A PRIMER ON HUMAN TRAFFICKING

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I. INTRODUCTION

In the late 1990s Congress became aware of the practice of what is now referred to as human trafficking.[1] Testimony before Congress by governmental officials,[2] representatives of nongovernmental organizations,[3] and victims[4] related incidents in which individuals were recruited under false pretenses or by coercion and found themselves forced into prostitution or forced labor. As testimony before a congressional committee indicated,

> Trafficking in human beings is a form of modern-day slavery. At its core, the international trade in women and children is about rape, abduction, coercion, violence, and exploitation in the most reprehensible ways. Although this is sometimes characterized as a women's issue, it is, in fact, a global issue involving human rights, economics, migration, transnational crime, labor, and public health. It is estimated that there are over 1 million women and children trafficked every year, over 50,000 into the United States.
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> Although this hearing focuses on the sex industry, it is clear that this is merely one component of trafficking. Traffickers themselves are often engaged in more than one kind of trade because they follow the profits. For example, we see cases where girls are lured from villages in South Asia, and the traffickers force some of the girls to work in domestic servitude or in carpet weaving, while others considered more attractive are culled out and sold to brothels. These are some of the practical reasons why the United States did not limit its efforts to one form of trafficking over another.[5]

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[1] *Trafficking of Women and Children in the International Sex Trade: Hearing on H.R. 1356 Before the Subcomm. on Int'l Operations & Hum. Rts. of the Comm. on Int'l Rels.*, 106th Cong. 10, 13–16 (1999) (statement of Theresa Loar, Director, President's Interagency Council on Women, United States Department of State).

[2] *See id.*

[3] *Id.* at 36–37 (statement of Laura J. Lederer, Research Director and Project Manager, The Protection Project, Harvard University, Kennedy School of Government).

[4] *Id.* at 35–36 (statement of Anita Sharma Bhattarai, Trafficking Survivor, Nepal).

[5] *Id.* at 14–15 (statement of Theresa Loar, Director, President's Interagency Council on Women, United States Department of State).

Since that time, human trafficking has been popularized as a story line in television,[6] the movies,[7] and contemporary fiction.[8]

In an effort to address this problem, H.R. 3244, The Trafficking Victims Protection Act of 2000, was introduced in the House of Representatives.[9] In explaining the need for this legislation, the Report of the House Committee on the Judiciary noted that,

> Trafficking of persons has recently become a growing phenomenon within and across international borders, including the United States. Many trafficked persons are forced into the sex industry. The rapid expansion of the sex industry and the low status of women in many parts of the world have contributed to a burgeoning of the trafficking industry.
>
> Trafficking of persons also involves forced labor, involuntary servitude, or slavery. Many trafficked persons are induced to perform labor or other services by force or the threat of force.[10]

This Article examines human trafficking from several different perspectives. It first examines the trafficking process. Then, it focuses on who the traffickers and the trafficking facilitators are. Then, it discusses who the victims of trafficking are, the indicators that a person is being trafficked, and the factors that keep trafficking victims in place. Last of all, it examines what is being done at the federal and state level to combat human trafficking. This primer on human trafficking is designed to give novice readers a basic understanding of the subject and identify the role they can play in the fight to combat human trafficking.

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[6] *See Law & Order Special Victims Unit: Slaves* (NBC television broadcast May 19, 2000).

[7] *See, e.g.*, EDEN (Momentum Pictures 2012); TAKEN (20th Century Fox 2009); JOY (Hoanzl 2018); NOT MY LIFE (Worldwide Documentaries, Inc. 2011); BORN INTO BROTHELS (Shout! Factory 2005); LOVE SONIA (Tamasha Talkies, Love Sonia Films 2018); SOLD (Gravitas Ventures 2014); SOUND OF FREEDOM (Angel Studios 2023); NEFARIOUS: MERCHANT OF SOULS (Nefarious, LLC 2011); I AM ALL GIRLS (Netflix 2021).

[8] *See, e.g.*, MARION SCHERER, THE CAGE: A HUMAN TRAFFICKING THRILLER (2019); BERNARD RADFAR, MECCA PIMP: A NOVEL OF LOVE AND HUMAN TRAFFICKING (2013); J.H. MORRIS, FOR SALE: A HUMAN TRAFFICKING NOVEL (2020); BILL WARD, TRAFFICKING (2015); JOE NELMS, LINDSEY/JANE: A SHORT STORY OF HUMAN TRAFFICKING, SURVIVAL, AND REVENGE (2011); MIKE PAPANTONIO & ALAN RUSSELL, INHUMAN TRAFFICKING: A LEGAL THRILLER (2021); L.M. ROBINSON, A POUND OF SUGAR: A HUMAN TRAFFICKING STORY (4th ed. 2015).

[9] This bill was subsequently enacted into law as Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, 114 Stat. 1464 (codified as amended in scattered sections of 18, 22 and 42 U.S.C.).

[10] H.R. REP. NO. 106–487, pt. 2, at 17 (2000).

II. THE ELEMENTS OF TRAFFICKING

A. The Trafficking Process

To understand how human trafficking works, one needs to examine the process, the characteristics of the trafficking organizations, and the end goal of the process. As the following incidents illustrate, a trafficking operation is not a monolithic entity.[11] It is a complex process with varied participants. This is illustrated by the forced labor trafficking operation, the El Monte Sweatshop.

> In 1995, federal agents found 72 Thai nationals working in slave-like conditions in El Monte, California. They were recruited from rural villages throughout Thailand through promises of a better life – but after arriving in the United States, employers locked them in a building complex with boarded up windows and barbed wire fencing. They had no contact with the outside world and worked 18-hour days sewing clothes for major retailers, such as Mervyn's, Montgomery Ward, Tomato, BUM International, LF Sportswear, Miller's Outpost, Balmara, Beniko, F-40 California, Ms. Tops and Topson Downs.
>
> No matter how hard they worked, the workers could never pay off their debts. These illegal debts are incurred when unscrupulous job recruiters promise good paying job opportunities to vulnerable people and force them to take on debts to pay their smuggling fees. These fees can never be paid off and the employers threatened to retaliate with physical violence and immigration deportation if they tried to escape or seek help.[12]

Approximately six years later, Homeland Security Investigations (HSI) would uncover the operation of a conspiracy that brought women from Eastern Europe to work in the strip clubs in Detroit.[13] The HSI press release stated,

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[11] Elyssa Schroeder et al., *A Review of Prevalence Estimation Methods for Human Trafficking Populations*, 137 PUB. HEALTH REPS. (SUPP. I) 46S, 48S (2022).

[12] *See* Off. of Pub. Affs., *Fighting Human Trafficking: The Legacy of the El Monte Sweatshop*, U.S. DEP'T OF LAB. BLOG (Jan. 11, 2022), https://blog.dol.gov/2022/01/11/fighting-human-trafficking-the-legacy-of-the-el-monte-sweatshop.

[13] Press Release, U.S. Immigr. & Customs Enf't, Final Defendant Sentenced in International Human Trafficking Scheme (May 23, 2012), https://www.ice.gov/news/releases/final-defendant-sentenced-international-human-trafficking-scheme.

> According to the [HSI] investigation, between September 2001 and February 2005, Gonikman, together with his son, Aleksandr Maksimenko, a U.S. citizen, and Michael Aronov, a Lithuanian national, operated Beauty Search, Inc., a business that brokered and managed Eastern European women who performed in exotic dance clubs in the Detroit area. The three men recruited a number of these women in Ukraine, facilitated their illegal entry into the United States, and then harbored them for commercial advantage and private financial gain. In 2001, Gonikman facilitated the smuggling of two young Eastern European women from Ukraine, through Mexico, into the United States and ultimately to Detroit, where the women were compelled to serve as exotic dancers.[14]
>
> . . . .
>
> "The defendants in this case preyed on young and vulnerable women from a foreign country. These women were brought to America with promises of education and travel, and, instead, forced to work in seedy strip clubs," said Brian M. Moskowitz, special agent in charge of HSI Michigan and Ohio.[15]

This next example further illustrates the complex and varied nature of the human trafficking problem. In 2011 a Maryland couple were indicted on charges arising from a scheme to compel the labor and domestic service of a Filipina national.

> According to the five count indictment, the couple enticed the victim to come to the United States to work as their domestic servant. According to the indictment, the defendants lured the victim, an impoverished, uneducated mother of eight children, using false promises of a salary that would support her children in the Philippines. The defendants procured a fraudulent visa to allow the victim to enter the United States; confiscated the victim's documents after she arrived; and compelled her labor for 13 hours a day over a period of 10 years, using a scheme of threats, assaults, withholding of documents, withholding of pay and a peonage contract to coerce the victims continued service.[16]

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[14] *Id.*

[15] *Id.*

[16] Press Release, Off. of Pub. Affs., Maryland Couple Charged with Domestic Servitude of Filipina Woman (Aug. 25, 2015), https://www.justice.gov/opa/pr/maryland-couple-charged-domestic-servitude-filipina-woman.

Each of these anecdotes represents a facet of human trafficking. While the public has become more aware of trafficking for the purpose of sexual exploitation over the past twenty plus years, trafficking also involves the exploitation of individuals for agricultural and factory labor and for domestic servitude.[17]

Chart 1[18]

Economic sectors where victims are reported to be exploited

Domestic Work	Construction Work	Fishing
Agriculture	Catering	Street Trading
Garment	Mining	Other

As the above examples illustrate, there is a pattern that is common to all of them. The trafficking process consists of multiple elements. As Amy O'Neill Richard notes in her seminal monograph on the international trafficking of women,

> Trafficking is all acts involved in the recruitment, abduction, transport, harboring, transfer, sale or receipt of persons; within national or across international borders; through force, coercion, fraud or deception; to place persons in situations of slavery or slavery-like conditions, forced labor or services, such as forced prostitution or sexual services, domestic servitude, bonded sweatshop labor or other debt bondage.[19]

B. *Characteristics of Trafficking Defendants*

1. Organizations

The structure of trafficking organizations is as diverse as the enterprises into which victims are trafficked. As Amy O'Neill Richard notes in her monograph,

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[17] *See* U.N. OFF. ON DRUGS & CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 2020, at 10, 12, 58, U.N. Sales No. E.20.IV.3 (2021) [hereinafter *GLOTIP*].

[18] *Id.* at 12 (chart information based on GLOTIP collection of court case summaries).

[19] AMY O'NEILL RICHARD, CTR. FOR THE STUDY OF INTEL., INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME, at v (2000), https://www.govinfo.gov/content/pkg/GOVPUB-PREX3-PURL-LPS61148/pdf/GOVPUB-PREX3-PURL-LPS61148.pdf.

> Globally, the full spectrum of criminal organizations and shady businesses—from major criminal syndicates to gangs to smuggling rings to loosely associated networks—are involved. Overseas, major organized crime groups, particularly Russian, East European, and Asian syndicates, are heavily involved in trafficking. . . . In the United States, trafficking in women is primarily being conducted by crime rings and loosely connected criminal networks. In many trafficking cases, the nucleus of these criminal rings is one family or extended family. Additionally, trafficking is perpetrated by a large number of loosely associated crime groups that focus on different aspects of the trafficking process, making detection and crackdowns difficult for law enforcement as the targets are much more amorphous.[20]

For example, a trafficker might partner with a mail order bride business to recruit victims.[21] (S)he would then affiliate with a smuggling operation or a travel agency to arrange transportation for the victims.[22] If crossing international borders was involved to complete the trafficking sale and delivery of victims, the trafficker might have an informal arrangement with corrupt personnel within an embassy for the country of destination responsible for issuing visas, or a legal organization that handles immigrations documentation to provide assistance in securing immigration documents for the victims from their country of origin to the country of destination.[23]

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[20] *Id.* at 13.

[21] *Human Trafficking: Mail Order Bride Abuses: Hearing on S. 1455 Before the Subcomm. on E. Asian & Pac. Affs. of the S. Comm. on Foreign Rels.*, 108th Cong. 37–38, 40 (2004) [hereinafter *Mail Order Hearings*] (statement of Suzanne H. Jackson, Associate Professor of Clinical Law, George Washington University Law School).

[22] *See id.* at 28–29 (prepared statement of Donna M. Hughes, Ph.D., Professor, University of Rhode Island).

[23] See Eur. Connections & Tours, Inc. v. Gonzales, 480 F. Supp. 2d 1355, 1359–60 (2007) for a description of the operation of an international matchmaking organization. S*ee also, e.g.*, *Mail Order Hearings*, *supra* note 21, at 37 ("The IMOs, or international matchmaking organizations, have been linked to criminal trafficking in several ways. They can be nothing more than fronts for criminal trafficking organizations in which adults and girls are offered to the public as brides, but sold privately into prostitution or forced marriage—including marriages to men who prostitute them—or held in domestic slavery. Global Survival Network found that most mail order bride agencies in Russia have expanded their activities to include trafficking for prostitution. European embassies have reported that a number of matchmaking agencies conceal organized prostitution rings victimizing newly arrived Filipina women. Asian groups have used fiancée visas and marriage with a so-called jockey, which is an escort bringing women across the U.S. border, to bring women into the United States for purposes of prostitution. And jockeys have even included U.S. military personnel stationed abroad.").

Over the past two decades there has been an effort to combat human trafficking internationally and nationally,[24] despite the under reported nature of the crime, it has been possible to collect data to develop a profile of trafficking organizations and the individuals who direct these organizations.[25] Both are as varied as the sectors into which victims are trafficked. A brief description of the different forms of trafficking organizations is provided in Chart 2.

Chart 2[26]

Type of criminal actors involved in trafficking in persons

Individual traffickers Typically operate on their own	**Opportunistic associations of traffickers** Two traffickers operating together or more than two traffickers not systematically working together beyond a single crime episode.
Business-enterprise type of organized criminal groups Three or more traffickers systematically working together to traffic persons as a core component of their criminal activities.	**Governance-type of organized criminal groups** Practice security governance in a community or territory by means of fear and violence and may be involved in multiple illicit markets.

However, one should keep in mind that trafficking organizations are rarely prosecuted as criminal defendants in trafficking cases.[27] According

[24] U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 2–4 (2021).

[25] *See GLOTIP*, *supra* note 17, at 37, 39–41.

[26] *Id.* at 12, fig.4. See also U.S. DEP'T OF STATE, *supra* note 24, at 46 for a list of governments that facilitate or participate in human trafficking.

[27] KYLEIGH FEEHS & ALYSSA CURRIER WHEELER, 2020 FEDERAL HUMAN TRAFFICKING REPORT 25 (Lindsey Roberson ed., 2021) [hereinafter HTI 2020 REPORT].

to the "2020 Federal Human Trafficking Report" issued by the Human Trafficking Institute (HTI),

> Since 2000, the government has charged nine entities in human trafficking prosecutions—less than 1% of all defendants. The very first case to include entity defendants was filed in 2009, when prosecutors charged three sham corporations established for the purpose of money laundering and visa fraud in furtherance of a forced labor scheme in Kansas City. The only other forced labor case involving entity defendants also occurred in Kansas City, this time implicating two companies comprising longtime local business Century Roofing for allegedly trafficking five foreign national employees. The four entities charged in sex trafficking prosecutions were all hotels or companies that owned and/or operated hotels, including a Best Choice Inn, Travelodge, Howard Johnson, and Pocono Plaza Inn (formerly Quality Inn).[28]

2. Individual Defendants

There is not a single profile that accurately depicts the perpetrators of human trafficking. Within the past year we have seen billionaires, rock stars, and entrepreneurs such as the CEO of NXIVM—a women's self-improvement enterprise—convicted of trafficking for sexual exploitation.[29] As a result of the cases brought against individual traffickers, it is possible to detail the demographic characteristics of individual traffickers.[30] According to the HTI 2020 report,

> The 2020 data on gender and other demographics of individual defendants did not deviate from established trends in previous years. Of all active defendants, 81% (802) were male and 19% (194) were female. The percentage of male defendants is higher in sex trafficking cases than forced labor cases. Males made up 82% (765) of active defendants in sex trafficking cases compared to females, who comprised 18% (166). Although the percentage of female defendants was higher in forced labor cases (43%, 28)

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[28] *Id.* at 24 (percentage based on the 4,132 criminal defendants charged in federal human trafficking cases from 2000 through 2020).

[29] United States v. Raniere, 55 F.4th 354, 357–60 (2d Cir. 2022); Sarah Grant, *Seagram Heiress Clare Bronfman Sentenced to 81 Months in Prison in NXIVM Case*, ROLLINGSTONE (Sep. 30, 2020), https://www.rollingstone.com/culture/culture-news/seagram-heiress-clare-bronfman-pleads-guilty-in-nxivm-sex-slave-case-825103/; Lauren Aratani & Gloria Oladipo, *R Kelly Found Guilty on Racketeering and Sex Trafficking Charges*, THE GUARDIAN (Sept. 29, 2021), https://www.theguardian.com/music/2021/sep/27/r-kelly-racketeering-sex-trafficking.

[30] *See* HTI 2020 REPORT, *supra* note 27.

> than in sex trafficking cases, males still accounted for the majority (57%, 37) of those defendants.[31]

The breakdown of the ages of the criminal defendants provided in this report ranges from 18 years to 79 years of age with 68.8% of the defendants ranging in age from 18 to 39 years of age.[32] Based on an analysis of 786 criminal cases in which the age of the defendants was known, 12.97% were between 18–23 years of age, 23.40% were between 24–29 years of age, 32.44% were between 30–39 years of age, 17.93% were between 40–49 years of age, 9.28% were between 50 and 59 years of age, 3.30% were between 60–69 years of age and 0.64% were 70–79 years of age.[33]

What is striking about these statistics is that women are not only the victims of human trafficking but are also the perpetrators of this crime.[34] According to an article by Natalie Sarachaga-Barato and Lenore Walker, "[a]lthough traffickers can be men or women, reports indicate that a large number of known traffickers around the world are women. A 2012 report by the United Nations Office on Drugs and Crime found that female traffickers accounted for one-third of trafficking perpetrators in over 50 countries."[35]

C. A Profile of Trafficking Victims

1. The Demographics of Trafficking Victims

Our knowledge of the demographics of victims of human trafficking is based on the criminal prosecutions for sex and labor trafficking.[36] According to the HTI 2020 Report,

> Since the enactment of the TVPA in 2000, federal prosecutors have named 4,824 victims in human trafficking cases, over half (57%, 2,671) of whom were children. Girls below the age of 18 years old were most likely to be named as a victim in a human trafficking prosecution. In fact, girls comprised 56% (2,439) of all victims. In comparison, only 2% (76) of victims were boys under

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[31] *Id.* at 25.
[32] *Id.* at 26.
[33] *Id.*
[34] *Id.* at 25–26.
[35] Natalie Sarachaga-Barato & Lenore Walker, *Victims Becoming Victimizers*, *in* HANDBOOK OF SEX TRAFFICKING: FEMINIST TRANSNATIONAL PERSPECTIVES 121, 122 (Lenore Walker et al. eds., 2019); *see also* Eva Veldhuizen-Ochodničanová & Elizabeth L. Jeglic, *Madams, Mentors & Mistresses: Conceptualizing the Female Sex Trafficker in the United States*, 64 INT'L J.L. CRIME & JUST., 1, 1–12 (2021) (examining stereotyping traffickers as males and the research on the role of women in sex trafficking).
[36] HTI 2020 REPORT, *supra* note 27, at 27–29.

> the age of 18 years old, 40% (1,721) of victims were women, and 3% (113) of victims were men over the age of 18 years old. Finally, most (89%, 4,295) victims were named in sex trafficking cases and only 11% (529) were named in forced labor cases.[37]

2. Factors Contributing to Being Trafficked

There are a variety of factors that make an individual vulnerable to being trafficked. Among these are national disasters such as floods and earthquakes, civil war, and failure of economic systems on a national or global level.[38] According to a U.S. Department of State Report issued in June 2010,

> In the months prior to the January 12, 2010 earthquake, the Government of Haiti had made limited anti-trafficking progress; prospects for additional, future progress were greatly impeded by the earthquake, which killed over 230,000 people, displaced 1.3 million people, including at least half a million children, and destroyed much of Port au Prince, including much of the government's infrastructure. The limited capacity of Haitian state institutions to respond to human trafficking was further weakened by the earthquake's monumental damage. Haiti remains a Special Case for the fifth consecutive year as the earthquake derailed government efforts to address the significant challenges facing the country, including human trafficking. The Government of Haiti, in partnership with NGOs, identified child trafficking victims, but it did not enact much-needed anti-trafficking legislation.[39]

As the HTI 2020 report notes, individuals who are trafficked have pre-existing vulnerabilities that make them susceptible to being trafficked.[40]

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[37] *Id.* at 27 (citations omitted).

[38] U.N. OFF. ON DRUGS & CRIME, TOOLKIT TO COMBAT TRAFFICKING IN PERSONS: GLOBAL PROGRAMME AGAINST TRAFFICKING IN HUMAN BEINGS, at 423–24, U.N. Sales No. E.08.V.14 (2008).

[39] U.S. DEP'T OF STATE, *supra* note 24, at 46; *see* Rachel Buchan, *The Syrian Refugee Crisis: A Greenhouse for Human Trafficking*, HUM. RTS. FIRST (Aug. 16, 2016), https://humanrightsfirst.org/library/the-syrian-refugee-crisis-a-greenhouse-for-human-trafficking-2/ ("Social, cultural, and economic policies and practices have the ability to either protect or endanger individuals and groups to human trafficking. . . . '[Traffickers] prey on those who lack security and opportunity, coerce or deceive them to gain control, and then profit from their compelled service.' . . . Due to the Syrian crisis, 4.8 million people have been rendered refugees and nearly all of them are acutely vulnerable to human trafficking." (citation omitted)).

[40] HTI 2020 REPORT, *supra* note 27, at 43.

> In both sex trafficking and forced labor cases, it is rare that perpetrators kidnap complete strangers off the street. Instead, traffickers often make calculated decisions about whom to victimize based on vulnerabilities that they can exploit. In 2020, the top victim vulnerabilities in active cases were substance dependency (38%, 139), having run away from home (28%, 100), undocumented immigration status (17%, 63), homelessness (10%, 37), being in the foster care system (10%, 35), having been previously trafficked (8%, 28), limited English language skills (6%, 22) financial debt (4%, 15), intellectual disabilities (4%, 14), and prior incarceration (2%, 6).[41]

In other words, social, economic, and political factors individually or in combination may create the perfect storm that makes an individual vulnerable to the deceptive practices and coercion of the trafficking operation.[42] As the government, NGOs, and researchers collectively have gained experience in combatting human trafficking, they have come to recognize certain indicators that a person is being trafficked. Some of these are listed below in Chart 3.

[41] *Id.* at 28.

[42] For a more detailed discussion see Kathleen A. McKee, *The United States' Response to Human Trafficking: Sword of Justice or Paper Tiger?*, 2 J. GLOB. JUST. & PUB. POL. 295, 300–03 (2016) [hereinafter *The United States' Response*].

Chart 3

Indicators of Trafficking in Adults:[43]	**Indicators of Trafficking in Children:**[44]
1. Is the victim in possession of identification and travel documents. If not, who has control of the documents?	1. Does the child have unexplained absences from school for a period of time, and is therefore a truant?
2. Was the victim coached on what to say to law enforcement and immigration officials?	2. Does the child demonstrate an inability to attend school on a regular basis?
3. Was the victim recruited for one purpose and forced to engage in some other job?	3. Does the child chronically run away from home?
4. Is the victim's salary being garnished to pay off a smuggling fee? (Paying off a smuggling fee alone is not considered trafficking.)	4. Does the child make reference to frequent travel to other cities?
5. Was the victim forced to perform sexual acts?	5. Does the child exhibit bruises or other physical trauma, withdrawn behavior, depression, or fear?
6. Does the victim have freedom of movement?	6. Does the child lack control over her or his schedule or identification documents?
7. Has the victim or family been threatened with harm if the victim attempts to escape?	7.Is the child hungry-malnourished or inappropriately dressed (based on weather conditions or surroundings)?
8. Has the victim been threatened with deportation or law enforcement action?	8. Does the child show signs of drug addiction?
9. Has the victim been harmed or deprived of food, water, sleep, medical care, or other life necessities?	Additional signs that may indicate sex-related trafficking include a sudden change in attire, behavior, or material possessions. (E.g., has expensive possessions.)

[43] *See* DEP'T OF HOMELAND SEC., *Indicators of Human Trafficking,* BLUE CAMPAIGN, https://www.dhs.gov/blue-campaign/indicators-human-trafficking (last updated Mar. 21, 2022); *Indicator Card – English*, DEP'T OF HOMELAND SEC., (Jan. 4, 2022) https://www.dhs.gov/sites/default/files/2022-02/BC-Indicator-Card_ENGLISH%20508.pdf.

[44] Off. of Safe & Healthy Students, *Human Trafficking of Children in the United States–A Fact Sheet for Schools*, DEP'T OF EDUC., (Dec. 3, 2013), https://www2.ed.gov/about/offices/list/oese/oshs/factsheet.html.

This chart can be used as a guide to help law enforcement and citizens alike to spot victims and to reach out to help them.

III. THE INTERNATIONAL AND DOMESTIC RESPONSE TO HUMAN TRAFFICKING.

A. The International Response

There are several U.N. Conventions or Covenants that address the problem of slavery.[45] However, the most recent Convention which provides the framework for combatting modern day human trafficking is the Convention Against Transnational Organized Crime[46] with its three related protocols on trafficking of women and children,[47] smuggling,[48] and illegal manufacture and sales of firearms.[49] The Convention on Transnational Organized Crime is the linchpin of this regulatory scheme. It is an aspirational document and encourages all nations to engage in bilateral and multilateral agreements to combat human trafficking.[50] It provides a common definition of trafficking and delineates the obligations of nation states to protect the rights of defendants while combatting trafficking.[51] A nation may not sign any of the protocols unless it first signs and ratifies the convention.[52] Since the United Nations has no enforcement powers, it is aspirational.[53] Compliance is discretionary for the member states.[54]

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[45] See *The United States' Response*, *supra* note 42, at 306–309 for a more detailed discussion of these conventions and covenants.

[46] United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2225 U.N.T.S. 209.

[47] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov. 15, 2000, 2237 U.N.T.S. 319.

[48] Protocol Against the Smuggling of Migrants by Land, Sea and Air, Nov. 15, 2000, 2241 U.N.T.S. 507.

[49] Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention Against Transnational Organized Crime, May 31, 2001 2326 U.N.T.S. 209.

[50] *The United States' Response*, *supra* note 42, at 309.

[51] *See id.* at 308–10.

[52] *Id.* at 309.

[53] *See* Somini Sengupta, *The United Nations Explained: Its Purpose, Power and Problems*, N.Y. TIMES (Sep. 18, 2016), https://www.nytimes.com/2016/09/19/world/what-is-united-nations-un-explained.html (explaining several problems the United Nations faces, including when countries choose not to listen to its directives).

[54] *See id.*; *see also* U.N., 2010 Treaty Event: Towards Universal Participation and Implementation, Fact Sheet #5 (2010), https://treaties.un.org/doc/source/events/2010/press_kit/fact_sheet_5_english.pdf.

B. The United States' Response

In 2000, the U.S. Congress enacted the Trafficking Victims Protection Act.[55] This legislation increased the criminal penalties for severe forms of trafficking for sexual or labor exploitation.[56] It also created a special visa referred to as the "T" visa for immigrant victims of trafficking that would allow victims to remain in the country and work during the investigation and prosecution of their trafficking cases.[57]

It is significant that the TVPA of 2000 also amended the definition of involuntary servitude in response to the ruling of the United States Supreme Court in the case of *United States v. Kozminski*[58] in which the defendants were charged with involuntary servitude after two mentally disabled men were found laboring on their farm.[59] The victims were living in squalid conditions,[60] working without pay, and deprived of outside contact by threats of what would happen to them if they left the farm.[61] The government included the use of psychological coercion in its charges of involuntary servitude.[62] In its decision, the Supreme Court reversed the Defendants' conviction for involuntary servitude because the jury instructions included psychological coercion as an element of the charge.[63] The Supreme Court remanded the case to the lower court for further proceedings noting that,

> (e) Since the District Court's jury instructions encompassed means of coercion other than actual or threatened physical or legal coercion, the instructions may have caused respondents to be convicted for conduct that does not violate § 241 or § 1584. The convictions must therefore be reversed. Because the record contains sufficient evidence of physical or legal coercion to permit a conviction, however, a judgment of acquittal is unwarranted, and the case is remanded for further proceedings consistent with this opinion.[64]

In Section 103 of the TVPA of 2000, the definition of coercion is broadened to include forms of coercion the Supreme Court held were not

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[55] Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, 114 Stat. 1464 (codified as amended in scattered sections of 18, 22 and 42 U.S.C.).

[56] *Id.* § 112 (codified as amended in 22 U.S.C. § 7109, 18 U.S.C. §§ 1584, 1589–94).

[57] *Id.* §§ 107, 1513 (codified in 22 U.S.C. § 7105, 8 U.S.C. § 1101).

[58] *Id.* §§ 102(b)(13), 103 codified as amended in 22 U.S.C. § 7101–02); United States v. Kozminski, 487 U.S. 931, 951–52 (1988).

[59] *Kozminski*, 487 U.S. at 931.

[60] *Id.* at 934–35.

[61] *Id.*

[62] *Id.* at 935–37.

[63] *Id.* at 953.

[64] *Id.* at 933.

covered by the involuntary servitude statute in the *Kozminski* case.[65] The definitional section specifically provides as follows.

> SEC. 103. DEFINITIONS.
>
> In this division:
>
> . . . .
>
> (2) COERCION.—The term "coercion" means–
>
> (A) threats of serious harm to or physical restraint against any person;
>
> (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
>
> (C) the abuse or threatened abuse of the legal process.[66]

The TVPA of 2000 has provided a statutory definition of what constitutes "severe forms of trafficking in persons," [67] increases the criminal penalties for severe forms of trafficking for sexual exploitation and labor exploitation,[68] and authorizes a program of federal grants to "States, Indian tribes, units of local government, and nonprofit, nongovernmental victims' service organizations to develop, expand, or strengthen victim service programs for victims of trafficking."[69] It also created an interagency framework for combatting human trafficking at the federal level.[70] It instructed those federal agencies that administer the safety net programs such as Food Stamps, Medicaid, and legal services for low income families to make their services available to individuals rescued from human trafficking.[71]

Legislation is usually authorized for a period of three to five years.[72] Each piece of legislation must be accompanied by an appropriations bill

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[65] Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, §§ 102(13), 103(2) 114 Stat. 1464, 1467, 1470 (codified as amended in 22 U.S.C. §§ 7101–02).

[66] *Id.* § 103(2) (codified as amended in 22 U.S.C. § 7102).

[67] *Id.* § 103(8) (codified as amended in 22 U.S.C. § 7102).

[68] *Id.* § 112 (codified as amended in 22 U.S.C. § 7109, 18 U.S.C. §§ 1584, 1589–94).

[69] *Id.* § 107(b)(2)(A) (codified as amended in 22 U.S.C. § 7105).

[70] *Id.* § 105. See also Kathleen A. McKee, *Modern-Day Slavery: Framing Effective Solutions for an Age-Old Problem*, 55 CATH. UNIV. L. REV. 141, 179–91 (2005) [hereinafter *Modern Day Slavery*] for a more detailed discussion on legislation of the TVPA of 2000.

[71] *See Modern Day Slavery*, *supra* note 70, at 185–86.

[72] JAMES V. SATURNO, CONG. RSCH. SERV., R46497, AUTHORIZATIONS AND THE APPROPRIATIONS PROCESS 1 (2023).

that provides the funding to implement the law.[73] Since the initial enactment of the Trafficking Victims Protection Act, the Congress has reauthorized this legislation multiple times.[74] Each time, the Congress has added additional provisions to close gaps in the coverage of the initial legislation.[75] Federal law now authorizes restitution for trafficking victims.[76] As a result of changes in the law in 2003, trafficking victims also have statutory authority to bring a civil suit against their traffickers.[77] (However, the civil suit will be held in abeyance during the criminal prosecution of their case.)[78] Recent changes in the law also have addressed the need to ensure that healthcare professionals are trained to identify and assist victims of trafficking.[79]

C. The State Level Response

Trafficking is most likely to be detected at the state and local level.[80] In 2000, states generally did not have specific legislation in place to combat trafficking. For example, in Virginia, in the absence of specific legislation a prosecutor would have used a combination of criminal statutes to prosecute traffickers.[81] These would have ranged from kidnapping, false imprisonment, pandering, and assault and battery.[82] These statutes generally would not carry penalties that reflect the seriousness of the crime.[83] Moreover, a state judge would have discretion to order that the sentences be served concurrently rather than consecutively.[84] While states have sentencing guidelines similar to those

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[73] JOHN V. SULLIVAN, HOW OUR LAWS ARE MADE, H.R. Doc. No. 110–49, at 16–17 (2007).

[74] *The United States Response*, *supra* note 42, at 317. See generally *id.* at 324–43 for a detailed discussion of legislation enacted between the years 2000 and 2015.

[75] *Id.* at 324, 326, 329, 333, 335, 338–39.

[76] *Id.* at 332.

[77] Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108–193, § 4(a)(4), 117 Stat. 2875, 2878 (2003) (codified as amended in 22 U.S.C. § 7105).

[78] *See id.*

[79] *See* Trafficking Awareness Training for Health Care Act of 2015, Pub. L. No. 114–22, §§ 701–04, 129 Stat. 227, 261–63 (2015).

[80] Kathleen A. McKee, *It's 10:00 P.M. Do You Know Where Your Children Are?*, 23 REGENT UNIV. L. REV. 311, 325 (2011).

[81] *See* Shi Staff, *Virginia: Last State in Nation to Establish a Human Trafficking Law*, SHARED HOPE INT'L (Apr. 1, 2015), https://sharedhope.org/2015/04/01/virginia-last-state-in-nation-establishes-first-standalone-sex-trafficking-law/; HEATHER J. CLAWSON ET AL., PROSECUTING HUMAN TRAFFICKING CASES: LESSONS LEARNED AND PROMISING PRACTICES 24 (2008).

[82] Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, § 102(10) 114 Stat. 1464, 1467 (codified as amended in 22 U.S.C. § 7101).

[83] *Id.* § 102(14) (codified as amended in 22 U.S.C. § 7101).

[84] Oregon v. Ice, 555 U.S. 160, 163–64 (2009) ("Most States continue the common-law tradition: They entrust to judges' unfettered discretion the decision whether sentences for discrete offenses shall be served consecutively or concurrently.").

of the federal court system,[85] in the absence of a specific trafficking statute with enhanced penalties, it would be possible for a defendant to face only a nominal sentence for trafficking for sexual exploitation unless the victim was a minor.[86]

To facilitate the work of states in responding to the challenge of combatting human trafficking, the Commission on Uniform Statutes formulated a draft statute for states to adopt to combat human trafficking.[87] The focus of the uniform statute is the prevention of trafficking, the protection of victims, and the criminal prosecution of traffickers.[88] At present, at least ten states have enacted some form of the uniform statute.[89] While federal grants are available to state and local governments, Indian tribes, and nonprofit organizations to combat trafficking, the needs of survivors of human trafficking are vast.[90] The burden of ongoing services may reside with state and local governments and nonprofit organizations.

IV.THE ROLE OF CORPORATIONS IN COMBATTING HUMAN TRAFFICKING

A. Corporate Social Responsibility

The issue of the social responsibility of corporations is not a recent one. The subject appears in legal literature going back to the 1980s,[91] as

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[85] *See The United States' Response, supra* note 42, at 344–45.

[86] *See Human Trafficking State Laws*, NAT'L CONF. OF STATE LEGISLATORS, https://www.ncsl.org/civil-and-criminal-justice/human-trafficking-state-laws#Body (Aug. 12, 2020).

[87] PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING ACT (UNIF. L. COMM'N, Proposed Official Draft 2013).

[88] *Id.* at 2–3.

[89] According to the Uniform Laws website Delaware, Louisiana, Montana, New Hampshire, North Dakota, Pennsylvania, Rhode Island, South Carolina, U.S. Virgin Islands, and West Virginia are among the states that have enacted some form of the Uniform Statute on Human Trafficking. Legislative Bill Tracking for Prevention of and Remedies for Human Trafficking Act, UNIF. L. COMM'N, https://www.uniformlaws.org/committees/community-home?CommunityKey=0c541796-903d-450a-bb0e-8485650bf360#LegBillTrackingAnchor (last visited Mar. 31, 2024). For a survey of human trafficking legislation enacted by the states, see generally *Human Trafficking State Laws*, *supra* note 86.

[90] *See* Press Release, U.S. Dep't of Just., Office of Public Affairs, Justice Department Awards Over $90 Million To Combat Human Trafficking And Support Victims (Oct. 26, 2022), https://www.justice.gov/opa/pr/justice-department-awards-over-90-million-combat-human-trafficking-and-support-victims; Dina F. Haynes, *Good Intentions Are Not Enough: Four Recommendations for Implementing the Trafficking Victims Protection Act*, 6 UNIV. ST. THOMAS L.J. 77, 89 (2008); Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, § 107(b)(2)(a) 114 Stat. 1464, 1476 (codified as amended in 22 U.S.C. § 7105).

[91] Julia Tolmie, *Corporate Social Responsibility*, 15 UNIV. NEW S. WALES L.J. 268, 268 n.1 (1992) (citing multiple legal articles on the topic of social responsibility ranging from the 1970s, 1980s, and 1990s).

Julia Tolmie notes in her article on this topic. Tolmie suggests that there are four threads in the corporate social responsibility (CSR) debate.[92] "The first two strands of the debate are aimed at enhancing corporate compliance with the present legal position. The latter two variants question whether corporations should be obliged to do more than they are currently legally required to do."[93] She goes on to point out that

> The substantive welfare considerations which have been suggested as appropriate for this sort of CSR involve a broad range of non-shareholder interests . . . . unrelated to company operations such as those involved in charitable gifts. In between are public concerns which business operations may impact upon, such as the environment, the industry in which the company operates and community interests.[94]

In recent years as the issue of human trafficking has gained increasing public awareness, attention has focused on the role of corporations in combatting human trafficking.[95] It is commonplace that corporations routinely have outsourced the production of goods and services to reduce the costs of labor and production generally.[96] This raises the question of whether corporations are producing goods and services in countries that use child labor or forced labor. As a result, the focus on corporate social responsibility has expanded to consider the role of corporations in human trafficking.[97] As attorney Mark S. Ostrau notes in his practice note entitled "Corporate Social Responsibility and the Supply Chain,"

> A company risks legal, reputational, and economic damage if its suppliers:
> - Engage in illegal or inhumane employment practices.
> - Violate human rights.
> - Cause environmental harm.

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[92] *Id.* at 268–69.

[93] *Id.* at 269.

[94] *Id.* at 270.

[95] *See, e.g.*, Nicola Jägers & Conny Rijken, *Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations*, 12 NW. J. INT'L HUM. RTS., 47, 47–48 (2014) (discussing the need for corporations and businesses to have an active role in preventing human trafficking).

[96] Rajshekhar G. Javalgi et al., *Outsourcing to Emerging Markets: Theoretical Perspectives and Policy Implications*, 15 J. INT'L MGMT. 156, 156–57 (2009).

[97] *See* Stephen John New, *Modern Slavery and the Supply Chain: The Limits of Corporate Social Responsibility?*, 20 SUPPLY CHAIN MGMT.: AN INT'L J. 697, 697–698 (2015); Jägers & Rijken, *supra* note 95, at 47–48.

- Engage in bribery or corruption.[98]

He goes on to point out that

> Recently, foreign factories supplying big retailers like Walmart, J.C. Penney, and H&M have experienced a shocking and tragic rash of deaths from industrial accidents . . . Apple, Inc. is still recovering from accusations that surfaced around 2011 regarding inhumane working conditions at Chinese factories producing iPhones and iPads.
>
> As a result of these and similar tragedies and accusations, companies have been working hard to recover or preserve their consumer popularity. Many US companies have incurred significant costs to drastically change their behavior in response to actual or potential adverse publicity.[99]

B. Supply Chain Transparency

1. Corporate and Organizational Initiatives

A review of select corporate websites illustrates how some corporations have a link that speaks to both the corporation's CSR policy and/or its supply chain transparency policies. Some companies, such as Hershey, make specific reference to the company's position regarding human trafficking.[100] This statement touches upon human rights policy as a supplier code of conduct, as reflected in the "Policies and Governance" section of the statement.

> The Hershey Company recognizes that issues like child labor, forced labor, human trafficking, and other forms of modern slavery are less likely to occur in environments where human rights are respected, governance is strong, and corruption levels are low. As a result, we have a number of foundational standards and expectations that guide our programming and activities in this space . . . .[101]

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[98] Mark S. Ostrau & Ashley C. Walter, *Corporate Social Responsibility and the Supply Chain*, PRAC. L. COM. TRANSACTIONS (Mar. 13, 2020) (last visited July 10, 2021) (initial Practice Note edition referenced on file with author).

[99] *Id.*

[100] *See* Michele Buck et al., *The Hershey Company Statement Against Slavery and Human Trafficking*, HERSHEY (Feb. 2022), https://www.thehersheycompany.com/content/dam/corporate-us/documents/pdf/HSY_Statement_Against_Human_Trafficking_and_Slavery.pdf.

[101] *Id.*

Apple is not alone in confronting adverse publicity regarding corporate responsibility.[102] For example, Nestlé has been severely criticized for its performance in this area.[103] Nestlé's labor policies have been the subject of criticism since the early 2000s.[104] An article published in the International Labor Rights Forum on July 18, 2005, reported that three U.S. companies were being sued on behalf of child workers by the International Labor Rights Fund.[105] The lawsuit claimed that "the companies are indirectly involved in the trafficking, torture and forced labor of Mali children. The lawsuit also claims that the Mali children were beaten and forced to work 12 to 14 hours a day with no pay and little or no food or sleep."[106]

Recently, a lawsuit was filed against Nestlé by six individuals who alleged they were trafficked into Ivory Coast as child slaves to work on the cocoa plantations.[107] The lawsuit was brought under The Alien Tort Claims Act.[108] The case was argued on December 1, 2020, and decided by the U.S. Supreme Court on June 17, 2021.[109] The Court held that the Alien Tort Claims Act did not establish jurisdiction over claims brought against Nestlé for allegedly aiding and abetting slavery abroad.[110]

In the aftermath of the adverse publicity regarding inhumane conditions at the Chinese factories producing its iPhones and iPads, Apple also now displays a very detailed statement of its supplier responsibility

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[102] *See* Christian Peña, *The War on Cocoa: Hershey Co. Accused of Not Upholding Sustainability Efforts in West Africa*, NBC NEWS (Dec. 12, 2020, 6:00 AM), https://www.nbcnews.com/business/business-news/war-cocoa-hershey-co-accused-not-upholding-sustainability-efforts-west-n1250798; Tom Fogden, *Apple's Half-Hearted Commitment to Social Responsibility*, TECH.CO (Apr. 15, 2019), https://tech.co/news/apples-social-responsibility-2019-04; *see also Nestlé's Shady CSR Won't Clean Up Its Filthy Image*, CORP. ACCOUNTABILITY (Jan. 15, 2019), https://corporateaccountability.org/media/nestle-abuse-nps/ (showing that Nestlé is also dealing with adverse publicity in social responsibility).

[103] *See, e.g.*, *Nestlé's Shady CSR Won't Clean Up Its Filthy Image*, *supra* note 102.

[104] *See* Joe Sandler Clarke, *Child Labour on Nestlé Farms: Chocolate Giant's Problems Continue*, THE GUARDIAN (Sept. 2, 2015, 9:34 AM), https://www.theguardian.com/global-development-professionals-network/2015/sep/02/child-labour-on-nestle-farms-chocolate-giants-problems-continuen (describing a child labor scandal in 2005 that lead Nestlé to be criticized for their actions).

[105] Datamonitor NewsWire, *U.S. Food Companies Sued Over Forced Child Labor*, INT'L LAB. RTS. F. (Jul. 18, 2005), https://laborrights.org/stop-child-labor/news/11073.

[106] *Id.*

[107] Nestle USA, Inc. v. Doe, 141 S. Ct. 1931, 1935 (2021).

[108] *Id.*; *see* Alien Tort Claims Act, 28 U.S.C. §1350. This statute provides federal courts jurisdiction to hear claims brought "by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." *Id.*

[109] *Nestle USA, Inc.*, 141 S. Ct. at 1931.

[110] *Id.* at 1940. Note that the Court did not rule on the merits of the substantive claims, only on the jurisdictional issue. *Id.*

code on its website.[111] Similarly, Nestlé has released on its website a document entitled "Nestle's Human Rights Framework and Roadmap: Supporting a Just Transition Toward a Regenerative Food System."[112]

While the timing of the release of this document may be coincidental, one can conjecture that it reflects the company's sensitivity to public opinion as reflected in the amicus brief filed on behalf of the plaintiff/respondents by the Center for Global Justice, an academic center within the Regent University School of Law, which noted that,

> Respondents are victims of trafficking and forced labor. In their complaint, respondents describe being beaten and tortured . . . . They allege that petitioners had "firsthand knowledge" of their suppliers' slaveholding practices, J.A. 318, and that petitioners engaged in a pattern and practice of encouraging the use of child slave labor to obtain cocoa at the lowest possible prices. J.A. 241–42.
>
> Needless to say, American corporations cannot enslave children – or anyone else – within the territorial jurisdiction of the United States. U.S. Const. amend. XIII. But if respondents' allegations are true, then these two American companies have, in essence, outsourced their unspeakably exploitative practices to foreign shores where the rule of law is utterly mocked.[113]

2. Federal and State Legislative Initiatives

Discussion of supply chain transparency up to this point has focused on voluntary initiatives by corporations implementing individual standards and codes, adoption of industrywide codes of conduct or practices and, organizational coalitions such as Fair Trade Associations. There have been initiatives on both the federal and state level to require

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[111] Gethin Chamberlain, *Apple's Chinese Workers Treated "Inhumanely, Like Machines"*, THE OBSERVER (Apr. 30, 2011, 16:30), https://www.theguardian.com/technology/2011/apr/30/apple-chinese-workers-treated-inhumanely; APPLE, INC., APPLE SUPPLIER CODE OF CONDUCT 16–18 (2022), https://www.apple.com/supplier-responsibility/pdf/Apple-Supplier-Code-of-Conduct-and-Supplier-Responsibility-Standards.pdf.

[112] NESTLÉ, NESTLÉ'S HUMAN RIGHTS FRAMEWORK AND ROADMAP: SUPPORTING A JUST TRANSITION TOWARD A REGENERATIVE FOOD SYSTEM 1 (2021), https://www.nestle.com/sites/default/files/2021-12/nestle-human-rights-framework-roadmap.pdf.

[113] Brief for Center for Global Justice et al. as Amici Curiae Supporting Respondents at 3–4, Nestle USA, Inc. v. Doe, 141 S. Ct. 1931 (2021) (Nos. 19–416 & 19–453).

corporations to ensure supply chain transparency.[114] For example, on March 13, 2020, H.R. 6279, "Business Supply Chain Transparency on Trafficking and Slavery Act of 2020" was introduced in the U.S. House of Representatives.[115] The draft legislation posits that,

> (b) SENSE OF THE CONGRESS. – It is the sense of Congress that—
>
> (1) forced labor, slavery, human trafficking, and the worst forms of child labor are among the most egregious forms of abuse that humans commit against each other, for the sake of commercial profit;
>
> (2) the legislative and regulatory framework to prevent goods produced by forced labor, slavery, human trafficking, and the worst forms of child labor from passing into the stream of commerce in the United States is gravely inadequate;
>
> (3) legislation is necessary to provide consumers information on products that are free of child labor, forced labor, slavery, and human trafficking; and
>
> (4) through publicly available disclosures, businesses and consumers can avoid inadvertently promoting or sanctioning these crimes through production and purchase of raw materials, goods and finished products that have been tainted in the supply chains.[116]

If enacted, the legislation would require the Securities Exchange Commission (SEC) to promulgate regulations requiring covered entities to file reports with the SEC annually disclosing "whether the covered issuer has taken any measures during the year for which such reporting is required to identify and address conditions of forced labor, slavery, human trafficking, and the worst forms of child labor within the covered issuer's supply chain, and a description of such measures taken."[117] The contents of the annual reports are detailed in the legislation and further provide for the disclosure on the company website relevant information on

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[114] *See* New York State Transparency in Supply Chains Act, S. 4442, 2023–2024 Reg. Sess. (2023); California Transparency in Supply Chains Act of 2010, CAL. CIV. CODE § 1714.43 (West 2024); Business Supply Chain Transparency on Trafficking and Slavery Act of 2020, H.R. 6279, 116th Cong. (2020) (dealing with supply chain transparency regarding human trafficking).

[115] H.R. 6279, 116th Cong. (2020).

[116] *Id.* §§ 2(b)(1)–(4).

[117] *Id.* § 3(s)(1).

its "Global Supply Chain Transparency,"[118] and a list of covered issuers on the SEC website in a searchable format.[119] This legislation has been referred to the House Committee on Financial Services.[120] To date no further action appears to have been taken on it.[121]

Some states have also enacted legislation on supply chain transparency.[122] For example, California has had such legislation in effect since 2012.[123] This legislation applies to both retailers and manufacturers who are doing business within the State of California whose worldwide gross receipts are $100,000,000.[124] Covered businesses are required "to disclose information regarding their efforts to eradicate human trafficking and slavery within their supply chains on their website or, if a company does not have a website, through written disclosures."[125] The disclosures are required to cover the company's efforts in the areas of verification, audits, certification, internal accountability, and training.[126]

> Specifically, in its supply chains disclosure, a company must disclose to what extent, if any it:
>
> 1. Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.
>
> 2. Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.
>
> 3. Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding

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[118] *Id.* § 3(s)(2)(A).

[119] *Id.* § 3(s)(2)(B).

[120] H.R. 6279.

[121] *All Actions: H.R.6279 – 116th Congress (2019-2020)*, CONGRESS.GOV, https://www.congress.gov/bill/116th-congress/house-bill/6279/all-actions?s=1&r=6 (last visited Feb. 19, 2024). For an in-depth discussion of prior congressional attempts to enact legislation on this issue, see generally Sophia Eckert, *The Business Transparency Act on Trafficking and Slavery Act: Fighting Forced Labor in Complex Global Supply Chains*, 12 J. INT'L BUS. & L. 383 (2013).

[122] *See, e.g.*, New York State Transparency in Supply Chains Act, S. 4442, 2023–2024 Reg. Sess. (2023); *see also, e.g.*, California Transparency in Supply Chains Act of 2010, CAL. CIV. CODE § 1714.43 (West 2024).

[123] CIV. § 1714.43.

[124] Explanation of The California Transparency in Supply Chains Act, OFF. OF THE ATT'Y GEN., https://oag.ca.gov/SB657 (last visited Feb. 19, 2024) [hereinafter California Att'y General Explanation].

[125] *Id.*

[126] *Id.*

> slavery and human trafficking of the country or countries in which they are doing business.
>
> 4. Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.
>
> 5. Provides company employees and management, who have direct responsibility to supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.[127]

While this legislation is a first step in informing consumers whether they are purchasing products in which human trafficking victims are employed, it applies only to retailers and manufacturers with worldwide gross receipts of $100,000,000.[128] It would not apply to entities whose receipts were solely domestic and which fell below the $100,000,000 threshold.[129]

C. The Fair Trade Movement

Corporate social responsibility and supply chain transparency are concepts that focus on steps taken by individual companies and corporations to combat human trafficking and other human rights violations within their operations.[130] Corporations also may participate in codes that set standards to combat human trafficking on an industrywide basis.[131] For example, in the hospitality industry some hotels have partnered with Polaris Project, an NGO, to implement practices to ensure that their hotels are not used to harbor or exploit victims of sex trafficking.[132] In his article "Human Trafficking: What Hospitality Organizations are Doing," Samuel Wich reports "[i]t has become a standard for global hotel companies to issue a slavery or human trafficking statement containing the organization's commitment to combat the issue. These statements are important in establishing and

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[127] *Id.*

[128] *Id.*

[129] *See id.*

[130] Vera Gracheva, *Why Corporate Social Responsibility Matters in the Fight Against Human Trafficking*, 19 TRANSATLANTIC POL'Y Q. 41, 45–46 (2020) available at http://turkishpolicy.com/article/1009/why-corporate-responsibility-matters-in-the-fight-against-human-trafficking; *see What Is Supply Chain Transparency, and Why Is It Important?*, SEDEX, https://www.sedex.com/blog/what-is-supply-chain-transparency-and-why-is-it-important/ (last visited Feb. 26, 2024).

[131] Gracheva, *supra* note 130.

[132] *Hotel Companies Step Up to Fight Human Trafficking*, POLARIS PROJECT (Jan. 16, 2019), https://polarisproject.org/blog/2019/01/hotel-companies-step-up-to-fight-human-trafficking.

overseeing a working strategy for companies' due diligence processes, risk identification and management, and training awareness."[133]

These corporate and industry efforts may be supplemented by Fair Trade initiatives which generally involve participation by a variety of entities and individuals.[134] The Fair Trade Movement describes itself as

> a trading partnership, based on dialogue, transparency and respect, that seeks greater equity in international trade. It contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalized producers and workers – especially in the South. Fair Trade Organizations, backed by consumers, are engaged actively in supporting producers, awareness raising and in campaigning for changes in the rules and practice of conventional international trade.[135]

A consumer may have already encountered the Fair Trade movement when buying certain products. For example, Starbucks coffee is served in cups that bear the Fair Trade Mark and may indicate that the coffee is produced under fair labor conditions.[136] An interested consumer can easily access a list of Fairtrade certified producer organizations and traders and Fairtrade licensees around the world by accessing the "Fairtrade Finder" internet site.[137]

While these initiatives show promise in advancing the cause of corporate social responsibility, they are aspirational and voluntary.[138] It lies with the respective corporations and organizations to make sure that the goals to which they have committed themselves are carried out in fact.

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[133] Samuel Wich, *Human Trafficking: What Hospitality Organizations are Doing*, EHL INSIGHTS (Apr. 23, 2019), https://hospitalityinsights.ehl.edu/human-trafficking-hotel-industry.

[134] WORLD FAIR TRADE ORG., THE INTERNATIONAL FAIR TRADE CHARTER 10 (2018), https://www.fair-trade.website/_files/ugd/291e20_d0760267b37a41328b80e4df127f85cb.pdf.

[135] *Id.* at 11.

[136] *Starbucks Serves Up Its First Fairtrade Lattes and Cappuccinos Across the U.K. and Ireland*, STARBUCKS STORIES & NEWS (Sept. 1, 2009), https://stories.starbucks.com/stories/2009/starbucks-serves-up-its-first-fairtrade-lattes-and-cappuccinos-across-the-u/.

[137] *See Fairtrade Finder*, FAIRTRADE INT'L, https://www.fairtrade.net/finder (last visited Feb. 26, 2024).

[138] Gracheva, *supra* note 130.

V. THE ROLE OF THE CONSUMER

A goal of the federal and state supply chain legislative initiatives is to better inform consumers.[139] As Rob Bonta, the Attorney General of California at the time, noted in his release on "The California Transparency in Supply Chain Act",

> In enacting the Transparency in Supply Chains Act, the California Legislature found that slavery and human trafficking are crimes under state, federal, and international law; that slavery and human trafficking exist in the State of California and in every country, including the United States; and that these crimes are often hidden from view and are difficult to uncover and track. (S.B. 657, §2, subds. (a)–(c).) The Legislature also found that consumers and businesses are inadvertently promoting and sanctioning these crimes through the purchase of goods and products that have been tainted in the supply chain, and that, absent publicly available disclosures, consumers are at a disadvantage in being able to distinguish companies on the merits of their efforts to supply products free from the taint of slavery and trafficking. (S.B. 657, §2, subds.(h),(i).) In passing the Transparency in Supply Chains Act, the Legislature declared the intent of the State of California to ensure that large retailers and manufacturers provide consumers with information regarding their efforts to eradicate slavery and human trafficking from their supply chains, educate consumers on how to purchase goods produced by companies that responsibly manage their supply chains, and, thereby, improve the lives of victims of slavery and human trafficking. (S.B. 657, §2, subd. (j).)[140]

Over the past two decades, the amount of information on human trafficking and child labor that has been disseminated on the internet has increased significantly.[141] Information is available on companies whether they are mandatory or voluntary reporters of the company's supply chain

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[139] *See* New York State Transparency in Supply Chains Act, S. 4442, 2023–24 Reg. Sess. (2023); California Transparency in Supply Chains Act of 2010, CAL. CIV. CODE § 1714.43 (West 2024); Business Supply Chain Transparency on Trafficking and Slavery Act of 2020, H.R. 6279, 116th Cong. (2020).

[140] California Att'y General Explanation, *supra* note 124.

[141] MARK LATONERO ET AL., TECHNOLOGY AND LABOR TRAFFICKING PROJECT 11–12 (2014), https://bpb-us-e1.wpmucdn.com/sites.usc.edu/dist/e/695/files/2014/06/Annenberg-Tech-and-Labor-Trafficking-Framing-Document-June-27-2014.pdf.

transparency policies.[142] A consumer can select a company and go to its website. If it falls within the jurisdiction of a state supply chain statute, there should be a link on the company's website that directs the consumer to information on its supply chain transparency.[143] The consumer can (1) assess whether the company's supply chain transparency provisions are sufficiently detailed to provide for verification of product supply chains, (2) conduct audits of suppliers to ensure supplier compliance, (3) require that direct suppliers certify compliance with the laws regarding trafficking and slavery of the country in which the supplies originate, (4) maintain internal accountability standards for employees and contractors, and (5) provide training for employees and management that have direct responsibilities for supply chain transparency.[144]

There are some products that are known to use child labor or forced labor in their production.[145] Not all the companies that manufacture or sell these products may be covered by a supply chain transparency statute. However, the individual consumer can still research such companies. A good starting point would be the company's website. Does the company website provide information on its corporate social responsibility policy? Does this policy include a commitment to supply chain transparency?

In the absence of a statement on either issue, the consumer can check the U.S. Department of Labor website for an updated list of products produced using forced or child labor.[146] That list includes both agricultural and manufactured products.[147] The list is organized by country of production, type of goods, and type of exploitation.[148] For example, on the 2022 list, the entry for Vietnam indicates that "Bricks, Cashews, Coffee, Fish, Footwear, Furniture, Leather, Pepper, Rice, Rubber, Sugarcane, Tea, Textiles, Timber, [and] Tobacco" are produced by child labor,[149] and garments are produced using both child labor and forced labor.[150] A consumer can check the manufacturer's labels in the garments sold in

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[142] *See* California Att'y General Explanation, *supra* note 124 (explaining that if the company meets the criteria set out in the legislation, then the company is a mandatory reporter but if the company does not meet the criteria, it is a voluntary reporter).

[143] *See id.* For example, this information can be found at the link labeled "Slavery and Human Trafficking Statement" at the bottom of the Hershey's About Us page. HERSHEY, https://www.thehersheycompany.com/en_us/home/about-us.html (last visited Mar. 18, 2024).

[144] California Att'y General Explanation, *supra* note 124.

[145] THEA LEE ET AL., U.S. DEPT. OF LAB.'S BUREAU OF INT'L LAB. AFFS., 2022 LIST OF GOODS PRODUCED BY CHILD LABOR OR FORCED LABOR 24–29 (Suteera Nagavajara et al. eds., 2022).

[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] *Id.* at 28.

[150] *Id.*

Walmart, or Target, or H&M to see where they are manufactured.[151] If the clothing is manufactured in Vietnam, then the DOL list indicates there is a strong possibility that it is manufactured using child or forced labor.[152]

Suppose a product is produced abroad but does not appear on the DOL list, a consumer can still check out the general reputation of the country of origin of the product regarding its efforts to combat human trafficking. For example, Casio imports hand-held calculators that are made in Thailand.[153] Electronics do not appear on the DOL list of products made in Thailand that are produced using forced or child labor.[154]

A link on Casio's website provides the company's California Transparency in Supply Chains Act of 2010 disclosure in which Casio makes the following representations:

> Casio America, Inc. ("Casio") values and selects business partners that produce quality products in an ethical and safe manner.
>
> Casio is continually implementing and improving policies and procedures designed to ensure a secure and safe supply chain. Casio rejects the use of slave labor or human trafficking including forced labor or child labor, in its supply chain.
>
> To this end, it has developed and is implementing a Code of Conduct that all suppliers will be required to follow. Casio's compliance program also includes verification of our product supply chain by means of announced and unannounced audits of our suppliers' facilities by independent third-party auditors and Casio personnel to evaluate compliance. All Casio direct suppliers will be required to certify that materials used in the production of products comply with applicable employment and human rights laws. Casio will provide company employees and management, who have direct responsibility for supply chain management training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.
>
> Casio expects all suppliers to act in an ethical and socially responsible manner and to comply with Casio's Code of Conduct.

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[151] *See* 15 U.S.C. §§ 70b(b)(4), 70g (code requiring all imported fiber textile goods to be labeled with country of origin).

[152] *See* LEE ET AL., *supra* note 145, at 28.

[153] *Casio Thailand to Begin Production of Calculators and Electronic Dictionaries*, CASIO (Apr 22, 2014), https://arch.casio.com/news/2014/0422_casio_thailand/.

[154] LEE ET AL., *supra* note 145, at 28.

> Should a supplier, sub-contractor, sub-supplier or service provider fail to meet Casio's standards, appropriate and timely corrective action shall be implemented. Failure to do so can result in the cancellation of contracts and/or termination of the business relationship.
>
> Casio is committed to social responsibility and conducts internal training focused on ethical sourcing, manufacturing, and labor practices.[155]

If a consumer wants to verify whether the statement of policy is an accurate reflection of Casio's corporate behavior regarding electronics, such as calculators, he or she may want to take the inquiry one step further. The TVPA of 2000 requires the U.S. Department of State to publish a report each year entitled the Trafficking in Persons Report (TIP Report).[156] The TIP Report evaluates the progress made by individual countries in combating human trafficking.[157] The countries are ranked by the Secretary of State in the TIP Report as Tier 1, Tier 2, tier 2 Watch List, and Tier 3.[158] These tiers denote the following.

> The Tiers
>
> Tier 1: Countries and territories whose governments fully comply with the [TVPA of 2000] Act's minimum standards.
>
> Tier 2: Countries and territories whose governments do not fully comply with the Act's minimum standards but are making significant efforts to bring themselves into compliance with those standards.
>
> Tier 2 Watch List: countries and territories whose governments do not fully comply with the Act's minimum standards but are making significant efforts to bring themselves into compliance with those standards, and:

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[155] *California Transparency in Supply Chains Act of 2010 Disclosure*, CASIO, https://www.casioca.com/support/our-suppliers (last visited Mar. 11, 2024). For similarly detailed statements of supply chain transparency, see Rafael R. Lizardi, *Anti-Human Trafficking Statement,* TEX. INSTRUMENTS (Sept. 2023), https://www.ti.com/lit/ml/sszo047d/sszo047d.pdf?ts=1649775961731; *Responsible Sourcing,* NORDSTROM, https://www.nordstrom.com/browse/nordstrom-cares/human-rights/ethical-business (last visited Mar. 31, 2024).

[156] 22 U.S.C. §7107(b)(1).

[157] *Id.*

[158] U.S. DEP'T OF STATE, 2021 TRAFFICKING IN PERSONS REPORT 51–53 (2021)[hereinafter 2021 Trafficking in Persons Report].

> a) The estimated number of victims of severe forms of trafficking is very significant or is significantly increasing and the country is not taking proportional concrete actions; or
>
> b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year.
>
> Tier 3: Countries and territories whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.[159]

The TIP Report includes reports on individual countries and their tier ranking.[160] Thus, even though Thailand does not appear to use child labor to manufacture its calculators, by accessing the individual country report on Thailand in the most recent TIP Report, a consumer can determine the extent to which Thailand generally is complying with the minimum standard for combatting trafficking set forth in the TVPA of 2000.[161] According to the 2021 Report, Thailand has dropped from Tier 2 to Tier 2 Watch List since the 2020 TIP Report.[162] The reason for this is as follows.

> The Government of Thailand does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. These efforts included taking steps to improve coordination with civil society in trafficking investigations and victim protection, organizing trainings and workshops for prosecutors and judges on trauma-informed procedures, and initiating investigations of nine officials allegedly complicit in trafficking crimes. The government created working groups to consider adopting a reflection period for victims and a national referral mechanism and institutionalized the police division dedicated to combatting the online sexual exploitation of children. However, the government did not demonstrate overall increasing efforts compared to the previous reporting period, even considering the impact of the

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[159] Off. to Monitor & Combat Trafficking in Persons, *Report to Congress on 2021 Trafficking in Persons Interim Assessment Pursuant to the Trafficking Victims Protection Act*, U.S. DEP'T OF STATE (Jan. 7, 2021), https://www.state.gov/report-to-congress-on-2021-trafficking-in-persons-interim-assessment-pursuant%20-to-the%20trafficking-victims-protection-act/.

[160] *Id.*

[161] *See 2023 Trafficking in Persons Report: Thailand*, U.S. DEP'T OF STATE, https://www.state.gov/reports/2023-trafficking-in-persons-report/thailand/.

[162] *Compare* 2021 TRAFFICKING IN PERSONS REPORT, *supra* note 158, at 67 (listing Thailand under Tier 2 watchlist), *with* U.S. DEP'T OF STATE, 2020 TRAFFICKING IN PERSONS REPORT 55 (2020) (listing Thailand under Tier 2).

> COVID-19 pandemic on its anti-trafficking capacity. The government initiated significantly fewer trafficking investigations, prosecuted fewer suspects, and convicted fewer traffickers than in 2019. Despite widespread reports that forced labor was prevalent among migrant workers in many industries in Thailand, the government identified a low number of labor trafficking victims compared to the scope of the problem, officials often lacked an understanding of labor trafficking, and the government lacked standard procedures for labor inspectors to refer potential cases to law enforcement. Thai authorities have never reported identifying a victim of labor trafficking as a result of fishing vessel inspections conducted at ports. The government's provision of services to victims remained inadequate, and some victims residing in government shelters lacked freedom of movement. Corruption and official complicity continued to impede anti-trafficking efforts, and the government convicted five complicit officials in 2020. Therefore, Thailand was downgraded to Tier 2 Watch List.[163]

In other words, despite the fact that Casio has a detailed statement of its corporate social responsibility policies on its website, one of its products is being produced in a country whose performance in combatting forced labor has been downgraded on the TIP Report tier ranking system. For reasons of decreased enforcement efforts, there is a lack of awareness of many officials of the magnitude of the problem, and government corruption. To get a complete picture of the status of combatting human trafficking in Casio's supply chain, consumers would be well advised to probe a bit deeper and consider more than one governmental source.

VI. CONCLUSION

On October 27, 2021, the U.S. House of Representatives House Foreign Affairs Committee held hearings on human trafficking.[164] One of the witnesses, Alex Thier, noted that we are at the crossroads in the fight to end human trafficking.[165] The costs are both social and economic. As Alex Thier noted in his testimony,

> Human trafficking has enormous long term economic and social consequences for its victims and enormous costs for society. It robs the economic contributions of millions, often creating a lifetime of trauma, underemployment, and socio-economic

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[163] 2021 Trafficking in Persons Report, *supra* note 158, at 544.

[164] *Combating Global Human Trafficking: Hearing Before the Subcomm. on Afr., Glob. Health, & Glob. Hum. Rts. of the H. Comm. on Foreign Aff.*, 117th Cong. 1 (2021).

[165] *Id.* at 7.

> hurdles. It disproportionately affects women and girls, overwhelmingly the victims of commercial sexual exploitation and other major areas like domestic work. Women in forced labor are often subjected to sexual violence even when not forced into sex trafficking. The long-term costs to society in dealing with trafficking – from prosecution, to corruption, to lost taxes, to psycho-social care are significant – and far higher per person than the cost of preventing trafficking. Human trafficking is also enormously costly to the environment. Many industries with a high prevalence of forced labor are among the most environmentally destructive, while several industries that are key to addressing climate change are also exposed to forced labor. Climate change is becoming a major driver of vulnerability and migration, and it will lead to many more being exploited by traffickers.
>
> In the other direction at this crossroads, we see the potential for serious progress in the passion and creativity of a global movement of people, governments, civil society, and companies.[166]

What is the takeaway of all this? It is that, when all is said and done, we are all our brothers' and sisters' keepers. We are all stakeholders, whether directly or indirectly, in the battle to eliminate trafficking in human beings. We all have a vested interest in a campaign to combat human trafficking that involves the collaboration of international organizations, nation states, political subdivisions within nation states, corporations, and individual consumers. Only by working collaboratively can we hope to reduce the incidence of human trafficking and its deleterious effects on individuals, societies, and the environment by dismantling the systems that perpetuate it.[167]

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[166] *Id.* at 10.
[167] *Id.* at 10–11.