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Perspectives from the Field(s)

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ARTICLE: Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field(s)

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SUMMARY:

... Scholars and advocates across several movements have attempted to develop approaches to human trafficking that would best serve the needs and support the rights of all migrant workers and survivors of trafficking. ... This Article also evaluates U.S. policies and practices across multiple sectors that relate to human trafficking including prostitution, labor migration, and sexual and reproductive health rights. ... " A similar restriction applies to international organizations receiving governmental funding to combat HIV/AIDS, requiring organizations, as a condition of receiving funding, "to have a policy explicitly opposing prostitution and sex trafficking. ... The anti-prostitution pledge restricting grants to anti-trafficking organizations also limits funding to domestic and international SRH organizations focusing on HIV/AIDS prevention, women's health and family planning. ... The Trafficking Act and the U.S. government's "s Global AIDS Act of 2003 both forbid funding to any group that does not explicitly oppose prostitution and sex trafficking. ... Such groups include public health advocacy organizations, grassroots organizations that encourage migrant worker organizing, formal and informal unions of domestic workers, sex workers and agricultural workers, and anti-border enforcement groups that advocate for safe migration across international borders for all individuals. ... Certainly more work is needed to counter these divisions and facilitate the critical and logical links between immigrant rights, labor rights, sex worker rights, sexual and reproductive health, and anti-trafficking advocacy, organizing and scholarship. ...

TEXT:

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Introduction

Scholars and advocates across several movements have attempted to develop approaches to human trafficking that would best serve the needs and support the rights of all migrant workers and survivors of trafficking. Many U.S.-based and international groups organizing for immigrant, labor, sex worker, and sexual and reproductive health rights, understand the need for collaborations among them. Yet, such connections have been largely obstructed by the U.S. federal government approach to trafficking, which emphasizes sex trafficking over other forms of labor. At a number of recent conferences, participants from across these movements have articulated the obstacles posed by the U.S. federal approach both to their work and to these potential alliances. n1

These ongoing discussions reveal a growing consensus among advocates that current U.S. anti-trafficking policies and practices that focus on law enforcement and anti-prostitution efforts detrimentally impact the rights of trafficked persons. Advocates increasingly witness a prosecutorial approach to trafficking narrowly focused on criminalizing prostitution as a purported means to stop trafficking. Meanwhile, enforcement agencies largely neglect the broader phenomenon of trafficking into agriculture, domestic service, restaurants, hotels, manufacturing, and construction. Non-governmental organizations assisting trafficked persons domestically and internationally [*319] report that the U.S. emphasis on criminal enforcement and anti-prostitution policies curtails the rights of trafficked persons voluntarily engaged as sex workers, and marginalizes trafficked persons in non-sex related industries. These policies and practices inhibit a rights-based approach that respects the agency and choice of adults to decide how to organize their lives.

This Article discusses the local and global consequences of the United States government approach toward human trafficking. This Article also evaluates U.S. policies and practices across multiple sectors that relate to human trafficking including prostitution, labor migration, and sexual and reproductive health rights. By providing an overview of current issues, problems, and concerns within the anti-trafficking movement and within related rights-based movements, this Article seeks to facilitate the development of a new anti-trafficking paradigm. A new anti-trafficking paradigm is already emerging out of collaborations and discussions between anti-trafficking and human rights advocates from diverse fields. n2 This paradigm evaluates trafficking within a broader framework and provides the foundation for a cross-sectoral alliance to challenge mainstream approaches to human trafficking and to create new strategies to protect the rights of trafficked persons, migrant workers, and women against the negative impact of United States policies and practices.

Part I of this article begins with a background of current U.S. policies and procedures addressing human trafficking. Noting the narrow conceptual focus of current U.S. anti-trafficking guidelines on primarily anti-prostitution and criminal law enforcement efforts, Part I proposes a more expansive reconceptualization of trafficking as it relates to multiple sectors - prostitution, labor migration and reproductive and sexual health. In furtherance of this reconceptualization, Part II draws from the experience of human rights advocates to analyze the impact of U.S. policies and practices on the rights of trafficked persons within each sector. This Article finds that current U.S. policies and procedures addressing trafficking divert attention away from underlying root causes of trafficking, and deprive certain trafficked persons of full access to immigration and labor protections. Moreover, related U.S. policies on labor migration and reproductive and sexual health operate to restrict the rights of not only trafficked persons, but more generally migrant [*320] workers and women. Part III of this Article summarizes recommendations to advance the rights of trafficked persons through a movement-based alliance of human rights advocates across multiple sectors.

I. The Conceptual Framework

A. U.S. Anti-Trafficking Policies and Practices: A Narrow Conceptual Focus

Organizations throughout the world report that U.S. anti-trafficking policies and practices operate with a narrow conceptual focus. As a consequence, advocates and other commentators have observed the erosion of trafficked persons' rights and diminishing service provisions for trafficked persons in a variety of sectors. n3 Specifically, U.S. anti-trafficking policies have increased the criminalization of prostitution while neglecting the broader reality of trafficking into farms, homes, restaurants, and other sites. The result is the conflation of human trafficking with prostitution. This

conflation appears ideologically driven, arising out of new and emerging alliances between some anti-prostitution feminists and right-wing evangelical Christians, who have recently entered HIV/AIDS service provision, human rights, and advocacy worlds. As a result, anti-trafficking advocates and service providers, particularly those working with clients in the sex sector, report negative consequences on their ability to serve clients, on the health and status of clients and on the rights of women in the sex sector in the U.S. and internationally. n4

Several examples indicate an emerging conflation of human trafficking and prostitution by the U.S. government. First, recent policy measures under the Bush Administration purport a unique "link" between prostitution and trafficking. A recent State Department publication entitled "The Link Between Prostitution and Sex Trafficking" suggests this perspective. n5 This document states that trafficking is both a cause and effect of prostitution, yet makes this assertion based on reports that are unsubstantiated by valid research methods and data. A number of scholars have contested these assertions and challenged the research upon which the claims are based, and have called upon the [*321] government to support more reliable research in the formulation of public policy. n6 Even a Government Accountability Office (GAO) study released in July 2006 reports that U.S. government estimates of global human trafficking are "questionable" and "in doubt because of methodological weaknesses, gaps in data, and numerical discrepancies." n7

The purported "link" between prostitution and trafficking damages on-going efforts to prevent trafficking and protect the rights of trafficked persons. This unproven "link," which lends support to the Bush Administration's focus on abolishing prostitution as the cornerstone to its anti-trafficking approach, has diverted attention away from an assessment of structural factors that facilitate trafficking such as poverty, discrimination, and civil and political unrest of certain developing regions. The Bush Administration has also employed this misguided policy to de-fund organizations that refuse to adopt a policy statement against prostitution.

In February of 2002, President Bush authorized National Security Presidential Directive 22 (NSPD 22), identifying trafficking as an important national security issue. n8 According to the Bush Administration, the relationship between trafficking and organized crime poses a transnational threat and raises terrorism concerns. n9 Though NSPD 22 is a classified document, and therefore, unavailable to the public, a Department of Justice report on anti-trafficking efforts cites to NSPD 22 and asserts without empirical evidence that prostitution is "the driving force behind sex trafficking." n10 The report emphasizes official presidential policy to heighten criminalization and enforcement against prostitution as the primary method to reduce human trafficking and further states: "The United States opposes prostitution and any related activities... as contributing to the phenomenon of trafficking in persons. These activities are inherently harmful and dehumanizing. The United States government's position is that these activities should not be regulated as a legitimate form of work for any human being." n11

In 2003, the U.S. Congress amended the Trafficking Victims Protection Act of 2000 to prohibit international non-governmental organizations (NGO) receiving governmental funding to support their anti-trafficking work, from [*322] using the funds to "promote, support or advocate for the legalization or practice of prostitution." n12 The funding restriction requires organizations to "state in either a grant application, a grant agreement, or both, that it does not promote, support or advocate the legalization or practice of prostitution." n13 A similar restriction applies to international organizations receiving governmental funding to combat HIV/AIDS, requiring organizations, as a

condition of receiving funding, "to have a policy explicitly opposing prostitution and sex trafficking." n14

Initially, the restriction applied only to foreign NGOs. In 2004, however, the Department of Justice issued an opinion letter supporting the application of these restrictions to U.S. grantees. n15 Accordingly, in 2005, Congress again amended the TVPA, expanding the restriction to domestic NGOs. n16 The restriction, now known as the "gag rule" or "anti-prostitution pledge" by anti-trafficking human rights activists, raised immediate First Amendment concerns from advocates and lawmakers. n17 First, the "pledge" compels U.S. NGOs to affirmatively adopt a government viewpoint. Simply having "no position" on the issue is not permissible under the rule. This conflicts with Supreme Court precedent disallowing the government from compelling speech in support of its viewpoint as a condition of participating in a government program. n18 Second, by requiring recipients of government funding to take the "pledge" as an organization-wide policy, the "pledge" restricts the way in which the organization chooses to utilize their non-governmental and private funding. As decided by the Supreme Court in *Rust v. Sullivan*, though the government may attach conditions to the disbursement of subsidies, funding schemes must "leave the grantee unfettered in its other activities." n19

[*323] The ambiguity of the words "promote, support or advocate" and the lack of concrete guidance from administration officials about their meaning led concerned NGOs to change their policies and practices. Many organizations even curtailed services and support for sex workers. n20 Other NGOs refused to comply with the "gag rule" and chose to forego U.S. funding, in recognition of the damaging impacts that policies and public statements against prostitution have on their abilities to serve those in the sex sector. A letter addressed to President Bush in May 2005, signed by public health, human rights, faith-based and community-based organizations, stated that such policies will "exacerbate stigma and discrimination against already marginalized groups" and make it "difficult or impossible to provide services or assistance to those at risk ... further driving them underground and away from lifesaving services." n21 Thus, organizations in Brazil rejected \$ 40 million of U.S. global AIDS funds, declaring that the restrictions would counter the very programs that have proven effective in reducing the spread of HIV in Brazil. n22 Such programs include rights-based and harm reduction approaches to prostitution that are designed to de-stigmatize and empower women as they move towards better health and self-sufficiency.

Two lawsuits have challenged the constitutionality of the anti-prostitution pledge: *Alliance for Open Society International, Inc. and Open Society Institute v. United States Agency for International Development*, n23 filed in the U.S. District Court for the Southern District of New York, and *DKT International, Inc. v. United States Agency for International Development*, n24 filed in the U.S. District Court for the District of Columbia. Both lawsuits alleged that the pledge violates the organizations' First Amendment right to free speech by requiring them to adopt the government's point of view in order to receive funding. n25 The lawsuits also charged that the pledge is unconstitutionally [*324] vague, thereby permitting arbitrary enforcement. n26 Moreover, the suits pointed to the public health danger presented by the pledge because it undermines efforts to provide preventative health information and services to sex workers who are at high risk of contracting and spreading HIV/AIDS. n27

Both courts agreed that the pledge requirement was an unconstitutional violation of free speech rights under the First Amendment. Judge Victor Marrero of the Southern District of New York and Judge Emmet G. Sullivan of the District Court of Washington, D.C. granted the respective plain-

tiffs' preliminary injunctions against the enforcement of the pledge in order to prevent irreparable harm. The pledge, Judge Sullivan wrote, implied a "demand that the organization become a mouthpiece for government policy" even if using its own funds. n28 Judge Marrero of the Southern District, moreover, opined that "the Supreme Court has repeatedly found that speech, or an agreement not to speak, cannot be compelled or coerced as a condition of participation in a government program." n29

In spite of recent court rulings, these policies have already caused significant damage. The court rulings do not apply to foreign NGOs receiving U.S. funding for anti-trafficking work. n30 Domestically, funding has shifted to more right-wing, religious organizations who support the U.S. government's policy; resources for U.S. NGOs that do not subscribe to these policies remain scarce. The shift in funding detrimentally impacted the work of organizations experienced in serving victims of trafficking but unable or unwilling to comply with the federal restrictions. Some progressive advocates witnessed the removal of funding from their organizations, while more conservative, church-based agencies, less-experienced in anti-trafficking work but willing to adopt the federal anti-prostitution stance received new funding. Domestic and international groups that oppose current U.S. policies often face vicious attack and fear blacklisting by the U.S. government and other sources of funding.

The conflation of human trafficking with prostitution also resulted in the narrow application of the federal Trafficking Victims Protection Act (TVPA) to sex trafficking cases. In 2005, the Department of Justice reported that over two-thirds of ninety-one human trafficking cases were cases of sex trafficking. n31 [*325] This information directly conflicts with empirical reports from service providers who have found that sex trafficking cases comprise only one-third of their caseload. For example, a recent study by the Coalition to Abolish Slavery and Trafficking reports that clients trafficked to Los Angeles are subject to exploitation in many fields, including domestic work (40 percent), factory work (17 percent), sex work (17 percent), restaurant work (13 percent), and servile marriage (13 percent). n32 These striking numbers refute the government's assertion that most trafficking is for prostitution.

Many advocates questioned the effectiveness of the government's anti-trafficking policy and practice in serving all human trafficking victims. These advocates note that in the period since the passage of the TVPA in 2000 to 2004, only 616 people benefited from the law through receipt of a T visa. n33 Notably, a 2006 Government Accountability Office study found: "There is also a considerable discrepancy between the numbers of observed and estimated victims of human trafficking." n34

Advocates speculate that trafficking victims in industries other than the sex sector could account for this gap. Law enforcement agents who equate trafficking with prostitution often do not view those in other industries as victims of trafficking. Furthermore, the prosecutorial focus of sex trafficking cases alienates migrant rights advocates, who fear that anti-trafficking work invites excessive prosecution in immigrant communities while ignoring the harm these communities face as exploited workers in domestic work, agricultural work, and in industrial and factory work. For example, leaders from Domestic Workers United, a collective of migrant-rights organizations supporting domestic workers in New York, expressed alienation from the anti-trafficking movement. n35 The focus on sex trafficking also alienates women's rights and human rights advocates, who are increasingly concerned with the stigmatizing and rights-depriving impact these anti-prostitution policies have on women around the world. For example, Sex Workers Across Borders (SWAB), a grassroots

group of sex workers and allies, states a concern that anti-trafficking measures are used to police and punish female, male, and transgender migrants and sex workers, and to restrict their freedom. n36

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B. Reconceptualizing Human Trafficking: A Broader Framework

Reconceptualizing human trafficking within a broader framework of labor migration, human rights, women's rights, sexual and reproductive health rights, and globalization may counteract the negative impacts of U.S. policies and advance the rights of trafficked persons.

The development of a field of understanding around the subject of human trafficking has progressed through various stages. The notion that only women were trafficked into prostitution was expanded in the 1990s with the realization that both men and women were being trafficked into other labor sectors. Both the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) n37 and the Trafficking Victims Protection Act (TVPA) n38 address the larger phenomenon of trafficking in persons. Anti-trafficking and human rights advocates, however, agree that an effective conceptual framework to combat human trafficking, must consider trafficking as inextricably linked to globalization and trends in labor migration. n39

Anti-trafficking and human rights advocates now consider it absolutely essential for anti-trafficking service providers to expand their work beyond the "3 Ps" of prevention, prosecution and protection. n40 While the "3 Ps" approach assisted many potential and actual lives of victims, it does not address underlying social structures that facilitate human trafficking. These advocates recognize that governments, whose agendas conflict with the goals of advocates, support the "3 P" approach and the prevailing discourse on human trafficking. Thus, civil society must actively seek the means to lead in developing new understandings and a new discourse on human trafficking.

This new discourse must be grounded in understandings of the processes of globalization, and the coercive nature of most migration within this context. The new discourse supports a framework that views trafficking as coerced migration or exploitation of migrant workers for all forms of labor, including a broad spectrum of work often performed by migrants, such as manufacturing, agriculture, construction, service work, servile marriage and sex work. This definition of trafficking rests upon an understanding that many migrant workers [*327] are coerced to migrate because of economic devastation caused by neoliberal policies in their home countries. While this displacement does not imply physical force or deception, it recognizes coercion created by the destruction of subsistence economies and social service states through neoliberal policies imposed on indebted sending countries by wealthy creditor nations. n41

The new discourse encompasses an understanding of migrant workers' experiences as inclusive of many forms of labor, either simultaneously or in sequence. In Canada, for example, women recruited and trafficked as domestic workers have often faced pressure to enter servile marriages within their employers' households and families. In the United States, it is not uncommon for workers engaged in manufacturing to hold second and third jobs in service work. Finally, people's experiences of being trafficked may span a broad spectrum from consent to coercion. While a person may initially participate with ostensible "knowledge and consent" to being transported for work, she

may later wish to leave the work or particular employment site, yet be held captive by an employer. Within the new discourse, such a person would be recognized as a victim of trafficking. n42

The focus on "sex trafficking" obscures the U.S. government's responsibility for compelling people to leave their countries. For example, structural adjustment and other neoliberal policies imposed on the Philippines has forced the mass migration of women and men. International financial institutions such as the World Bank and International Monetary Fund impose structural adjustment policies as preconditions for indebted nations to obtain loans. n43 The ravages of these policies have destroyed subsistence economies and social services; as a result, over 3,100 people leave the Philippines each day. Government agencies in sending countries such as the Philippine Overseas Employment Administration facilitate this mass migration in such explicit, concrete ways that it is difficult to view this movement as anything short of government-sponsored human export. In turn, receiving countries such as the United States and Canada fashion immigration, labor, and welfare laws in such a way that migrant workers remain super-exploitable as temporary workers, ineligible for most rights and protections afforded to citizens in these "host" countries. n44

Through these policies, the U.S. government and many other nations promote human trafficking and labor exploitation, while simultaneously creating the conditions of poverty through neoliberal economic policies that [*328] compel people to migrate. The selective criminalization of "sex trafficking" ensures that the root causes of all forms of human trafficking, and state responsibility for or complicity in these structural causes, remain unchallenged. n45

In sum, the underlying root causes for rendering human beings vulnerable to human trafficking are complex and regionally diverse and cannot be addressed by a "one size fits all" strategy. The development of a new discourse on trafficking, therefore, requires a critical analysis of the current U.S. policy and its consequences that integrates multiple perspectives from varied fields of human rights, women's rights, labor rights and health rights. An integrated and cross-disciplinary framework launches a reconceptualization of trafficking that considers root causes and the role of U.S. policies in hampering efforts to combat trafficking.

II. A New Discourse on Trafficking

U.S. anti-trafficking policies significantly impact three distinct areas: prostitution, labor migration, and sexual and reproductive health. A new discourse on trafficking seeks to understand the consequences of U.S. policies within each area on efforts to prevent trafficking and to protect the rights of trafficked persons.

A. Prostitution and Sex Work

As discussed in Part I, U.S. governmental policies and practices addressing human trafficking conflate trafficking with prostitution. This characterization severely hampers the work of anti-trafficking advocates and damages the rights of trafficking survivors. The negative consequences of this conflation on anti-trafficking efforts is visible both domestically and internationally.

1. Impacts of Policies

Various policy measures contribute to the conflation of trafficking and prostitution, in definition and in subsequent practice. In addition, administrative agencies substantively and procedurally utilize these policies to enforce the criminalization of prostitution, rather than to combat human traf-

ficking. Examples include the definition of trafficking in persons pursuant to the Trafficking Victims Protection Act (TVPA); the Trafficking in Persons annual report issued by the U.S. State Department; and the End Demand legislation.

First, a historical tension exists with regard to the relationship of trafficking to sex work. The TVPA, the chief U.S. anti-trafficking statute, defines "human [*329] trafficking" more narrowly than the established international definition. As discussed earlier, the TVPA focuses on sex trafficking, which conflicts with the broader definition created under international agreements such as the 2000 Palermo Protocol. The Palermo Protocol defines trafficking as follows:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability n46 or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; n47

The definition in the Palermo Protocol is perhaps the first international definition or reformulation of "trafficking in persons" since the 1949 UN Convention for the Suppression of the Traffic in Persons and the Exploitation of Prostitution of Others. The 1949 Convention focused exclusively on prostitution and considered all prostitution, whether voluntary or forced, to be trafficking. The Palermo Protocol recognizes the existence and possibilities of both voluntary and forced prostitution and indeed leaves "prostitution" intentionally ambiguous to allow for different interpretations. Participants noted that the Palermo Protocol includes but does not define the phrase "exploitation of prostitution of others or other forms of sexual exploitation" because delegates to the Palermo negotiations could not reach a consensus on the meaning of this phrase. While all delegates agreed that involuntary participation in prostitution constitutes trafficking, the majority of delegates rejected the idea that voluntary participation by adults in prostitution amounts to trafficking.

Thus, the language of the Palermo Protocol emerged from a compromise reached by the delegates to ensure the greatest number of signatories. Delegates agreed to leave the phrase undefined but included the following explanation in interpretive note 64:

The travaux préparatoires should indicate that the Protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms "exploitation of the prostitution of others" or "other forms of sexual exploitation" are not defined in the Protocol, which is therefore [*330] without prejudice to how States Parties address prostitution in their respective domestic laws. n48

The strength of this language and the lack of an explicit definition of the "exploitation of prostitution of others or other forms of sexual exploitation" allows for governments to develop their own approaches and definitions with respect to prostitution and sexual exploitation.

The Global Alliance Against Trafficking in Women (GAATW) has suggested that "if a government insists on using language such as 'sexual exploitation,' we should encourage them to use

the following definition so that sexual exploitation, like any other form of labour exploitation, requires the use of force or coercion... ." For example:

"Sexual exploitation" means the participation by a person in prostitution, sexual servitude, or the production of pornographic materials as a result of being subjected to a threat, deception, coercion, abduction, force, abuse of authority, debt bondage or fraud. Even in the absence of any of these factors, where the person participating in prostitution, sexual servitude or the production of pornographic materials is under the age of 18, sexual exploitation shall be deemed to exist. n49

The language of the TVPA does not allow for such broad interpretation and autonomy of other states in defining trafficking. This raises the concern that the TVPA overrides the possibilities allowed for and intended by the delegates in creating the terms of the Palermo Protocol.

Furthermore, the TVPA language supplants these more expansive definitions of trafficking through concrete means such as international "prevention" measures mandated, monitored and enforced by the U.S. State Department's Trafficking in Persons (TIP) report. n50 The TIP report ranks countries' performance in preventing trafficking at Tier 1, 2, or 3, based on their compliance with U.S. approved anti-trafficking measures. The U.S. government sanctions countries with lower tier rankings, while higher tier countries may receive funding from the U.S. to aid their anti-trafficking efforts. The strongest determinants for rankings include a country's level of focus on prostitution, endorsement of the prostitution/trafficking conflation and emphasis on prosecution.

One example of the U.S. government's bias exists in the case of Korea. Advocates reported that in legal terms, the Korean government understands human trafficking only to mean prostitution. This interpretation did not change with the introduction of the Palermo Protocol, and only grew worse after introduction of the TVPA, and Korea's initial ranking as a Tier 3 country in [*331] 2001. The Korean government responded by establishing an inter-ministry task force to combat trafficking and subsequently introduced a prostitution prevention law. Despite protests by sex worker rights groups, Korea has instituted a sweeping anti-prostitution law, the first of its kind since 1961. The reform includes prison sentences and fines for traffickers and for women in the sex industry. The Korean government, encouraged by its subsequent ranking at Tier 1, claims it will eliminate prostitution by 2007. This illustrates the large-scale negative impact of the anti-prostitution and prosecution-oriented framework of the TVPA and other U.S. trafficking policy globally. n51

2. Impacts of "End Demand" Legislation and Practices

The conflation of prostitution and trafficking has also led to the faulty idea that ending "demand" for commercial sex will lead to a reduction in or eradication of trafficking.

This concept has been incorporated into proposed legislation such as the "Bill to End Demand for Sex Trafficking Act" of 2005. n52 While this bill failed to pass through Congress by itself, sections of it were included in the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005. n53 The "End Demand" section of the TVPRA 2005 diverts attention and federal funds to programs aimed at the prosecution, shaming, and "re-education" of clients of sex workers.

Specifically, the TVPRA 2005 provides funds to states and local jurisdictions for programs to "investigate and prosecute persons who purchase commercial sex acts" n54 and to "educate persons charged with, or convicted of, purchasing or attempting to purchase commercial sex acts." n55 The latter is to be accomplished largely through "john schools," such as those established in 1995 in San Francisco, where clients of street prostitutes attend courses about the purported negative effects of prostitution on sex workers, their customers, and society. n56 Research has revealed that john schools have not been effective in [*332] discouraging clients from continuing to purchase commercial sex and have only resulted in moving sex work from one area to another. n57

Advocates critique the underlying premises of "end demand" policies as well as their negative impacts on both trafficked persons and sex workers. For example, the Sex Workers Project of the Urban Justice Center and the Network of Sex Work Projects states:

"Demand" for sex work is not a predominant driving factor for trafficking, which is driven by poverty, race, and gender inequities. The term "demand" also refers to the legitimate concerns raised by migrants and labor rights advocates who address the issues relating to the need in the global north for exploitable labor and services. However, this narrow focus of the term in the context of sex work represents a dangerous move towards policies that, under the guise of protecting sex workers, is another way of undermining sex workers' autonomy and causing more harm to them. n58

Thus, advocates criticize "end demand" as misguided and ineffective in targeting the true causes of trafficking, i.e., the demand of states and employers in the global north for low-wage migrant labor, as well as diverting attention and services from trafficked persons while undermining the rights of sex workers. Advocates note that the "end demand" sections of the TVPRA of 2005 provide little funding for services and support for trafficked persons, while authorizing most of the funding for law enforcement and "end demand" programs not yet proven to be effective. n59 Advocates also suggest that the "end demand" focus does not serve to curtail commercial sex or trafficking, nor help to identify those who may be vulnerable in either or both groups: "A decrease in the number of people in the unlawful commercial sex sector, including those who are trafficked, can only be achieved with an increase in services to vulnerable groups and victims, and in research on causes and prevention methods." n60

Moreover, critics of the end demand focus observe that it does not serve the rights and needs of trafficked persons, yet it severely hinders those of sex workers in a number of ways: moving sex workers off the streets to the underground, making them more vulnerable to violence and abuses and less likely to have access to health and outreach services, including critical [*333] HIV/AIDS and STI education and prevention. n61 Sex workers in the United States identify not only clients as a source of violence but law enforcement agents as abusers, commonly violating their human rights through harassment and assault. n62 Thus, advocates such as the Urban Justice Center's Working Group on Sex Work and Human Rights argue that "giving law enforcement more power [through end demand policies] makes sex workers even more vulnerable." n63

3. Impacts of "Raid and Rescue" Practices

Government practices, particularly the dominant model of "raid and rescue" tactics in and outside of the United States, negatively impact both survivors of trafficking and migrant workers voluntarily engaged in sex work.

A recent "raid and rescue" case in the United States, dubbed Operation Gilded Cage, n64 clearly illustrates these concerns. The incident was reported as the largest "sex trafficking" case in the history of the United States. In July of 2005, law enforcement agents raided ten brothels in San Francisco they had identified as suspected trafficking sites and "rescued" over 120 women. Authorities then detained the women at a military base in California; federal officials questioned the women to determine their status as possible victims of trafficking before calling in trained service providers twenty-four hours later. By the time advocates arrived, federal officials had already decided that the majority of the women were not legal victims of trafficking, and placed them in immigration detention.

Advocates struggled to convince officials to interpret the law more broadly in screenings of the remaining women, in direct conflict with the narrow federal framework. In this case and others, advocates report that when clients identify themselves as voluntary or consenting participants in their migration or employment at any point, authorities deem them ineligible for benefits under T-visas as legal victims of trafficking. If clients do not fit traditional conceptions of involuntary or non-consenting victims, they may instead face deportation, like many of the women "rescued" in the Operation Gilded Cage case. n65

Advocates also comment that often they can only secure certifications from law enforcement agents enabling their clients to apply for T-visas if their [*334] clients cooperate exactly with law enforcement during the investigation and prosecution process. n66 Authorities deprived one woman "rescued" in Operation Gilded Cage of trafficking victim status, citing that she was "uncooperative," after she decided that she did not wish to cooperate with law enforcement and instead, return to Korea. Authorities also denied her the ability to return to Korea and held her in jail as a material witness for the case. n67

4. Conclusion

These examples raise a number of concerns and suggestions regarding the conflation of prostitution and trafficking by US governmental anti-trafficking policies and practices:

a) The U.S. government's focus on trafficking for prostitution; its assumption that it must be involuntary in all cases; and the explicit, exclusive goal of prosecuting trafficking when equated with prostitution denies protection to exploited laborers who are consenting adults in sex work and many other industries. Those who migrate for work may participate voluntarily in any industry yet still face unlawful exploitation through labor rights abuses, poor working conditions and debt bondage. U.S. and international anti-trafficking policies and practices must recognize this exploitation consistently in the identification and treatment of all victims of trafficking.

b) Victims of trafficking face many threats to their safety and encounter numerous challenges to their livelihoods, health, and rights not necessarily addressed or secured through cooperation with law enforcement agents in the prosecution of trafficking. Thus, law enforcement should offer victims of trafficking autonomy, greater rights, and increased protections if they choose to cooperate with prosecution efforts. Victims of trafficking also need greater access to benefits, regardless of their cooperation or the form of trafficking they have survived.

B. Labor Migration

This section discusses the role of labor migration within the U.S. anti-trafficking framework. U.S. policies and practices focusing on sex trafficking marginalize the rights of workers trafficked into non-sex-related industries. The emphasis on sex trafficking and criminalization of prostitution perpetuates the widespread exploitation of migrant workers by failing to reform restrictive immigration policies that deny migrant workers the labor protections afforded to citizen workers.

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1. Impact of policies

As a starting premise, it is important to recall the original intent of the TVPA to not only protect victims of forced or coerced prostitution, but to also guarantee legal relief to migrant workers subjected to slave-like working conditions in factories, farms, private homes, restaurants, hotels and any other labor industry. Several noteworthy cases prompted the passage of the Trafficking Victims Protection Act, including the 1995 El Monte, California case involving seventy-two Thai garment workers forced and coerced to labor in sweatshops, some for up to seventeen years. n68 A 1997 case convicted eighteen traffickers for forcing hearing-impaired Mexicans to peddle trinkets in New York City, Los Angeles and Chicago. n69

In light of these types of forced labor cases, the TVPA recognizes in its Purposes and Findings that: "Trafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide." n70 Furthermore, the TVPA's expansion of the law's definition of forced labor protects all migrant workers coerced to endure exploitive labor conditions through physical or non-physical means, including a trafficker's threats to deport a worker or to harm a worker's family members. Such non-physical means also include the use of psychological and "non-violent" coercion. n71 For example, the TVPA's conference report encompasses the protection of domestic workers compelled to work under threats that their family members may suffer "banishment, starvation, or bankruptcy." n72

The TVPA has succeeded in the prosecution of several high profile trafficking cases involving non-sex industries. For example, *United States v. Kil Soo Lee*, n73 commonly known as the Dae-woosa case, involved approximately 250 Vietnamese women and men forced to work in a garment factory in American Samoa, under threats of deportation, severe economic hardship, and constant employer surveillance. n74 In another case, *U.S. v. Ramos*, farmworkers from Mexico were forced to labor in Florida agricultural fields through threats of violence and debt bondage. n75

[*336] Despite the occurrence of these labor trafficking prosecutions, however, the Department of Justice reports that from the years 2001-2005, it pursued a total of only twenty-three labor trafficking cases as compared with sixty-eight sex trafficking cases. The Department of Justice further reports that the sixty-eight sex trafficking prosecutions represent an 871 percent increase from fiscal years 1996-2000 when only seven sex trafficking cases were filed. n76 In contrast, the twenty-three labor trafficking cases filed between 2001-2005 show only a 109 percent increase from the eleven labor trafficking cases filed between 1996-2000. n77

These numbers are disproportionate to estimates from non-governmental organizations and academic researchers asserting that approximately one-half to two-thirds of all trafficking in the U.S. occurs in non-sex related industries. A 2004 report from Free the Slaves and the Human Rights Center at University of California Berkeley indicates that 46.4 percent of trafficking cases are for

forced prostitution while 46.2 percent of trafficking cases are for domestic service, agricultural labor, sweatshops and food service. n78 Anecdotal evidence from anti-trafficking service providers estimate that only one-third of their cases are related to the sex industry, while the clear majority of their trafficking cases occur in non-sex industries. n79

Service providers contend that the U.S. government's focus on sex trafficking results in the rejection of labor trafficking cases for investigation and prosecution. The Forced Labor report indicates that NGOs observe federal law enforcement "downplaying of the severity of crimes involving forced labor." n80 The government's lack of attention to labor trafficking cases results in the denial of law enforcement protection to trafficked workers who may fear employer retaliation for escaping the abusive work environment and reporting the incidents to the authorities. The neglect of labor trafficking cases has the additional consequence of condoning employer abuses in non-sex industries, thereby hindering long-term prevention efforts to deter labor exploitation in any industry.

2. Impacts of Current Policies on Labor and Immigration

Other examples of current U.S. laws, highlight the perpetuation of migrant worker vulnerability despite the TVPA's original intent to protect these workers from exploitation. For instance, the 2002 Supreme Court case, [*337] *Hoffman Plastic Compounds, Inc. v. NLRB*, n81 determined that an undocumented worker, wrongfully terminated from his job for union organizing, was not entitled to compensation for back pay due to his status as an illegal immigrant. As a result of this decision, all undocumented workers asserting their right to associate under the National Labor Relations Act (NLRA), n82 were deprived of certain labor remedies for employer retaliation. Employers can fire undocumented workers who organize without providing reinstatement or compensation for lost work. The case has had a pervasive effect on the immigrant worker community, as employers defending labor violations attempt to use the ruling to curtail worker organizing in non-NLRA matters such as wage and hour and employment discrimination cases. n83

Domestic workers, who, according to reports from advocates and the Department of Justice, constitute a large percentage of trafficking cases, n84 continue to lack sufficient employment and labor protections. The NLRA does not include domestic workers under the definition of employee under the NLRA and therefore, provides no protection for domestic workers from employer retaliation for striking or collective bargaining. n85 Individual domestic workers working in private homes are ineligible to assert violations of sex, race or national origin discrimination under Title VII. n86 Live-in domestic workers are not entitled to overtime pay under the Fair Labor Standards Act (FLSA). n87 Finally, domestic workers employed by foreign diplomats cannot hold their employers accountable for workplace violations as diplomats enjoy immunity from civil, criminal, or administrative liability within the United States. n88 While an exception to immunity exists for "any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions," n89 the 4th Circuit ruled in *Tabion v. Mufti* n90 that "commercial activity" includes only activities for personal profit, explicitly stating that domestic workers are not "commercial activity." Thus, pursuant to *Tabion*, domestic workers are denied claims against their diplomat employers in the civil justice system.

[*338] Farmworkers, comprising a sizeable percentage of known trafficking cases in the U.S. are similarly deprived of full labor protections. n91 Under federal law, farmworkers are not entitled to overtime pay. In some cases, special agriculture exemptions for employers who, in a single calendar quarter during a year, do not use more than 500 man days of farm labor, exclude farmworkers

from receiving the federal minimum wage of \$ 5.15 per hour. The NLRA does not protect farm-workers for organizing activities. Finally, guestworkers under the H-2A program are excluded from the Agricultural and Seasonal Workers Protection Act, n92 the principal federal labor law for farm-workers. Consequently, H-2A workers are not entitled to disclosure of job terms during recruitment, transportation safety requirements, or access to federal courts.

3. Impacts of Proposed Immigration Policies

Moreover, the introduction of new policy measures designed to "reform" immigration policy in the United States, if passed, would exacerbate the exploitation of migrant workers. Introduced by James Sensenbrenner, HR 4437 n93 passed in the House of Representatives on December 16, 2005. This enforcement-only bill criminalizes all undocumented immigrants, expands the definition of "alien smuggling" to hold criminally liable those who assist undocumented immigrants, and expands employment authorization verification requirements to "recruit and refer" entities such as day labor centers and other workers centers. The Comprehensive Immigration Reform Act of 2006, S 2611, n94 passed in the Senate on May 25, 2006. It is designed to drastically revamp the U.S. immigration system and proposes some positive changes, such as a path to legal status for undocumented immigrants and a reduction in immigration backlogs. However, the bill also expands border and interior enforcement, further criminalizing immigrants, by increasing the number of Border Patrol officers, mandating expedited removal for non-citizens detained within 100 miles of the border and within two weeks of entry, and broadening the definition of "aggravated felony" for purposes of deportation.

4. Conclusion

In order to advance the rights of trafficked persons and effectively prevent human trafficking, it is necessary to dismantle the existing and proposed immigration and labor policies that facilitate trafficking. Reconceptualizing [*339] trafficking as an issue of labor migration takes a step toward this goal by understanding trafficking as a gross violation of migrants' rights to live and work where they choose, with freedom from abusive working conditions. A migrant labor rights paradigm, recognizes that labor rights violations remain at the core of trafficking. Globalization and neoliberal policies have led to a lack of economic opportunity that allow individuals to support themselves and their families in their sending countries. A demand for cheap and expendable labor increases the vulnerability of migrant workers susceptible to trafficking. The migrant labor rights approach to trafficking encourages safe migration for workers as well as worker empowerment through organizing in order for workers to claim their own labor rights.

C. Sexual and Reproductive Health

This section discusses the role of sexual and reproductive health ("SRH") within the U.S. anti-trafficking framework. As a starting premise, it is significant to note that similar ideologies of the Christian evangelical right fuel U.S. governmental policies regulating both SRH and trafficking. The anti-prostitution pledge restricting grants to anti-trafficking organizations also limits funding to domestic and international SRH organizations focusing on HIV/AIDS prevention, women's health and family planning. Such policies hinder the work of these organizations, and more importantly, stigmatize and marginalize their clients who are predominantly poor women of color from the developing world.

1. Impact of Policy on SRH Work in the Field

The 1995 Fourth World Conference on Women in Beijing, China developed a Platform for Action published by the United Nations Educational, Scientific and Cultural Organization. n95 The Platform for Action stated an agenda for women's empowerment that called on nations to take action promoting and respecting women's human rights. Among other things, the Platform for Action defined women's human rights as extending to sexual and reproductive health. It asked nations to "remove legal and regulatory and social barriers, where appropriate, to sexual and reproductive health education within formal education regarding women's health issues..." n96 Despite these international recommendations, over the past decade, public health organizations note a rise in political and religious conservatism. This conservatism is reflected in U.S. policy initiatives that resist an individual's right to determine his or her own reproductive and sexual health options.

[*340] The impact of right wing ideologically driven policies on SRH work is most visible in governmental funding strategies that support faith-based organizations promoting abstinence, while excluding alternative prevention approaches to SRH. For example, in 2003, President Bush implemented an "emergency plan" for AIDS relief. The \$ 15 billion appropriated, spends one-third of prevention funds on abstinence until marriage programs. Further, the program opposes condom use and discourages sex education. n97 The Department of Health and Human Services also increased funding for "abstinence only" programs. n98 The propaganda of these programs criticizes the use of contraception and condoms as having high failure rates and as ineffective due to the "reality" that individuals do not use them. Such propaganda leads to a decrease in condom supplies and a decrease in the usage of condoms, consequently risking the sexual and reproductive health of both men and women.

Additional policy measures restrict SRH. Pharmacists may now deny contraception for religious reasons thereby circumventing access to contraception. In 2001, the U.S. government reintroduced the "Global Gag Rule" which prohibits the distribution of USAID funding to family planning agencies abroad that provide or promote abortions or even give abortion information in counseling sessions.

Finally, policy constraints on SRH impact the LGBT community. For example, the Center for Disease Control and National Institute of Health drastically reduced funding for research on health issues specific to the LGBT population. These policies are similar to measures that prevent access to contraception, privilege traditional heterosexual married men and women, and marginalize alternative lifestyles and sexual orientations.

2. Sex Work and HIV/AIDS Prevention

The Trafficking Victims Protection Reauthorization Acts of 2003 and 2005, which incorporated the anti-prostitution pledge and gag rule, highlight the connection between policy restrictions on SRH and trafficking. The Trafficking Act and the U.S. government's "s Global AIDS Act of 2003 both forbid funding to any group that does not explicitly oppose prostitution and sex trafficking. This exclusion includes organizations that collaborate with sex workers to perform outreach work on HIV prevention and sexual health.

The moralistic ideology driving the government's SRH policies alienates sex workers from the fight against HIV/AIDS and prevents sex workers from protecting their own sexual health. The anti-prostitution pledge requiring health [*341] care and social service providers to denounce prostitu-

tion has the effect of depriving sex workers of safer sex education and contraception. It also prevents the mobilization of sex workers to control the spread of HIV/AIDS by demanding condom use by their clients.

Advocates agree that any successful effort to combat HIV/AIDS should involve sex workers. Yet, governmental policies vilify sex workers as the source of HIV/AIDS, rather than viewing them as people impacted by the disease, entitled to treatment, and uniquely positioned to impact HIV/AIDS prevention and education. n99 The anti-prostitution pledge forces SRH organizations to "take sides." By accepting funding from the government, these organizations must condemn their clients who may choose to engage in sex work, thereby denying sex workers of their fundamental human right to healthcare.

3. Conclusion

According to advocates, the ideologically driven policies that currently regulate SRH deny medical services and preventive health care to populations marginalized by poverty, race, gender, sexual orientation, and social stigma. n100 Instead, a rights-based approach to SRH promotes universal access to health care by individuals susceptible to trafficking such as migrant women, sex workers, and others who experience discrimination due to social, economic and political factors.

Human rights advocates also support harm reduction methodologies, recognizing that some individuals may continue to engage in risky behavior. The harm reduction approach seeks to mitigate health risks by equipping individuals with preventative education and the tools to protect themselves while remaining non-judgmental of their independent lifestyle choices. In contrast, the ideologically driven "abstinence only" approach to SRH takes a moral stance on access to healthcare, impeding health services to individuals who lead alternative lifestyles. Such an approach limits the autonomy of individuals to make their own reproductive and sexual health choices.

III. A Revitalized Anti-Trafficking Movement

Based on ongoing discussions between anti-trafficking and human rights advocates from diverse sectors, there are at least three overarching objectives of a revitalized anti-trafficking movement: identification of guiding principles; [*342] expansion of a broad anti-trafficking coalition; and a fundamental shift in the current anti-trafficking rhetoric. These objectives may serve to unify the distinct subject areas of prostitution, labor migration and reproductive and sexual health. n101

A. Guiding Principles

Guiding principles provide the foundation for a consistent platform to build a cross-sectoral movement advancing trafficked persons' rights, migrant labor rights, and reproductive and sexual health rights. At a minimum, core principles should include extending comprehensive labor protections to all migrant and non-migrant workers in all labor sectors including commercial sex, domestic service, agriculture, construction, restaurants, hotels, factories, and any other type of work. Other core principles may include ending law enforcement rescue raids, and replacing this tactic with community-based responses to assisting trafficked persons and preventing trafficking; developing immigration laws that protect migrant workers and account for the reality of labor migration; recognizing the autonomy and self-determination of all individuals; protecting and promoting the freedom to organize for migrant, labor, reproductive and sexual health rights; and actively addressing race, ethnicity, class, gender, sex, sexual orientation, and other factors affecting trafficking.

B. Expanded Coalitions

A new coalition committed to the above principles may include groups that have not previously worked with anti-trafficking organizations or with each other. Such groups include public health advocacy organizations, grassroots organizations that encourage migrant worker organizing, formal and informal unions of domestic workers, sex workers and agricultural workers, and anti-border enforcement groups that advocate for safe migration across international borders for all individuals. Building alliances between these seemingly disparate groups requires identifying the intersecting issues that connect them with each other and with anti-trafficking advocacy. For example, anti-trafficking groups share with domestic workers, sex workers and agricultural workers, the goal of fair labor conditions. These groups, in turn, connect to public health advocacy by supporting the right to safe and healthy work environments and the right to access healthcare that respects individual lifestyle choices.

Alliances between these groups should also consider potential points of fragmentation. For example, the prevailing trafficking framework has created implicit categories of trafficking victims, giving preference and protection to victims of sexual slavery, while denying protection to trafficked persons [*343] viewed as migrant laborers. Arbitrary determinations by officials that consider some workers trafficked based on the egregiousness of their working conditions and others not, create "levels" of exploitation that could divide the workers' rights community. For example, the illicit nature of prostitution may alienate sex workers from a broader migrant worker rights movement. The migrant labor rights approach emphasizes worker organizing to enforce fair working conditions and to advocate for increased labor protections. Because sex work is not legally recognized as a form of labor, sex workers' rights groups, such as the Sonagachi project in Calcutta, must organize to not only enforce fair working conditions, but to also advocate for the decriminalization of prostitution. n102

C. A Change in Rhetoric

A cross-sectoral coalition broadening the conceptual framework of trafficking may facilitate the rejection of the current rhetoric of trafficking. The expansive legal definitions of "trafficking" in the Palermo Protocol and the TVPA resulted from advocacy of human rights groups to comprehensively define "trafficking," to include men, women, and children compelled to work in any labor industry. However, the U.S. government's narrow focus on sex trafficking and cooptation of trafficking as a tool for the criminalization of prostitution distorts the meaning of "trafficking." Media images mirror the conflation of trafficking with prostitution with sensationalized stories of sex slaves. n103 Symbolically, "trafficking" has regressed to stereotyped images of poor, uneducated, and helpless young women and girls, forced into prostitution, reminiscent of historical conceptions of "white sexual slavery" at the turn of the twentieth century. These stereotypes are used to rationalize the U.S. government's criminal enforcement approach to trafficking through "raid and rescue" practices, which operate on the presumption that brothels imprison passive sex slaves who need to be rescued by law enforcement. Such perceptions of "trafficking" divert attention away from issues of globalization and labor migration that drive trafficking and distort the profile of "trafficking victim" to exclude many other migrant workers.

"Trafficking," connoting only "sex," has polluted the efforts of many advocates in accessing protection for their clients trafficked into non-sex related industries. The disposal of the term "trafficking" altogether could revitalize anti-trafficking advocacy to advance the rights of trafficked

workers [*344] in all industries by refocusing anti-trafficking work on reforming the underlying migration and labor policies that perpetuate the exploitation of all migrant workers. Anti-trafficking advocates have begun this process through public education efforts and interactions with the media. By using alternate language to describe trafficking, such as forced or coerced migrant labor, the reconceptualization of trafficking as a migrant labor rights issue can evolve.

Conclusion

In order to protect the rights of trafficked persons and to work toward the elimination of trafficking, human rights advocates across multiple sectors should advance a movement based on shared goals. Current U.S. policies and procedures addressing trafficking divert attention away from underlying root causes and deprive certain trafficked persons of full access to immigration and labor protections. Moreover, related U.S. policies on labor migration, reproductive, and sexual health rights operate to restrict the rights of not only trafficked persons, but more generally migrant workers and women. New understandings of trafficking as it impacts and is affected by a broad spectrum of issues connect advocates in different but related fields. This reconceptualization can serve to build an inter-sectoral movement for the labor and reproductive and sexual health rights of all individuals, regardless of occupation, citizenship or immigration status.

Developing new approaches to human trafficking to better serve the needs and rights of survivors of trafficking and migrant workers in all industries will entail collaborations among organizations and movements that have been largely divided against each other until recently. The very goal of centering the needs and rights of migrant workers runs counter to the current U.S. federal agenda of criminalizing prostitution. While compliance with this agenda has been enforced through the anti-prostitution pledge and many other U.S. government measures that have created suspicions and divisions among groups, perspectives from the field(s) indicate that many advocates have transcended the government's divisive tactics, and are beginning to forge effective alliances in the broader movement against human trafficking.

Certainly more work is needed to counter these divisions and facilitate the critical and logical links between immigrant rights, labor rights, sex worker rights, sexual and reproductive health, and anti-trafficking advocacy, organizing and scholarship. Yet there are already several emerging models of U.S. and international organizations working against, within and around the constraints of the U.S. federal approach towards more effective responses. These groups provide social services, support organizing, create analyses and inform policies that can better meet the needs of survivors of trafficking, all exploited migrant workers and the victims of other harmful U.S.-sponsored "anti-trafficking" activities.

Legal Topics:

For related research and practice materials, see the following legal topics:
Constitutional Law
Bill of Rights
Fundamental Freedoms
Judicial & Legislative Restraints
Overbreadth & Vagueness
Criminal Law & Procedure
Criminal Offenses
Sex Crimes
Prostitution
Element-
s
Labor & Employment Law
Employee Privacy
Disclosure of Employee Information
Public Employees

FOOTNOTES:

n1. These gatherings include "Shaping the Future: New Voices & Strategies on Human Trafficking," a conference sponsored by the Freedom Network, in Chicago, IL, March 2006; "Sex Work Matters: Beyond Divides," a conference sponsored by CUNY Graduate Center and the New School for Social Research in New York, NY, March 2006; and "Summit on Human Trafficking.: Critiques and New Strategies," a conference sponsored by the Global Fund for Women and the Open Society Institute in New York, NY, May 2006.

n2. Summit on Human Trafficking: Critiques and New Strategies, Open Society Institute, New York, New York, May 2006. This two-day meeting was funded by a generous grant from Global Fund for Women. The Summit was organized by Lin Chew, who was Activist-in-Residence for the Global Fund for Women, Ann Jordan, Director of the Initiative Against Trafficking In Persons at Global Rights, Kathleen Kim, who was Immigrants' Rights Teaching Fellow at Stanford Law School, and Alice Miller, Assistant Professor of Clinical Public Health at Columbia University. The Summit brought together human rights advocates who work in the interrelated fields of anti-trafficking, labor migration, sex workers' rights, and sexual and reproductive health. Summit participants shared perspectives on current struggles within their work posed by current U.S. policies and practices with an aim to launch an inter-sectoral movement to advance the rights of trafficked persons.

n3. See e.g., Edi C. M. Kinney, Appropriations for the Abolitionists: Undermining Effects of the U.S. Mandatory Anti-Prostitution Pledge in the Fight Against Human Trafficking and HIV/AIDS, *21 Berkeley J. Gender L. & Just.* 158 (2006).

n4. See e.g., Urban Justice Ctr., Statement on Trafficking in Persons for the 51st Session of the U.N. Commission for the Status of Women on the "Elimination of All Forms of Discrimination and Violence Against the Girl Child" (2007), available at http://www.urbanjustice.org/pdf/publications/swp_csw_51_statement.pdf; see also Urban Justice Ctr., Working Group on Sex Work and Human Rights, Toolkit (on file with author). The Sex Workers Project at the Urban Justice Ctr. is an invaluable resource and has accomplished tremendous advocacy on behalf of trafficked persons and sex workers.

n5. Bureau of Pub. Aff., Dep't of State, The Link Between Prostitution and Sex Trafficking, (Nov. 24, 2004), <http://www.state.gov/r/pa/ei/rls/38790.htm>.

n6. Letter from Ann Jordan, Director, Initiative Against Trafficking In Persons, Global Rights, et al., to John Miller, Director, Office to Monitor and Combat Trafficking In Persons, U.S. Dep't of State (Apr. 21, 2005) (on file with author).

n7. U.S. Gen. Acct. Office, GAO-06-825, Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad 2 (2006), available at www.gao.gov/cgi-bin/getrpt?GAO-06-825.

n8. Press Release, White House Off. of the Press Secretary, Trafficking in Persons National Security Presidential Directive (Feb. 25, 2003) (on file with author).

n9. U.S. Dep't of Just., Report on Activities to Combat Human Trafficking: Fiscal Years 2001-2005, 6 (2006), [hereinafter U.S. Dep't of Justice] available at [http://www.usdoj.gov/crt/crim/trafficking report 2006.pdf](http://www.usdoj.gov/crt/crim/trafficking%20report%202006.pdf).

n10. Id. at 6.

n11. Id. at 6.

n12. 22 U.S.C. § 7110(g)(1) (2006) (barring use of funds to "promote, support, or advocate the legalization or practice of prostitution").

n13. Id. (requiring organizations receiving funding to state "in either a grant application, a grant agreement, or both, that it does not promote, support or advocate the legalization or practice of prostitution").

n14. 22 U.S.C. § 7631(e)-(f) (2003) (barring use of funds to "promote or advocate the legalization or practice of prostitution or sex trafficking" and requiring organizations receiving funding to "have a policy explicitly opposing prostitution and sex trafficking").

n15. Letter from Daniel Levin, Acting Assistant Attorney General, U.S. Dep't of Justice, to Alex M. Azar II, General Counsel, U.S. Dep't of Health and Human Svcs. (Sept. 20, 2004), available at [http://www.globalrights.org/site/DocServer/Update letter on funding restrictions.2005.doc?docID=4224](http://www.globalrights.org/site/DocServer/Update%20letter%20on%20funding%20restrictions.2005.doc?docID=4224).

n16. 22 U.S.C. § 7110(g)(1) (2006).

n17. Letter from Ann Jordan, Director, Initiative Against Trafficking in Persons, Global Rights to Friends (Jan. 7, 2004) (on file with author); Letter from Rep. Henry A. Waxman, to Alberto Gonzales, Attorney General, U.S. Dep't. of Just. (Apr. 13, 2005) (on file with author).

n18. See *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943) (invalidating a requirement to pledge allegiance as a condition of attending public school).

n19. *Rust v. Sullivan*, 500 U.S. 173, 196 (1991).

n20. Letter from Ctr. for Gender and Health Equality, et al., to George W. Bush, President, United States of America, (May 18, 2005) (on file with author), available at <http://www.aidsinfonyc.org/tag/activism/globalAppropriations.html> (citing an interview by Alice Miller, Columbia Univ. Law School, with Elaine Pearson, Anti-Slavery International, Bangkok, Thailand in July 2004 that discussed NGOs in Cambodia discontinuing "plans to provide English language training classes for people working in the commercial sex sector for fear such programs would be interpreted as "promoting prostitution").

n21. Id.

n22. Michael M. Phillips & Matt Moffett, Brazil Refuses U.S. Aids Funds, Rejects Conditions, *Wall St. J.*, May 2, 2005, at A3.

n23. *Alliance for Open Soc'y Int'l, Inc. v. United States Agency for Int'l Dev.*, 430 F. Supp. 2d 222 (S.D.N.Y. 2006).

n24. *DKT Int'l, Inc. v. United States Agency for Int'l Dev.*, 435 F. Supp. 2d 5 (D.D.C. 2006).

n25. See *Complaint, DKT Int'l, Inc.*, 435 F. Supp. 2d 5 (Civ. No. 05-1604 (EGS)) 2005 WL 3568821, available at http://www.brennancenter.org/programs/downloads/dkt_district_court_complaint.pdf; see also *Complaint, Alliance for Open Society International, Inc., and Open Society Institute*, 435 F. Supp 2d 222 (No. 05 Civ. 8209) , available at http://www.brennancenter.org/dynamic/subpages/download_file_8355.pdf.

n26. See supra note 25.

n27. Id.

n28. 22 U.S.C. § 7110(g)(1) (2006).

n29. Letter from Daniel Levin, supra note 15.

n30. Press Release, EngenderHealth, U.S. Court Rules Antiprostitution Loyalty Oath Unconstitutional, (June 8, 2006), available at <http://www.engenderhealth.org/news/newsreleases/060607a.html>.

n31. U.S. Dep't of Justice, supra note 9, at 25.

n32. Kathryn McMahon & Coalition to Abolish Slavery and Trafficking, *Speaking Out: Three Narratives of Women Trafficked to the United States* (2002).

n33. U.S. Dep't of State, Trafficking in Persons Report 53 (2006), available at <http://www.state.gov/g/tip/rls/tiprpt/2006/>.

n34. U.S. Gen. Accounting Office, *supra* note 7, at 1.

n35. Grace Chang, *Redefining Agency: Transnational Feminist, Immigrant, and Sex Workers* (July 1, 2007) (unpublished manuscript, on file with author).

n36. Sex Workers Across Borders, Mission Statement, <http://www.bayswan.org/traffik/swabmission.doc> (last visited July 1, 2007).

n37. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, Annex II, U.N. Doc. A/RES/55/25 (Nov. 15, 2000) [hereinafter Palermo Protocol].

n38. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 (2000) (codified as amended in scattered sections of 22 U.S.C.).

n39. Kathleen Kim, Psychological Coercion in the Context of Modern-Day Forced Labor: Revisiting *U.S. v. Kozminski* and Understanding Human Trafficking, 38 *U. Tol. L. Rev.* 941 (2007).

n40. Kathleen Kim & Kusia Hreshchyshyn, Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States, 16 *Hastings Women's L.J.* 1, 4, 12 (2004) (exploring the use of civil litigation as an alternative to the 3P approach).

n41. Grace Chang, *Trafficking By Any Other Name* (forthcoming 2008).

n42. *Id.*

n43. These conditions include requiring indebted nations to reduce government social service spending, slash wages, liberalize imports, open markets to foreign investment, expand exports, devalue local currency and privatize state enterprises. See Grace Chang, *Disposable Domestics: Immigrant Women Workers in the Global Economy*, (2000).

n44. Grace Chang, *From the Third World to the Third World Within*, in *Labor Versus Empire* 217-34, (Gilbert G. Gonzalez et al. eds., 2004).

n45. Chang, *supra* note 41.

n46. Interpretative note (63) states: "the travaux préparatoires should indicate that the reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved." Palermo Protocol, *supra* note 37.

n47. Palermo Protocol, *supra* note 37.

n48. Bayswan.org, Definitions of Trafficking, <http://www.bayswan.org/traffick/deftraffickUN.html> (last visited March 27, 2007).

n49. Bayswan.org, Definition of Sexual Exploitation, <http://www.bayswan.org/traffick/deftraffickUN.html> (last visited March 27, 2007).

n50. U.S. Dep't of State, Trafficking in Persons Report, *supra* note 33.

n51. Sea-ling Cheng, Anti-Trafficking Discourses and Policies: A Gendered and Human Rights Perspective, paper presented at Women's Worlds 2005 conference, Ewha Women's University, Seoul, Korea, June 21, 2005; see also Lisa Katayama, Sex Trafficking: Zero Tolerance, Mother Jones Blog, May 4, 2005, [http://www.motherjones.com/news/dailymojo/2005/05/sex trafficking.html](http://www.motherjones.com/news/dailymojo/2005/05/sex%20trafficking.html).

n52. H.R. 2012, 109th Cong. (2005).

n53. H.R. 972, 109th Cong. (2005) (enacted).

n54. Trafficking Victims Protection Reauthorization Act, Pub. L. No. 109-164, § 204(a)(1)(B) (codified at 42 *U.S.C.A.* § 14044c (2007)).

n55. *Id.* at § 204(a)(1)(C) (codified at 42 *U.S.C.A.* § 14044c (2007)).

n56. See Urban Justice Ctr., *Revolving Door: An Analysis of Street-Based Prostitution in New York City* 21 (2003), available at <http://www.sexworkersproject.org/reports/RevolvingDoor.html>.

n57. Working Group on Prostitution, Canadian Dep't of Justice, *Report and Recommendations in Respect of Legislation, Policy and Practices Concerning Prostitution-Related Activities* (1998) pt. III(B)(ii)(c), available at <http://www.canada.justice.gc.ca/en/news/nr/1998/toc.html>.

n58. Urban Justice Ctr., *supra* note 4.

n59. See Global Rights, Int'l Org. for Adolescents, et al., Comments on Bill To End Demand for Sex Trafficking Act of 2005 (2005), available at <http://www.globalrights.org/site/DocServer/Comments on End Demand bill 4.22.pdf?docID=2203>.

n60. Letter from Ann Jordan, Global Rights et al. to Sen. John Cornyn (Apr. 22, 2005) (on file with author).

n61. Emilia Casella & Irene Martinetti, Urban Justice Ctr., Draft Critique of Focus on Demand in the Context of Trafficking in Persons, (2006).

n62. Sex Worker's Project, Urban Justice Ctr., International Covenant on Civil and Political Rights Shadow Report: Domestic Criminal Justice and Access to Courts (2006), available at http://www.urbanjustice.org/pdf/publications/swp_submission_iccpr_shadow_may06.pdf.

n63. Urban Justice Ctr., *The Truth about Demand* (2007).

n64. Press Release, U.S. Dep't of Justice, 29 Charged in Connection With Alien Harboring Conspiracy (July 1, 2005) (on file with author).

n65. Chang, *supra* note 35.

n66. *Id.*

n67. Carol Leigh, Op-Ed., Behind the Moral Panic, An Opportunity to Work, *S.F. Chron.*, July 22, 2005, at B9.

n68. Julie Su, El Monte Thai Garment Workers: Slave Sweatshops, in *No Sweat: Fashion, Free Trade, and the Rights of Garment Workers* 143, 143 (Andrew Ross ed., 1997).

n69. LeRoy Potts, Global Trafficking in Human Beings: Assessing the Success of the United Nations Protocol to Prevent Trafficking in Persons, *35 Geo. Wash. Int'l. L. Rev.* 227, 233 (2003).

n70. *22 U.S.C. § 7101(b)(3)* (2000).

n71. Kim, *supra* note 39 (exploring the legal dimensions of psychological coercion in the context of human trafficking).

n72. H.R. Rep. No. 106-939, at 101 (2000) (Conf. Rep.).

n73. *472 F. 3d 638 (9th Cir. 2006)*.

n74. U.S. Dep't of Justice, *supra* note 9, at 75.

n75. *Id.*

n76. *Id.* at 25.

n77. *Id.* at 27.

n78. Free the Slaves & Human Rights Ctr., Univ. of Cal. Berkeley, *Hidden Slaves: Forced Labor in the United States*, 19 (2004), available at [http://www.hrcberkeley.org/download/hiddenslaves report.pdf](http://www.hrcberkeley.org/download/hiddenslaves%20report.pdf).

n79. See Debbie Nathan, *Oversexed*, *The Nation*, Aug. 2005; see also Bernice Yeung, *Enslaved in Palo Alto*, *S.F. Weekly*, Feb. 18, 2004.

n80. Free the Slaves & Human Rights Ctr., *supra* note 78, at 33.

n81. *Hoffman Plastic Compounds v. NLRB*, 535 U.S. 137 (2002).

n82. National Labor Relations Act, 29 U.S.C. §§152-169 (2001).

n83. Kim, *supra* note 39.

n84. McMahon, *supra* note 32.

n85. 42 U.S.C. § 12111 (2001).

n86. 42 U.S.C. § 12111 (2001). Title VII applies to employers with fifteen or more employees. Because domestic workers are frequently the sole employee in the workplace, they are excluded from Title VII protection.

n87. 29 U.S.C.A. §§213(a)(15), 213(b)(21).

n88. Human Rights Watch, *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States* 34-35 (2001).

n89. Vienna Convention on Diplomatic Relations art. 31(c), Apr. 18, 1961, *23 U.S.T.* 3227.

n90. *73 F.3d 535 (4th Cir. 1996)*.

n91. *United States v. Bradley*, *390 F.3d 145 (1st Cir. 2004)*; *United States v. Flores*, No. 98-4178, *1999 WL 982041* (4th Cir. Oct. 29, 1999); *United States v. Garcia*, No. 02-110, *2003 WL 22938040* (W.D.N.Y. Dec. 2, 2003); *United States v. Michael Lee*, No. 00-14065 (S.D. Fla. 2000).

n92. *29 U.S.C. § 1851* (2002).

n93. H.R. 4437, 109th Cong. (2nd Sess. 2006).

n94. S. 2611, 109th Cong. (2nd Sess. 2006).

n95. Fourth World Conference on Women, Sept. 4-15, 1995, Beijing Declaration and Platform for Action, U.N. Doc A/CONF.177/20 (September 15, 1995).

n96. *Id.* at P 83(k).

n97. Eldis, *Key Debates in Sexual and Reproductive Health and Rights*, - <http://www.eldis.org/health/srhr/debates.htm> (last visited June 3, 2007).

n98. Sharon Jayson, *Abstinence Message Goes Beyond Teens*, USA Today, (Oct. 30, 2006).

n99. Urban Justice Ctr., Working Group on Sex Work and Human Rights, *Toolkit* (2006) (on file with author).

n100. Eldis Health Key Issues, *Universal Access to Sexual and Reproductive Health Services* (2006), available at [http://www.eldis.org/health/Universal/universal access.pdf](http://www.eldis.org/health/Universal/universal%20access.pdf).

n101. Discussion notes from the Summit on Human Trafficking: Critiques and New Strategies, *supra* note 2 (on file with author).

n102. Smarajit Jana et al., The Sonagachi Project: A Sustainable Community Intervention Program, 16 AIDS Educ. & Prevention 5, 405-414 (2004).

n103. See, e.g., Peter Landesman, The Girls Next Door, N.Y. Times, January 25, 2004, at sec. 6; Meredith May, Sex Trafficking: San Francisco Is A Major Center For International Crime Networks That Smuggle And Enslave, S.F. Chron. Oct. 6, 2006, at A1.