⁷ Numerous sources, including Amb. (ret.) Mark Lagon, confirmed that the majority of trafficking victims within the U.S. were born here, and cases in which foreign victims are kidnapped and forcefully smuggled across national borders are rare.^{158, 159} Though such scenarios do exist, perpetuating the false belief that a majority of human trafficking victims are chained up in cages reduces the likelihood that law enforcement, members of the public, and victims themselves will recognize trafficking operations that don't conform to this image.¹⁶⁰ Furthering the spread of fictitious information on

¹⁵⁵ Rogers, *Interview*.

¹⁵⁶ *Ibid.*

¹⁵⁷ Davis, *Border wall impact on human trafficking debated*.

¹⁵⁸ Lagon, *Interview*.

¹⁵⁹ Febrey, *Interview*.

¹⁶⁰ Stephan, *Interview*.

trafficking, as done by the president in multiple speeches, proves harmful to both citizen and noncitizen victims.¹⁶¹

Experts confirmed that many victims, especially in cases of labor trafficking, do not recognize the nature of their circumstances.^{162, 163} DA Stephan stated that victims from other cultures are often led to believe their situation is a result of their failure to repay a debt, and therefore, their own fault.¹⁶⁴ Victims who don't know to identify as such lack the protections available to them under the law. Even victims who realize they have been subjected to a trafficking operation are often misinformed about their legal rights.¹⁶⁵

Overall, experts agree that taking steps to improve education and awareness about trafficking, particularly within vulnerable communities, would help victims take advantage of the policies and programs designed to protect them.¹⁶⁶

In addition, evidence strongly supports the need for further law enforcement training. Victim criminalization and failure on the part of law enforcement to accurately identify victims continues to threaten the success of anti-trafficking efforts. The 2018 Trafficking in Persons Report states that “NGOs continued to report the criminalization of victims creates barriers to accessing public benefits, employment, financial aid for higher education, housing, and other needs essential to avoid re-trafficking and facilitate recovery.”¹⁶⁷ Despite calls from numerous organizations to make educating law enforcement agents a priority, federal funding for such initiatives remains blatantly insufficient.^{168, 169}

¹⁶¹ Davis, *Border wall impact on human trafficking debated*.

¹⁶² Febrey, *Interview*.

¹⁶³ Stephan, *Interview*.

¹⁶⁴ Ibid.

¹⁶⁵ Tenorio, *Interview*.

¹⁶⁶ Stephan, *Interview*.

¹⁶⁷ U.S. Department of State, *Trafficking in Persons Report, 2018*, 446.

¹⁶⁸ Ibid, 446.

¹⁶⁹ Rogers, *Interview*.

In effort to reduce misidentification and victim criminalization, organizations like the Human Trafficking Institute have developed specialized training models. The Human Trafficking Institute initiative trains agents to engage with every component of the crime, promoting a holistic approach that has proven more successful in identifying covert trafficking operations.¹⁷⁰ The six federal districts in which this specialized training model was tested saw a 114% increase in the number of traffickers charged, in comparison with a 12% increase in the remaining 88 districts. Despite representing only 7% of total federal districts, these six sectors accounted for “more than half of all the human trafficking convictions in the entire country.”¹⁷¹ The effectiveness of such training is remarkable. However, it is yet to become common practice.

The necessity for enhanced training in all areas of law enforcement has been repeatedly demonstrated. Consistent with reports from previous years, the 2018 Trafficking in Persons Report states, “Advocates called for improved screening protocols to prevent the removal or deportation of trafficking victims and reported cases where immigration officers allegedly detained or deported individuals displaying key indicators of trafficking, including cases reported where immigrants were taken into custody when seeking protection at specialized human trafficking courts.”¹⁷² Such mishandled cases are primarily due to insufficient law enforcement training, and research shows that repeated mistakes by immigration officers harm both individual victims and anti-trafficking efforts as a whole.

¹⁷⁰ Ibid.

¹⁷¹ “What We Do.” *The Human Trafficking Institute*.

¹⁷² U.S. Department of State, *Trafficking in Persons Report, 2018*, 446.

CONCLUSION

Based on the evidence here described, this paper concludes that the Trump Administration's strict and negative approach to immigration undermines anti-trafficking endeavors. Policies aimed at maximizing arrests and deportations create a chilling effect, which discourages victims from seeking help and makes it harder for law enforcement to investigate and prosecute traffickers. The increased likelihood that victims will be criminalized and/or removed if their undocumented status is discovered by authorities gives additional credence to threats used by traffickers as a means of coercion. Furthermore, the focus on raising criminal and civil immigration arrests inadvertently discourages law enforcement agents from opening lengthy, often fruitless, human trafficking investigations—especially in cases of labor trafficking.

Inflammatory anti-immigrant rhetoric by President Trump and other government officials, bolstered by philosophically aligned media pundits, and widely publicized by news outlets exacerbates the aforementioned problems. Regardless of real changes to law and procedure, President Trump's antipathetic tone on immigration decreases the willingness of foreign victims to interact with law enforcement, despite the protections afforded to them by the TVPRA and other anti-trafficking provisions. Furthermore, the President's promotion of false claims on human trafficking perpetuates damaging misinformation and reduces the likelihood of victims being properly identified as such.

Finally, research shows that a lack of public awareness, particularly in vulnerable communities, and insufficient law enforcement training represent a significant part of the problem. Foreign victims do not always recognize the nature of their situation, and those who do self-identify as victims are often ignorant of their legal rights. Law enforcement

agencies—particularly in the realm of immigration—lack comprehensive training on how to spot human trafficking, which can lead to unintentional victim criminalization.

In accordance with recommendations put forth by NGOs, these research findings suggest a need for increased funding and a commitment to specialized training initiatives across all sectors of law enforcement. A higher budget for anti-trafficking organizations should support a more widespread campaign to promulgate the legal rights and protections of trafficking victims, especially in vulnerable communities. Furthermore, reformative changes to law enforcement protocol must be made a priority. Models designed to help officers detect trafficking situations, such as those created by the Human Trafficking Institute, should be further developed. Additionally, agents and officers should be required to use such screening protocol in all cases involving prostitution or illegal immigration to help them better assess whether a situation should be further investigated for potential trafficking.

While the government has taken steps to improve public awareness, and some departments have implemented mandatory or optional courses on how to identify human trafficking, these efforts are not sufficient.^{173, 174} If we are to counter the detrimental impact of increasingly strict immigration enforcement and make serious progress in the fight against modern slavery, the Federal Government must politically and financially prioritize the issue of human trafficking.

¹⁷³ U.S. Department of State, *Trafficking in Persons Report, 2018*, 442-448.

¹⁷⁴ U.S. Department of Homeland Security. U.S. Citizenship and Immigration Services. *Blue Campaign Initiatives*. Washington, D.C.: Department of Homeland Security, 2013, Last Modified February 26, 2019.

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