

# EFFECTIVE COUNTERMEASURES AGAINST THE TRAFFICKING IN HUMAN BEINGS AND SMUGGLING OF MIGRANTS

*Richard L. Hoffman\**

## I. INTRODUCTION

Human Trafficking and Migrant Smuggling present very complex and difficult problems. I will not suggest otherwise, and I will not suggest that these problems can be easily solved. I will try to describe for you the efforts of the United States government, together with other governments and non-governmental organizations, to address these problems, and some of the difficulties that we have encountered, and some of the successes that we have experienced, in doing so.

## II. COUNTERMEASURES AGAINST HUMAN TRAFFICKING

When the United States Congress enacted the Trafficking Victims Protection Act, which took effect on October 28, 2000, Congress made several important findings concerning human trafficking. Several of those findings set forth the reasoning behind the key provisions of the new statute, and explained why Congress had concluded that it was necessary to adopt a new and different approach to combat human trafficking in the United States.

Here are some of those findings, which reflect the official views of the United States government on the crime of human trafficking:

- (5) Traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable.
- (6) Victims are often forced through physical violence to engage in sex acts or perform slavery-like labor. Such force includes rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion.
- (7) Traffickers often make representations to their victims that physical harm may occur to them or others should the victim escape or attempt to escape. Such representations can have the same coercive effects on victims as direct threats to inflict such harm.
- ....
- (9) Trafficking includes all the elements of the crime of forcible rape when it involves the involuntary participation of another person in sex acts by means of fraud, force, or coercion.
- (10) Trafficking also involves violations of other laws, including labor and immigration codes and laws against kidnapping, slavery, false imprisonment, assault, battery, pandering, fraud, and extortion.
- ....
- (13) Involuntary servitude statutes are intended to reach cases in which persons are held in a condition of servitude through non-violent coercion. In United States v. Kozminski, 487 U.S. 931 (1988), the [United States] Supreme Court found that section 1584 of Title 18, should be narrowly interpreted, absent a definition of involuntary servitude by Congress. As a result, that section was interpreted to criminalize only servitude that is brought about through use or threatened use of physical or legal coercion, and to exclude other conduct that can have the same purpose and effect.

---

\* Assistant U.S. Attorney,  
Department of Justice,  
U.S.A.

122ND INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

- (14) Existing legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offenses involved. No comprehensive law exists in the United States that penalizes the range of offenses involved in the trafficking scheme. Instead, even the most brutal instances of trafficking in the sex industry are often punished under laws that also apply to lesser offenses, so that traffickers typically escape deserved punishment.
- (15) In the United States, the seriousness of this crime and its components is not reflected in current sentencing guidelines, resulting in weak penalties for convicted traffickers.
- (16) In some countries, enforcement against traffickers is also hindered by official indifference, by corruption, and sometimes even by official participation in trafficking.
- (17) Existing laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves.
- (18) Additionally, adequate services and facilities do not exist to meet victims' needs regarding health care, housing, education, and legal assistance, which safely reintegrate trafficking victims into their home countries.
- (19) Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.
- (20) Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.

These findings make it clear that Congress recognized in October 2000 that human trafficking is a complex, multi-faceted, and transnational issue, involving organized crime and corruption, human rights, economics, migration, labor, public and individual health, and social services, and that this new twenty-first century criminal enterprise requires a twenty-first century coordinated response.

The Trafficking Victims Protection Act of 2000 is a significant part of that response. The Act provides law enforcement with better statutory tools to prosecute trafficking cases, provides for longer jail sentences, and establishes several programs that focus on prevention of trafficking and protection of trafficking victims. The United States Attorney General has allocated resources to the Civil Rights Division of the Department of Justice to combat trafficking more effectively, and the Department of Justice is working closely with other parts of the United States government to address the problem. Our anti-trafficking strategy combines prosecution, protection, and prevention.

### III. PROSECUTION

#### **A. The United States has Substantially Increased Trafficking Prosecutions**

Let me begin with a discussion of our prosecution efforts. As I explained in my other paper, human trafficking investigations, indictments, and convictions have increased substantially since the enactment of the Trafficking Victims Protection Act, and cases brought under pre-Act statutes are also being pressed to conclusion.

Just recently, the Department of Justice won a conviction in West Palm Beach, Florida, against a defendant who conspired with others to hold women and girls from Mexico in involuntary servitude. The Defendant, who had been charged in 1998, but who had fled to Mexico in 1997, was arrested for

illegal re-entry into the United States in May 2002. The defendant was taken into custody on his outstanding FBI warrant, and arraigned on the pending federal civil rights charges. The defendant is alleged to have smuggled young Mexican females into the United States to work in brothel houses in a number of Florida cities. As part of his subsequent guilty plea agreement, the defendant admitted that the victims had been forced to work at the brothel houses as prostitutes until they paid the defendant's family a \$2,000 smuggling fee. Some victims were locked in a room with no windows and given no money. The victims were forced into prostitution in order to pay their smuggling fees and were threatened with beatings and reprisal attacks against their families in Mexico. Several victims, many of whom were underage, attempted to escape but were hunted down and returned to the brothels, where they were punished by beatings and confinement.

In another recent case, four defendants were charged on conspiracy and sex trafficking counts related to their scheme to recruit minor girls and young women from rural areas in Mexico, transport them across the border into the United States, and force them into prostitution. Four victims, ranging in age from fourteen to eighteen at the time of recruitment, were wooed by a pair of brothers, who promised them love and a better life in the United States. Once the girls arrived in the United States, however, the girls were forced, through nearly constant threats and physical abuse, to work as prostitutes in a brothel in New Jersey. They were forbidden to leave the house or to talk to each other. If they violated the house rules, they were beaten. By the time local police raided the brothel in February 2002, some of the girls had been held there, against their will, for more than a year.

As I explained in my first paper, the source countries for these prostitution rings are spread throughout the world. Earlier this year, the United States charged five defendants with devising a scheme to lure young women to travel from Indonesia to the United States by promising to arrange restaurant jobs and housing for them in New York City. Once they arrived in New York, the women were held and forced to work as prostitutes at brothels, without pay, until each had earned and repaid \$30,000 in transporting fees.

While the purpose of much human trafficking is to acquire women and girls for prostitution, individuals have also engaged in human trafficking to acquire domestic servants. In a recent case in Berkeley, California, a wealthy real estate owner from India, L.B. Reddy, had his estate managers seek out pretty young girls some as young as 11 years of age of the Untouchable caste, remove them from their families, and keep them in his compound in India where they would be available for his sexual predation when he visited from the United States. Reddy smuggled several of the girls into the United States under fraudulently obtained visas, placed them in conditions of forced labor in his restaurants, and kept them in his apartments so as to have them available for his sexual abuse. Domestic servitude cases often have such a sexual component.

Trafficking cases include other types of forced labor. In a recent case in south Florida, three defendants, who were subcontracted by businesses to put together crews of migrant agricultural workers, pled guilty to conspiring to induce victims into slave labor through physical violence, and by cultivating the workers' addiction to crack cocaine.

#### **B. Training Prosecutors and Law Enforcement Personnel**

The recent increase in human trafficking prosecutions in the U.S. reflects the increased attention focused on this crime by President Bush and Attorney General Ashcroft. The Attorney General has held three press conferences or media events to discuss trafficking. He personally announced the addition of new positions in the Civil Rights Division of the Department of Justice, to coordinate trafficking prosecutions. Additional attorneys in Washington, however, are not enough. Local prosecutors need to be aware of the trafficking problem and ready to prosecute traffickers in their communities. Training prosecutors and law enforcement personnel is an important component in the process of increasing and improving trafficking investigations and prosecutions.

At the federal level, the Department of Justice has issued a guidance memorandum to all federal prosecutors detailing the law enforcement tools available under the Trafficking Victims Protection Act. During the past 18 months, the Department has provided training for federal victim-witness coordinators and prosecutors. In addition, the Immigration and Naturalization Service held a training

122ND INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

session for its agents and is adding a human trafficking component as part of the regular training programs for Border Patrol personnel.

This month, at the National Advocacy Center in Columbia, South Carolina, the Department of Justice is presenting its most comprehensive national human trafficking training session thus far, holding a two-day seminar for federal prosecutors and agents from throughout the United States. This training will discuss how to identify trafficking victims, protect victims' rights, and provide for their safety. Prosecutors and agents are being taught how to ask the appropriate questions when they come into contact with someone who is undocumented, especially to distinguish between trafficking and smuggling schemes. In too many instances in the past, law enforcement officials have arrested an undocumented person and deported her, without asking the questions that would have indicated that she is a trafficking victim entitled to protection and assistance, rather than someone who was smuggled into the United States voluntarily without force, fraud, or coercion. The better that law enforcement becomes at identifying and meeting the needs of trafficking victims, the more successful federal prosecutors can be in prosecuting trafficking cases to a successful conclusion.

At the state and local level, the Justice Department is coordinating and collaborating with local police and community service agencies to provide training on human trafficking issues. The Department has conducted programs at local police departments and at child service agencies to disseminate information about ways to identify trafficking victims. The Department has also worked with the International Association of Chiefs of Police to help alert the approximately 20,000 police departments around the United States about the tragedy of human trafficking.

### **C. Outreach Efforts**

Investigating trafficking cases presents unique challenges. Trafficking victims are among the most vulnerable members of society. They often come to the United States from countries where people fear the government and the police. They typically lack documents, and they fear deportation. Coming from this background, it is not surprising that in the past trafficking victims have rarely sought out law enforcement assistance, or made formal complaints when they were abused.

Unlike many other types of crime, human trafficking rarely happens where it can be witnessed by third parties who are likely to come forward and inform law enforcement or file a complaint. The abuse of trafficking victims typically occurs in brothels or private homes, where third parties are not present. Because the victims are rarely, if ever, allowed outside these buildings, people in those communities will largely be unaware of the victims' condition. Modern day traffickers also tend less often to use outright force, which they may think is more likely to be discovered by law enforcement. Instead, traffickers often use more subtle forms of psychological coercion such as the threat of serious harm to family members in a victim's home country. It is even more difficult for third parties to identify and report victims of these more subtle methods of coercion.

The Department of Justice is addressing these problems through an aggressive outreach campaign. The Department maintains open communication with victims' service providers and non-governmental organizations, also known as "NGOs." The NGOs include women's shelters, crisis centers for victims of sexual assault and domestic violence, and immigrant and refugee service organizations. These organizations often employ individuals who speak the victims' native languages. They are the types of organizations that victims are likely to learn about, and likely to be willing to trust. Victims who have contacted and established trusting relationships with NGOs, and who have received helpful and supportive services from them, are more likely to be willing to come forward, often with the NGOs' help, to report their abuse to law enforcement.

Another part of the outreach program of the Department of Justice has been the establishment of a toll-free telephone complaint line to handle complaints and questions about potential trafficking cases. The Department utilizes a telephone service that allows Department personnel to use interpreters to speak with callers in many different languages. Since February 2000, when the Department set up this hotline, the number of trafficking investigations has increased four-fold. Fifty percent of the new investigations have been a result of a telephone referral. The vast majority of cases arise from information provided by service providers. NGOs and our toll-free telephone

hotline have provided information leading to new cases, as well as major leads in on-going investigations, and are more productive in this area than other types of information sources traditionally used in criminal investigations.

#### **D. New Statutory Provisions**

The more aggressive training and investigatory efforts just described have permitted Justice Department prosecutors to pursue the wider variety of trafficking cases made possible by the Trafficking Victims Protection Act. The Act provided strong new tools to help prosecutors bring these cases. The Act created several new trafficking-related crimes to reach a wider variety of instances of human trafficking. It strengthened pre-existing criminal penalties. It afforded new protections to trafficking victims, and provided that they be treated as victims, rather than as immigration criminals to be deported. It also made available certain benefits and services to victims of severe forms of trafficking.

First, the Act recognizes that means other than physical force can be used to control victims. Modern traffickers often use subtle forms of coercion, including tactics such as threatening to report victims to immigration authorities or threatening the families of victims or others remaining in other countries. The Act expands the reach of earlier U.S. anti-trafficking laws to prohibit these other methods of controlling victims, including psychological coercion, trickery, and the seizure of documents. Specifically, the Act prohibits obtaining the services of a person by:

- 1) threats of serious harm to, or physical restraint against, that person or another person;
- 2) means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor of services, that person or another person would suffer serious harm or physical restraint;
- 3) means of the abuse or threatened abuse of law or the legal process.

Congress enacted this new provision so that :

prosecutors will be able to bring more cases in which individuals have been trafficked into domestic service, an increasingly common occurrence, not only where such victims are kept in service through overt beatings, but also where the traffickers use more subtle means designed to cause their victims to believe that serious harm will result to themselves or others if they leave, as when a nanny is led to believe that children in her care will be harmed if she leaves the home. In other cases, a scheme, plan, or pattern intended to cause a belief of serious harm may refer to intentionally causing the victim to believe that her family will face harms such as banishment, starvation, or bankruptcy in their home country. [This provision] will in certain instances permit prosecutions where children are brought to the United States and face extreme nonviolent and psychological coercion (e.g. isolation, denial of sleep, and other punishments). A claim by an adult of a false legal relationship with a child in order to put the child in a condition of servitude may constitute a scheme, plan or pattern that violates the statute, if there is a showing that such a scheme was intended to create the belief that the victim or some other person would suffer serious harm.

The Act increased the criminal penalties imposed on human traffickers. Violations of several sections of the anti-trafficking laws now are punishable by a prison term of up to 20 years, up from the previous 10 years maximum sentence. If a death results, or kidnaping, sexual abuse or attempted murder are involved, an individual found guilty faces up to life in prison.

Another new provision of the law provides that those who engage in recruiting, harboring, transporting, or in other ways assist those who violate the trafficking laws are guilty as if they themselves had violated the laws. In legal terms, anyone participating in this phase of trafficking is guilty as a “principal,” and not merely as an accessory or aider and abetter. Anyone convicted under this new provision is subject to a 20 year prison term or even life imprisonment in certain situations.

## 122ND INTERNATIONAL TRAINING COURSE REPORTS OF THE COURSE

A third new provision specifically addresses the problem of sex trafficking of children or by force, fraud and coercion. This provision makes it illegal to recruit, entice, harbor, transport, provide, or obtain a person, knowing that the person will be engaged in commercial sex, if the person is under 18 years of age or the person is induced by force, fraud, or coercion, and the statute also makes it illegal to benefit financially as a result of these actions. Under this provision, if the victim is less than 14 years old, the defendant faces life in prison. If the victim is between 14 and 18 years old, then the defendant faces up to 20 years in prison.

A fourth new provision of the law addresses the problem of the increasing number of victims held in service not by force or threats, but by the confiscation of, and denial of access to, actual or purported identification or immigration documents. This provision criminalizes the conduct of a person who knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document while in the course of violating or intending to violate a human trafficking law, or who does these things to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a severe form of trafficking .... This provision carries a maximum penalty of up to five years in prison. "Sex trafficking" is defined by 22 U.S.C. 7102(9) to include: "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act."

Two other new statutes added by the TVPA provide for monetary penalties to be assessed against those convicted of human trafficking. The first statute provides for restitution for trafficking victims. The court is required by this statute to order a convicted defendant to pay the full amount of the victim's losses. This includes the greater of the gross income or value to the defendant of the victim's services or labor, or the value of the victim's labor as guaranteed under the minimum wage and overtime laws of the United States. This section also includes costs of medical care, rehabilitation, transportation expenses, and other similar costs incurred by the victim. The second new penalty statute subjects any property that was used to commit or to facilitate the commission of the crime to forfeiture, and also requires the forfeiture of any proceeds earned as a result of the trafficking. The new forfeiture statute also provides for civil forfeiture of property used to commit or to facilitate the commission of human trafficking offenses, and of proceeds of such offenses. Such a civil forfeiture case may be prosecuted even where assets are available for seizure, but the criminal defendants cannot be found or cannot be brought to trial.

Finally, the TVPA includes several provisions designed to protect human trafficking victims. These include creation of a special T visa which permits victims who cooperate with prosecutors to remain in the United States, as well as provisions to provide medical and health coverage and to satisfy other humanitarian needs. Protecting victims, which I will discuss separately, is critical to any human trafficking prosecution, especially when the victims are potential witnesses.

Thus, the TVPA not only expands the definition of the crime of trafficking in persons to include the more subtle methods of coercion used by modern day traffickers, and provides for stronger punishments for traffickers, it also supports training to make local officials aware of this problem, and close coordination with NGOs and others who are likely to receive leads because they have gained the trust of trafficking victims. Local service organizations play a vital role not only in generating information that will allow us to apprehend and prosecute offenders, but also in providing services to and protecting victims.

### IV. PROTECTION

#### A. Policies to Protect Victims of Trafficking

Perhaps the most important change brought about by the Trafficking Victims Protection Act Victims is the changed approach toward trafficking victims. The new law clearly provides that such people are victims.

Many victims of human trafficking are undocumented. Too often, they have been branded with the label of undocumented aliens. Victims of trafficking likewise often are women and young girls who

have been forced into prostitution or have been forced to engage in other commercial sex acts. Too often, they have been branded with the label of prostitutes.

Under the Trafficking Victims Protection Act, the United States views trafficking victims as crime victims and treats them as victims, not criminals. The law also recognizes the importance of helping such victims to rebuild their lives. This focus on victims is not only humane; it is also advisable from a law enforcement perspective. Successful prosecutions require in-country witnesses who feel safe, secure, and able to testify.

## **B. Trafficking Victims Face Unique Challenges**

Victims who are trafficked across borders are particularly vulnerable. They are usually undocumented. They are unfamiliar with the laws, culture, and language of the foreign country into which they have come. They are mistrustful of local law enforcement, who are sometimes in league with the traffickers. In their eyes, they have no one to run to and no place to seek help. Traffickers exploit these vulnerabilities by confiscating victims' identity documents and threatening to have them jailed or deported if they try to escape. Many trafficking victims suffer physical and sexual abuse, violence, and extreme psychological coercion and manipulation. The physical and emotional abuse takes a devastating toll.

## **C. Responsive Policies**

### **1. Victim Assistance**

As a general rule, U.S. law entitles victims of severe forms of trafficking to receive assistance and support to the same extent as refugees. Victims of severe forms of trafficking who are under eighteen years of age are automatically eligible for these benefits. Victims over the age of eighteen are eligible for benefits upon certification by the U.S. Department of Health and Human Services, in consultation with the Department of Justice. The Department of Health and Human Services will certify a victim of severe forms of trafficking over the age of eighteen years if the victim 1) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons, and 2) has either made a bona-fide application for a T visa with the Immigration and Naturalization Service, or is a person whose continued presence in the United States the Attorney General is ensuring in order to effectuate prosecution of traffickers.

Once deemed eligible, trafficking victims immediately receive assistance related to the protection of life and safety. This includes medical care, crisis counseling, and other mental health assistance as well as intervention programs for victims of criminal activity, short-term shelter, and housing assistance. In cases involving sexual assault or trafficking into the sex industry, victims may opt to receive free testing for HIV and other sexually transmitted diseases, as well as counseling by a medically trained professional on the accuracy of such tests and the risk of transmission of such diseases to the victim.

Immediate information regarding the availability of such services, and the immediate provision of services, are important. Trafficking victims are typically disoriented. They find themselves in a new country; they do not have local community contacts; they do not speak the language. To secure their physical and psychological safety, the Department of Justice employs victim specialists to ensure that victims receive information about their rights and referrals to necessary services.

### **2. Access to Information**

Language often poses a barrier to communication between the victims and prosecutors. Victims should understand the services available to them. Informing victims of their rights in their native languages helps foster an increased sense of safety.

U.S. regulations require that victims receive reasonable access to translation and interpretation services if they are not able to communicate in English. In addition, victims must receive information about pro bono and low-cost legal services, including immigration services. This is necessary to ensure that victims are informed of, and have meaningful access to, the variety of services available. Specifically, federal officials are responsible for ensuring that trafficking victims are informed, in a language they understand, of:

122ND INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

- i) Pro bono (free) and low cost legal services, including immigration services
- ii) Available federal government assistance (victims who are minors and adult victims who are certified by the Department of Health and Human Services are eligible for assistance that is administered or funded by federal agencies to the same extent as refugees; others may be eligible for more limited benefits)
- iii) Victim service organizations, including domestic violence and rape crisis centers
- iv) Protections available, especially against threats and intimidation, and the remedies available as appropriate for the particular individual's circumstances
- v) Rights of individual privacy and confidentiality
- vi) Victim compensation and assistance programs
- vii) Immigration benefits or programs that may be relevant to trafficking victims
- viii) Right of restitution
- ix) Right to notification of case status
- x) Availability of medical services

Several agencies of the government have worked together to develop brochures designed to provide standardized victim assistance information to trafficking victims. These brochures provide basic information or points of contact about victims' rights and potential services and benefits that may be available to victims, depending on their eligibility. Where information more specific to a geographic area is required, local representatives of the various federal agencies supplement the general information provided in the brochure. These brochures are being distributed for federal agencies to use when encountering victims of trafficking.

### 3. Federal Grants and Private Sector Assistance

In addition to providing assistance directly to victims, the Department of Justice also provides grants to both domestic and international NGOs to provide additional assistance to victims. This year alone the Office for Victims of Crime at the Department of Justice will provide \$10 million in grants to NGOs to develop, expand, or strengthen victim service programs for trafficking victims. The Department of State, likewise, has funded a Johns Hopkins University Project called 'The Protection Project' that developed an interactive database on United States and international legislation protecting women and children from commercial sexual exploitation. The database includes a comparative analysis of laws and penalties, country-specific situation reports, maps, case studies, and victim testimonials.

### 4. Immigration Status and Continuing Presence

The T visa is a special visa, which the United States provides to certain trafficking victims. A T visa provides trafficking victims with legal immigration status, allowing them to remain in our country. U.S. law permits the issuance of 5,000 T visas per year.

The T visa specifically allows trafficking victims and accompanying dependent children to remain in the country for the duration of the criminal prosecution against the traffickers, provided that the victim is willing to comply with reasonable requests to assist in the investigation or prosecution of the traffickers. In short, the T visa ensures that trafficking victims are not deported during this period.

In addition, victims and their dependent children who receive a T visa are also eligible to apply for permanent residence after three years if they have complied with reasonable requests from law enforcement. However, if a victim prefers to return to the country of origin, the United States will develop a plan for a safe return.

In addition to the T visa, a U visa may soon be available to undocumented individuals who have suffered substantial physical or mental abuse as a result of being the victims of certain crimes, including trafficking, that violate federal, state, or local laws. By statute, 10,000 U visas may be issued annually. Trafficking victims may also be sponsored or apply for other immigration benefits for which they may be eligible. Recipients of a T visa and U visa are eligible for employment authorization.

#### 5. Physical Protection

In addition to assistance to address immediate health and safety needs, federal officials will arrange for victims to receive reasonable protection from suspected traffickers to prevent intimidation or recapture. Victim assistance coordinators work with prosecutors to ensure that victims are aware of the legal remedies available to protect them. These include a number of civil law remedies such as temporary restraining orders and protective orders. If a victim is at risk of being recaptured by the traffickers, prosecutors are prepared to use all practicable means to protect the victims and their families from harm, threats, and intimidation. Prosecutors in particular take care to ensure that the names and identifying information of victims are not disclosed to the public to reduce the risk that the suspected traffickers will know that the victims are cooperating with the government. The goal is to secure the victim and the victim's family from threats, reprisals, or intimidation by the traffickers.

### V. PREVENTION

Preventing the crime of trafficking in persons is the most challenging goal of the Trafficking Victims Protection Act. Of course, the most effective method of prevention would be to eliminate poverty, inequality, and economic desperation around the world. That, unfortunately, is unlikely to happen anytime soon, so what can be done in the meantime?

#### A. **National Task Force**

On February 13, 2002, President Bush signed an Executive Order (EO 13257) creating the President's Interagency Task Force to Monitor and Combat Trafficking in Persons. This task force consists of the Secretary of State, the Attorney General, and the Secretaries of Labor and Health and Human Services, the Director of Central Intelligence, and the Administrator of the United States Agency for International Development.

This task force is charged with coordinating the implementation of the Trafficking Victims Protection Act, examining and reviewing national and international efforts to combat trafficking, assisting with the development of the State Department's Annual Report on Trafficking in Persons, ensuring cooperation among federal government agencies on this issue, and consulting with governmental and non-governmental organizations about trafficking in persons. As a result of the Executive Order, senior government officials play a major role in the prevention of trafficking.

#### B. **Public Awareness Campaign**

The United States is engaged in public awareness campaigns both at home and abroad. These awareness campaigns are aimed at educating at least three different groups: trafficking victims; those at risk of becoming trafficking victims; and the general public.

With respect to those who have already been trafficked, the public awareness campaigns are intended to educate victims about their rights and how to seek help, about the measures in place to ensure their safety, recovery, and safe return to their home countries, and how to contact appropriate law enforcement authorities. The goal is to inform victims of the protections available to them and thus to encourage them to report traffickers either to law enforcement officials, or to others who will then report the crimes.

With respect to potential victims and the general public, the goals are both to prevent additional victims from being trafficked and to increase the general public's awareness of this issue, and thus to increase the likelihood that the general public may observe and report trafficking crimes.

Current public awareness efforts include speeches, presentations, pamphlets, brochures, posters, advertisements in mass media, and similar methods. To reach victims, potential victims of trafficking,

122ND INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

and language-minority members of the general public, outreach materials have been produced in languages other than English that are spoken by significant numbers of trafficking victims. Brochures about trafficking are available at 27 U.S. Embassies in 24 different languages.

The Attorney General of the United States has spoken publicly several times about the efforts of the United States government to protect trafficking victims. These included press announcements about the expansion of prosecution efforts to combat trafficking, and an announcement specifically addressing the T visa protections now available to victims.

To supplement these public announcements, the Department of Justice has produced, in cooperation with other federal government agencies, two brochures about the protections available to victims of trafficking. These brochures are aimed at both law enforcement agencies and NGOs to inform them about the issue, to help them in identifying instances of trafficking, and to provide information about assistance available to victims.

The Department has also engaged in major efforts to work with NGOs and to make public presentations on trafficking. The Civil Rights Division's Special Counsel for Trafficking in Persons and other Civil Rights Division attorneys have spoken about the Department's anti-trafficking efforts at numerous conferences and with many organizations who provide victims services.

The Department of Justice has also initiated a community outreach program to work with local community groups, victims' rights organizations, immigrants' rights organizations, shelters, houses of worship, and others. The Department wants to inform victims of the protections and services that are available to them, and to encourage victims and others to report suspected trafficking crimes. Working with NGOs, including faith-based NGOs, may be particularly effective in countries in Central America and the Caribbean because victims will often turn to church organizations when they are in need. Church officials have provided valuable leads that have led to significant raids on trafficking rings.

Working with local community groups and NGOs is important because most victims and potential victims belong to language minority groups in the U.S., and may have little access to mainstream media. Increasing awareness among those who operate victim-oriented NGOs is often the best way to reach victims or potential victims. Targeting outreach efforts to non-English language media is also important. A recent article entitled *Fields of Shame: Exposing a shocking case of modern-day slavery*, in a Spanish language magazine called "Latina," targeted to women, focused on the experiences of a particular group of victims who fought against abusive trafficking practices. The Department of Justice cooperated with the author of this article, providing comments from senior Department officials as well as access to prosecutors and Border Patrol agents. Similar articles, written with extensive cooperation from government officials, have appeared in major newspapers such as the *Miami Herald* and the *Washington Post*, two of the United States most widely circulated newspapers.

In addition, the Department is advertising the toll-free trafficking telephone complaint line using public service announcements, and distributing information on worker exploitation to immigrant and other communities. By these efforts, the government can both inform potential victims of their rights and signal to them that help is available. These efforts are consistent with our goal of making the American public aware of this problem and how to report it.

### **C. International Efforts are Necessary to Curb the Flow of Trafficking of Victims**

Effective prevention requires stemming the flow of trafficking victims at its source. Most victims of trafficking are brought to the United States against their will. The United States is working with source countries to address the problem of trafficking.

The Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) at the Department of Justice has held training sessions in many countries throughout Eastern Europe, Central Asia, and South Asia. These training sessions are designed to emphasize legal reforms such as legislation, investigative techniques, appropriate penalties for traffickers; protection of victims and witnesses; the benefits of multi-agency approaches to combating trafficking; and the value of outreach to NGOs. Civil Rights and Criminal Division attorneys have helped to train legislators and law

## RESOURCE MATERIAL SERIES No. 62

enforcement officials in more than 20 countries, including Poland, Bosnia-Herzegovina, Bulgaria, Kosovo, Macedonia, Romania, Greece, Thailand, and former Soviet republics including Ukraine, Kazakstan, Uzbekistan and Krygyzstan. In addition, the Federal Bureau of Investigation has worked closely with law enforcement agencies in Romania, Albania, and Bulgaria to develop witness assistance programs.

The United States has supported over 110 anti-trafficking programs in approximately 50 countries. These programs include economic alternative programs for vulnerable groups, education programs, training for government officials and medical personnel and development or improvement of anti-trafficking laws.

This year, the Department of State brought more than 250 international visitors to the United States to meet with experts in trafficking issues and to examine United States efforts to stop human trafficking. Entities such as the U.S. Agency for International Development (USAID) actively support the prevention of trafficking activities around the world in 25 countries with more than \$6 million in funds. The Department of Labor recently negotiated a cooperative agreement to conduct a two-year anti-trafficking project in Eastern Europe a program which is meant to prevent the trafficking of women by creating viable economic alternatives for at-risk women. Approximately 13,500 women will be trained annually under this program.

The Departments of State, Justice and Labor are working with Costa Rica to develop a comprehensive program to combat sexual exploitation of children in Costa Rica. This program will address law enforcement training, social support, NGO engagement, public affairs, and legal reforms. Once this program is fully developed, we hope that it will serve as a model for broader regional cooperation. As another example, the Department of State has worked closely with the El Salvadorian Attorney General's Sex Crimes Division to provide training and establish relationships with U.S. government attorneys to address the prosecution of sex crimes.

The U.S. government also works closely with NGOs active in victim assistance. Casa Amiga, a service provider located in Mexico in the border town of Ciudad Juarez, is one such example. The United States helped fund Casa Amiga, which engages in efforts to conduct training for law enforcement, to assist victims of violence (including victims of trafficking), and to reach out to the community.

The Trafficking Victims Protection Act recognizes the international scope of the trafficking problem and requires the Department of State to engage in aggressive international efforts to curb trafficking in source countries. An important aspect of this effort is working with countries to encourage them to adopt strong domestic anti-trafficking efforts.

The Act established within the Department of State the Office to Monitor and Combat Trafficking and charged this office with the preparation of analytical reports on trafficking. In July 2001, the Department of State issued the first annual Trafficking in Persons Report. The report presented information gathered from over a hundred embassies and consulates as well as numerous non-governmental and press reports.

These annual reports assess the anti-trafficking efforts of 89 countries, selected because they have been found to be countries of origin, transit or destination for one hundred trafficking victims or more. In each annual report, these 89 countries are grouped into tiers based on the State Department's assessment of the efforts of the government of each country to combat trafficking. Countries whose governments fully comply with the Act's minimum standards for the elimination of trafficking are placed in Tier 1. Countries whose governments do not fully comply with those standards are placed in Tier 2 if they are making "significant efforts to bring themselves into compliance" with the standards, and in Tier 3 if they were not making such efforts.

The TVPA defines the "minimum standards for the elimination of trafficking" necessary for a country to bring itself into Tier 1. Generally, these include: criminal prohibition of trafficking; criminal punishment of traffickers commensurate with the gravity of the crime; and sustained efforts to

122ND INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

eliminate trafficking. For example, a source country for trafficking victims will be scrutinized to determine what efforts it is making to prevent and criminalize the recruitment of victims. The Act also sets forth three factors to be considered in determining whether a country is making significant efforts to bring itself into compliance with these minimum standards. These considerations are: 1) the extent of trafficking in the country; 2) the extent of governmental noncompliance with the minimum standards, particularly the extent to which government officials have participated in, facilitated, condoned, or are otherwise complicit in trafficking; and 3) what measures are reasonable to bring the government into compliance with the minimum standards in light of the government's resources and capabilities.

The Trafficking Victims Protection Act contains specific provisions directed at countries that, by 2003, still remain in Tier 3. Countries rated in that third tier of nations will be subject to certain actions, principally termination of non-humanitarian, non-trade-related assistance. Such countries may face U.S. opposition to assistance (except for humanitarian, trade-related, and certain development-related assistance) from international financial institutions, specifically the International Monetary Fund and multilateral development banks such as the World Bank. The President of the United States may waive these penalties in specific circumstances.

The June 2002 release of the 2002 Trafficking in Persons Report has already generated many responses from countries listed by the Report in Tiers 2 and 3. The United States is meeting with representatives of each country to discuss the Report and to suggest concrete follow-up steps. In addition, throughout the year, the United States will continue to work with foreign NGOs to obtain feedback on whether the Report's descriptions are accurate in light of the NGOs' experiences working with trafficking victims in the affected countries.

#### **D. Border Inspections**

Finally, increased border inspections and monitoring with an emphasis on trafficking can be helpful. The U.S. Government has several agencies that monitor the borders. These agencies include, among many, the Border Patrol, the Customs Service, and the Coast Guard. These agencies cooperate closely to reduce the numbers of undocumented persons entering the United States. The United States is making efforts to secure its borders and to implement policies to screen people entering or exiting the country to determine whether they may be trafficking victims.

## **VI. COUNTERMEASURES AGAINST MIGRANT SMUGGLING**

The efforts to combat migrant smuggling in the United States involve investigators, prosecutors, and other agencies within the United States government, and also the cooperation and assistance of other governments and non-governmental organizations.

As I explained last week, the United States Immigration and Naturalization Service since 1999 has been applying its "interior enforcement strategy," focusing on assessing and attacking the infrastructure that supports illegal migration, large-scale smuggling organizations, fraud conspiracies, employers involved in widespread immigration violations, and significant local law enforcement problems created by the arrival of illegal immigrants into U.S. communities. Applying that strategy, as of June 2002, INS had conducted approximately 50 major migrant smuggling investigations, including the successful cases that I described last week.

In June 2001, the INS announced progress that had been made on its "Global Reach" initiative, which has emphasized overseas deterrence of migrant smuggling since it began in 1997. The INS, as of mid-2001, had established 40 overseas offices with 150 U.S. positions to provide a permanent presence of immigration officers overseas to work on deterring migrant smuggling in both source and transit countries. The INS also trained more than 45,000 host country officials and airline personnel in detecting fraudulent documents, and intercepted more than 74,000 fraudulently documented aliens attempting to transit these countries to the United States.

In January 2002, to enhance domestic security, the INS initiated a multi-jurisdictional enforcement initiative aimed at targeting migrant smuggling organizations specializing in the movement of U.S.-

bound aliens from countries that are of interest to the national security of the United States. Information available to the INS indicates that terrorist organizations often use human smuggling organizations to move around the globe. Several significant alien smugglers have been arrested and charged with alien smuggling violations as a result of this ongoing initiative and significant smuggling pipelines have been severely crippled.

Meanwhile, in the year 2000, the Department of Justice created its Alien Smuggling Task Force. The Task Force was created because the Department recognized that the smuggling of migrants had evolved into a major organized criminal activity, and required a coordinated response.

The mission of the ASTF is to coordinate the Department's efforts to combat smuggling. The Task Force works with the INS, the FBI, and the Civil Rights Division, and also with other departments and agencies of the United States government, to develop a coordinated approach to migrant smuggling issues. It also provides a central contact point for the U.S. Attorneys Offices around the country to assist them in prosecuting migrant smuggling cases, and in applying the stronger anti-smuggling statutes that have been enacted in recent years.

Criminal prosecutors and investigators are being trained to pursue migrant smuggling organizations, and other persons benefiting from migrant smuggling, by using many different statutes and investigative methods. In addition to the statute specifically directed at migrant smugglers, which covers unlawfully bringing migrants into the United States other than at a legal port of entry, bringing them anywhere in the United States, knowing that they are not authorized to enter, transporting them within the United States, harboring or concealing them, encouraging or inducing them to enter illegally, the statute prohibiting employment of smuggled migrants, and the statute prohibiting importation of aliens for prostitution or other immoral purposes, federal prosecutors may also use other statutes that apply to certain migrant smuggling cases depending upon additional facts that may be learned by the government during the investigation, such as the mail and wire fraud statutes, and the money laundering and racketeering laws.

In the Tyson Foods case that I described earlier, the charges now include money laundering and money laundering conspiracy as well as migrant smuggling violations. In the case where two Mexican migrants died after being confined in a tractor-trailer truck container in Texas, the recent superseding indictment charged not only migrant smuggling violations, but also racketeering, in violation of 18 U.S.C. 1962(c), and interstate travel in aid of racketeering, in violation of 18 U.S.C. 1952.

The elements of the primary migrant smuggling offenses, are charged under various subsections of 18 U.S.C. 1324. The penalties for violation of these statutes can be severe. The maximum penalties start at five years. They increase to 10 years for certain offenses done for commercial advantage or private financial gain. They increase further to 20 years in certain cases where the conduct causes serious bodily injury or places a life in jeopardy, and even further to life imprisonment or the death penalty in certain cases where the charged conduct results in a death. The statutes also provide for monetary fines, and for forfeiture of vessels, vehicles, and aircraft used in the offense and proceeds of the offense. These statutes are designed not only to punish the individual smugglers, but also to dismantle the smuggling organization, and to take away the financial incentive for smuggling.

In order to obtain convictions under these statutes, prosecutors must overcome a number of difficult hurdles. They must prove that the defendants actually knew that the migrants were illegal aliens or that the defendants recklessly disregarded the migrants' illegal status. They must prove that the migrants were aliens, and were in the United States illegally. In transportation cases, they must prove that the defendants were transporting the migrants "in furtherance of" a violation of the immigration laws.

In United States courts, prosecutors may prove these cases with information obtained from, among other sources, lawful border interviews, searches and seizures, and consensual recordings, and also from properly authorized non-consensual electronic surveillance. It is obviously helpful, and often necessary, to obtain testimony from the smuggled migrants themselves. That raises issues and problems for prosecutors similar to those that arise in human trafficking cases: we must have the

122ND INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

smuggled migrants in hand, at least long enough for a lawful deposition to be taken; we must obtain the migrants' testimony by lawful means; and we must deal somehow with the migrants' fear of testifying against the smugglers.

The United States government recognizes that migrant smuggling is a global problem that cannot be addressed successfully without international cooperation. In addition to working together with other nations on smuggling investigations and interdictions, the U.S. is seeking to persuade other nations to adopt effective laws to deter smuggling which, at a minimum, should provide criminal penalties for migrant smuggling, impose fines on carriers involved in smuggling, and provide ways to seize the assets of criminal smuggling organizations. Smugglers will always seek out and exploit the weakest link in the international chain, so nations must work together to make it more difficult for smugglers to operate anywhere in the world.

In some of the successful investigations that I have described to you, such as Operation Crossroads International, transnational cooperation resulted in the successful interdiction of large-scale smuggling schemes before the smuggled migrants even reached the borders of the United States. As is true of human trafficking, the best way to combat migrant smuggling is to prevent it from happening in the first place, and for that to occur, transnational cooperation is essential.

## VII. CONCLUSION

Trafficking in persons and migrant smuggling are an insidious combination of international crime and human rights violations. They demand a unique blend of strong law enforcement responses and humanitarian responses.

Stopping the smuggling of migrants is necessary not only to protect our borders, but also to prevent the many kinds of harm that are done to would-be migrants who place themselves in the dangerous hands of smugglers, and to cut off a massive source of income for transnational organized crime.

Stopping trafficking in persons poses unique challenges to prosecutors, who must not only track criminal groups operating in two or more countries, but must also attend to the complex needs of the victims. The ability to focus on victim's needs in such cases is both essential in helping victims begin to rebuild their lives and crucial to the ability of prosecutors to find witnesses who are willing to come forward and cooperate in the investigation and prosecution of the traffickers.