

U.S. Immigration and Human Trafficking Overlap

This paper examines the current overlap between the U.S. immigration system and human trafficking, specifically focusing on how these disjointed policy areas may result in negative outcomes for both immigrants and victims of trafficking (VoT). It shall argue that the U.S. government must reconcile these two interconnected policy areas in order to adequately protect migrant VoTs.

The aim of this study is to demonstrate how an express focus on anti-immigration can directly impact the identification and experiences of trafficked victims by analyzing the ways that the victim-protection aspects of the Victims of Trafficking and Violence Protection Act of 2000 (TVPA) is hindered by temporary work visa programs that permit greater exploitation of foreign nationals, state-level variance of immigration policies and enforcement strategies, and anti-immigration objectives that are, in part, fueled by prevailing restrictionist sentiment across the country. This paper contributes to the extant literature by providing an analysis of how a lack of coordination between the fields of immigration and human trafficking is detrimental to migrant VoTs. Securing U.S. borders is a vital aspect of national security, but when protecting citizens and the state converges with transnational human rights issues, a re-examination of current immigration practices and programs from a humanitarian perspective is necessary for addressing the consequences that inadvertently compound the suffering of VoTs.

This study is divided into five parts. The first part provides a brief overview of the overarching way immigration and human trafficking intersect, setting the stage for a discussion of the specific aspects of the U.S. immigration system that negatively impact VoTs. The second part outlines the different worker visa programs that traffickers have used to exploit foreign workers. In the third part, we discuss how conflicting anti-immigration and anti-trafficking

agendas combined with an emphasis on restriction by the general public and state-level variation of immigration enforcement practices all contribute to the maintenance of the existing order, where the deportation of illegal immigrants prevails over the protection of potential victims. Prioritizing one group over another has implications for administrative agencies in charge of distributing resources and for law enforcement agencies that oversee both interior and exterior security. The fourth part recommends a few steps that legislators might take to consolidate these two policy areas, while taking into account typical resistance to large-scale reform. The paper concludes with a summary of the main points discussed.

Immigration and Human Trafficking

Understanding the intersection between immigration and trafficking first requires an operational definition of terms such as “smuggling” and “trafficking” as the media tends to use them interchangeably. According to the 2000 U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, also known as the Palermo Protocol,¹ *trafficking in persons* is “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception... for the purpose of exploitation.” *Exploitation*, in the Palermo Protocol, specifically includes “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.” *Smuggling* involves “the procurement for financial or other material benefit of illegal entry of a person into a State of which that person is not a national or resident.”² Trafficking explicitly involves exploitation and does not discriminate against individuals due to their citizenship status, whereas smuggling focuses on foreign nationals who voluntarily enter another country illegally. Although smuggling situations can transform into instances of human trafficking, they are fundamentally different

activities that require contrast in order to better grasp the nuances between the two policies areas discussed in this paper.

The Victims of Trafficking and Violence Protection Act (TVPA) criminalized human trafficking and related activities, combatting the issue through a “3-P” approach—prevention, protection, and prosecution.³ Unlike other crimes, human trafficking has only recently been codified and brought to public attention because of growing concerns regarding the impact of globalization and transnational migration. Technological advancements and friendlier multilateral relations facilitate cross-border movement. Ease of entry naturally raises several national security concerns, which the U.S. government has typically addressed via increased investment into border enforcement over the last three decades.

Immigration has divided policy makers and the electorate for decades. Unauthorized immigration, in particular, is one aspect of immigration that has been heatedly debated. Unauthorized border crossings have been the leading theme in immigration rhetoric for years. The immediate and gradual consequences that immigration policies can have on citizens and non-citizens alike make tackling policy areas that intersect with immigration difficult. The need for immigration reform has been discussed heavily in scholarly literature,⁴ but due to how time-consuming and politically fraught implementing even small changes are, transforming recommendations into action is difficult. The lack of updated guidance presents challenges to federal and local law enforcement officials that are expected to simultaneously combat complex issues like the smuggling of weapons and drugs, human trafficking, and illegal immigration.

Human trafficking is a ceaseless, global business that involves the exploitation of individuals. Due to the private nature of trafficking, it is impossible to get an accurate estimate of the number of victims trafficked domestically and abroad. Gargi Bhattacharya stated in his book,

Traffick: The Illicit Movement of People and Things, that “the tension between the need for population movement... and state prohibitions against immigration led to where we are now.”⁵ In America, trafficking is considered another form of population movement and is thus placed under the jurisdiction of immigration agencies. While the growing human trafficking dilemma has become more salient in recent years, responses that prioritize human rights tend to be eclipsed by long-standing immigration priorities that favor law enforcement solutions like migrant arrest and deportation.⁶ Due to this, victim-centered responses have either been fragmented or sidelined by institutions on account of the broader concern for illegal immigration.

The overt link between security and immigration dates back to the creation of the Immigration and Naturalization Services (INS) in 1933. The INS merged immigration, border enforcement, and citizenship all into one agency. This arrangement persisted even when the INS was replaced by the Department of Homeland Security (DHS) in 2003 and most of its functions were delegated to various sub-agencies within the DHS such as the U.S. Customs and Border Protection (CBP) and the U.S. Immigration and Customs Enforcement (ICE). The convergence of immigration and security has resulted in an increase in the type of crimes resulting in deportation. Actions by immigrants that were previously seen as civil violations have become criminal offenses.⁷ Citizens or permanent residents that commit serious crimes may have their rights restricted, while undocumented immigrants, regardless of their connections in the country, have no constitutional protections against arrest and deportation. This reflects the broader public view of immigration as a “contract,” whereby immigrants admitted into the country tacitly agree not to commit any serious offenses.⁸ This directly impacts policy. Immigration law is no longer structured in such a way that views immigrants as future citizens, rather it is based on the notion that foreigners must legally earn their equality.⁹

Shifts in immigration policy directly affects traffickers and their victims. For example, stricter enforcement along U.S. borders may make smuggling costs more expensive, and fleeing migrants that utilize these illicit networks may be at an increased risk of exploitation through debt bondage. Human trafficking victimizes all persons, but certain groups are at increased risk due to economic inequalities, citizenship status, social isolation, armed conflict, gender inequality, and other social factors that drive individuals to leave their homes in search of opportunities elsewhere.¹⁰ The intricate dynamic between the push and pull factors that fuel individual desire to move between territories limns the fact that stories of trafficking are also stories of migration.¹¹

Worker Visa Programs

Human trafficking is a serious humanitarian issue, but because of the moral dilemmas associated with it, the mere mention of trafficking of persons and victim exploitation can distract from the structural causes within the American immigration system that drive this underground business. Specifically, it diverts attention from the federal loopholes that exist between immigration and employment. Stephanie Hepburn and Rita Simon state in their book, *Human Trafficking around the World: Hidden in Plain Sight*, that while “U.S. anti-trafficking laws are adequately stringent, the nation’s visa programs reflect conflicts between its anti-trafficking and immigration agendas.”¹²

The two most notable examples of exploitable worker visas are the H-2A and the H-2B visa programs. The former allows qualified U.S. employers to bring non-citizens to fill temporary agricultural positions, while the latter allows U.S. employers to bring non-citizens in for seasonal non-agricultural work.¹³ Both of these visa programs tie workers to a specific employer. When legal employment in a foreign country is tied to a single employer, workers are

at heightened risk for exploitation.¹⁴ High demand for cheap labor and an inability to leave a job because of possible changes in immigration status, fear of harm, debt bondage, or physical and psychological abuses all contribute to the likelihood that fiscally disadvantaged migrants will find themselves in exploitative situations in which there is little chance of escape upon coming to the United States. Furthermore, the lack of investment into more efficient monitoring mechanisms for temporary worker visa programs and unaccompanied minors or administrative enhancements that would ease the load of overburdened immigration agencies exacerbates human trafficking issues.

Bridge Anderson and Rutvica Andrijasevic argue in their article, “Sex, Slaves, and Citizens: The Politics of Anti-Trafficking,” that the state is “complicit in permitting third parties to profit from migrants’ labor... [it is important to] address the role played by the state’s immigration and labor regulations in creating the conditions in which trafficking and the exploitation of migrant labor are able to flourish.”¹⁵ There is a blurry line between VoTs and smuggled migrants that cross the border of their own volition. That line is worsened by legislators that turn a blind-eye to companies complicit in trafficking for reasons like political preservation; by law enforcement officers that do not receive sufficient training in identifying the signs and complex interpersonal dynamics of trafficking; and by legal loopholes within federal labor regulations that continue to exist because the issue of labor trafficking simply is not as salient to the general public.

In addition to the H-2A and H-2B visa programs, there are five other programs that are associated with trafficking—J-1, F-1, A-3, G-5, and B-1.¹⁶ The J-1 visa program allows foreign migrants to work in the U.S. for educational purposes; they are sponsored either by universities or companies that are responsible for their job placement. J-1 visa-holders are especially easy to

exploit because they are only in the country for a short period of time, and they must receive permission from their sponsor to change employers.¹⁷ F-1 visas are specifically for international students coming to the United States to obtain an education. Due to social isolation, discrimination, the high cost of education, and general unfamiliarity with American culture, F-1 visa students are at heightened risk of exploitation by traffickers.

The A-3 and G-5 visa programs are for foreign domestic workers of diplomats and officials of international organizations. The issue of working in private households makes it difficult to determine whether a domestic worker is being abused or exploited. Furthermore, prosecuting foreign diplomats can be problematic because they may be qualified for diplomatic or consular immunity.¹⁸ Lastly, B-1 visas permit short periods of travel to the U.S. for business purposes. Since B-1 visas are meant to facilitate short-term trips, they may be obtained through a faster and less intense investigative process than other work visas.¹⁹ Notably, a subcategory of this visa authorizes individuals to work in the U.S. if they receive a work permit.

Conflicting Agendas and Restrictionist Priorities

At the core of anti-trafficking and immigration protocols lies human rights protection, citizenship rights, enforcement cooperation, and border security. While provisions of the TVPA were specifically intended to alleviate some of the trafficking consequences of immigration and labor laws,²⁰ it has been hindered—if not, at times, completely overshadowed—by the competing goal of restriction. The U.S. is a nation of immigrants, but at the same time, it has always been a country with robust nativist traditions that excludes foreigners from many forms of societal participation.²¹ According to the DHS, the U.S. has deported over 200,000 aliens annually since 2003. The U.S. has also returned and arrested over ten million aliens since 2000.²² These historically high numbers coincide with the implementation of comprehensive deportation

programs such as the Secure Communities Program in 2008 (restarted again in 2017 by President Donald Trump) and the Priority Enforcement Program in 2014—both of which underscore federal-state immigration enforcement cooperation.²³

The Immigration and Customs Enforcement (ICE) has also traditionally used arrest quotas for their mass immigration raids. According to a report by the Migration Policy Institute, tracking teams within the National Fugitive Operations Program (NFOP) had to arrest 1,000 fugitives per year beginning in 2006.²⁴ Despite the threat to public safety rationales often stressed by supporters for restrictive immigration laws, many of these arrests were non-criminal aliens. In a human trafficking context, police officers concerned about meeting quotas may willfully choose easy targets or disregard signs of human trafficking to detain undocumented immigrants for deportation proceedings. This was illustrated in a 2008 North Dakota case in which ICE officers deliberately targeted over twenty VoTs cooperating in a federal investigation against their trafficker, Signal International, LLC. The targeted workers were among 500 that were trafficked to the U.S. following Hurricane Katrina in 2005 through the H-2B visa program. Throughout their trafficking experience, they were subjected to discrimination and squalid living conditions.²⁵ Despite statements that the workers were victimized by their employer and requests for legal counsel, ICE agents prioritized their persecution.²⁶

Restrictive immigration policies and programs are not specific to the twenty-first century. Saliency of immigration and related issues rises and falls depending on the broader political climate. While it might appear that U.S. immigration laws have become more severe in recent years due to growing political insensitivity and the ramping up of enforcement capabilities following the tragic September 11 terrorist attacks, strict immigration policies date back to the first citizenship law; the 1790 Naturalization Act, which limited citizenship to free, white males.

There are numerous examples of restrictive laws throughout the centuries that followed—the 1882 Chinese Exclusion Act, the 1903 Anarchist Exclusion Act, the 1917 Asiatic Barred Zone Act, the 1924 Johnson-Reed Act, the list of examples goes on—all of which are important to consider when analyzing how the US immigration system has changed throughout the years and why there is such an emphasis on limited avenues for citizenship and greater border security controls. In stark contrast to what America’s collective representations like the Statue of Liberty signify, most immigration laws work to restrict groups of people living both inside and outside of the United States. In fact, for the U.S., exclusionary immigration policies may even be considered standard.²⁷

National efforts to block legal immigration has consequences for citizens and non-citizens. Executive Orders like the 2017 Executive Order “Buy American and Hire America” can send jobs and financial investments out of the country.²⁸ According to Britta Glennon, “multinational U.S. companies have already offshored tens of thousands of jobs and opened new foreign affiliates in response to H-1B visa restrictions much less severe than those currently being implemented.”²⁹ An outpouring of resources abroad feeds into a cycle that further disadvantages already vulnerable subsets of the population. Strict regulation of who and who cannot enter a country has important implications for human trafficking. When it is too difficult to enter a country legally or to process documents without the help of a third party, this creates an opportunity for traffickers to exploit vulnerable populations.

Variance of domestic legislation among the states also puts certain groups at heightened risk. Although states cannot change federal immigration statutes, they can pass legislation that can limit federal-state enforcement cooperation and accommodate or deter coming migrants.³⁰ This has shaped the diverse landscape of “sanctuary” and “risk” zones across America today.³¹

State differences ultimately affect the freedom traffickers have to operate within a particular area, the capabilities of law enforcement, and even the behavior of VoTs. Research has shown that there is rampant police mistrust among immigrants when local law enforcement officials enforce federal immigration law.³² Hostile immigration enforcement practices and restrictive policies on the state-level can even cause legal immigrants to behave in similar ways as unauthorized immigrants.³³ In addition, some VoTs, especially those that are a part of marginalized ethnic groups, may opt not to report their situation for fear of stereotyping, deportation, or prosecution by immigration officials; such fears may even be used against them by their traffickers.

Some scholars have examined the effect of anti-immigrant sentiment in shaping public support for anti-trafficking efforts and found that while anti-immigration advocates support anti-trafficking initiatives and acknowledge that immigrants may be more vulnerable to trafficking, they are simultaneously less supportive of services that work to protect trafficked migrants.³⁴ This reflects Congressional attitudes as well; anti-trafficking bills typically receive bipartisan support, but any mention of immigration often results in swift gridlock. This may be due to broader depictions of immigrants in the media, as well as disassociation between what a human trafficking victim is supposed to look like and what an illegal immigrant looks like and, notably, *does*. For example, someone may believe that illegal immigrants steal jobs and constantly do work for pennies, thus whatever atrocious employment situation they find themselves in cannot be an instance of trafficking. During times of economic prosperity, migrants are often welcomed into the country for their complementary skills and labor, but during times of economic deprivation, border controls are constricted to “save” the jobs of domestic workers. Such negative stereotypes against various groups of people can have detrimental consequences for all

immigrants of the same race or ethnicity, regardless of their citizenship status. If they were trafficked, it may also marginalize their experiences as victims, resulting in poor post-trafficking care. In some cases, the negative stereotypes of police officers—particularly toward minorities that cannot speak English proficiently—have caused them to believe the trafficker’s version of events over the victim’s, despite signs of abuse and fear.³⁵ For states that are genuinely concerned about reducing trafficking cases within their territories and not just using anti-trafficking legislation as a means to gain more control in immigration-related matters,³⁶ they will need to ensure that their policies are flexible enough to consider diverse circumstances and do not in any way undermine already vulnerable minority communities.

The overwhelming focus on illegal immigration among legislators and the electorate presents additional challenges. The number of VoTs mistakenly detained as undocumented immigrants and subsequently arrested or deported is impossible to ascertain. Most undocumented immigrants enter the country legally,³⁷ yet the federal government continues to invest significant resources into border and interior enforcement programs. Federal agencies prosecute hundreds of thousands of immigration offenses every year, but increased enforcement does not automatically equate to significant reductions in trafficking.³⁸ Cases of individuals deported by ICE for trafficking offenses, while on the rise, still make up only a small portion of the overall removal statistics.³⁹ Within the social science literature, there are authors that suggest that there is considerable overlap between victims and offenders.⁴⁰ Quick removal of individuals for trafficking offenses without a thorough evaluation of whether they were also, at one point, trafficking victims disregards the protection paradigm of the TVPA. It is also vital to consider how hyper-focusing on illegal immigration may worsen trafficking issues. Increased interior efforts to identify undocumented immigrants naturally makes non-citizens more vulnerable and

more wary. This can, in turn, exacerbate racial, ethnic, and tribal tensions among communities. Such tensions may degrade immigrant integration and encourage the enactment of state ordinances that promote racial stereotyping such as Arizona's controversial Support Our Law Enforcement and Safe Neighborhoods Act, which empowers local authorities to verify the immigration statuses of detained or arrested persons that they suspect of being in the U.S. illegally.⁴¹ Furthermore, because the problem of human trafficking takes a back seat in the eyes of police, trafficking victims may not be given the proper protection and post-care that they need—if they are acknowledged as VoTs at all.

Immigration legislation shapes statuses of dualism—such as deserving or undeserving migrants, credible or not credible VoTs, genuine or fake asylum-seekers—that can negatively impact the experiences of VoTs and immigrants in general.⁴² There is a stark divide between the rights afforded to undocumented immigrants and those afforded to VoTs. This is problematic, considering the difficulty of identifying VoTs and that an individual may easily be both. Citizenship is instrumental to mobility, which may be key to survival for some. This inevitably impacts the specific recruitment and transportation strategies utilized by traffickers inside and outside of domestic borders. Furthermore, citizenship grants individuals certain rights within the boundaries of a nation-state. These rights are crucial for vulnerable trafficking survivors that fear deportation, or worse, prosecution for acts they were forced to commit while trafficked.

The TVPA established nonimmigrant visa classes (U-visas and T-visas) for VoTs, which grants temporary admission and state assistance. However, applicants must first prove that they suffered substantial abuse to qualify. Moreover, most are required to cooperate with law enforcement agencies and are treated as criminals until proven otherwise.⁴³ This results in underutilization of these visa programs. Like many other U.S. visa programs, there do exist caps

on the number of U-visas and T-Visas that the DHS is authorized to issue every year—10,000 and 5,000 respectively.⁴⁴ It is worth noting that the number of U-visas and T-visas granted every year does not even come close to approaching those annual limits.⁴⁵ These limits were established to prevent too many fraudulent claims by migrants.⁴⁶ However, based on the estimated number of people trafficked into and within America at any given time, those visa caps are intensely disproportionate.

Consolidating Policy Areas

The enactment of the TVPA is a clear indicator that the federal government is not unaware of the issues discussed above. Conforming policy areas is an inherently arduous endeavor, largely because of the inconsistent way legislation in different fields develop over time. Finding a middle ground between immigration enforcement and anti-trafficking initiatives, despite the considerable overlap between them, is an even trickier undertaking because the two exist on opposite sides of a continuum,⁴⁷ with the former emphasizing security and prosecution and the latter emphasizing victim protection and trafficking prevention. Therefore, coordinating immigration and anti-trafficking legislation and practices goes beyond reforming internal and external security management; a balance must also be reached between promoting basic human rights for all persons and promoting the individual rights of citizens. An express focus on immigration (as is the case currently) and no plans to consolidate these two policy areas in the future will have severe long-term consequences for both VoTs and immigrants.

Recognizing the disproportionate risk that some individuals face is only the first step. To begin addressing this issue, Congress might first start by reforming labor visas that have allowed employers to exploit workers. Re-evaluation of current federal and state administrative branches followed by augmentation of regulatory practices would also be a critical step forward. Congress

can do this by first determining the fundamental operations related to the 3-P framework that should be performed by specific federal or state institutions. This will establish clear boundaries among agencies and minimize future ambiguity. They might also direct states to create mandatory local task forces that specialize in human trafficking cases, make anti-human trafficking training mandatory for police officers and immigration agents, and require enforcement agencies to connect with relevant non-governmental organizations that have experience interacting with survivors. Ensuring that there are clear lines of communication between each of these agencies is also crucial, so that the multiple traumas of VoTs are adequately addressed and that they are not unintentionally re-victimized during their post-trafficking experience.

Policy makers could strengthen current preventive strategies by investing in widespread information campaigns that educate the general public and law enforcement about human trafficking; these should be done in multiple languages. Lastly, legislators might frame their solutions in ways that explicitly focus on the convergence of trafficking and immigration, stressing the reality that this is an issue for all people, regardless of citizenship status. While such a recommendation may seem basic, the first step to passing legislation that addresses the consequences of two overlapping and salient policy areas is to prevent lawmakers from devolving into the heated partisan debates so often associated with any type of discussion concerning immigration.

Conclusion

Human trafficking is irrefutably tied to immigration, yet the federal government has taken limited steps in reconciling these two policy areas. Many believe that immigration differs from trafficking because freedom of choice is involved when an individual migrates to another

country. This disregards the reality that some trafficked victims enter the U.S. legally for employment, only to have their documents taken away or to be isolated and exploited from the rest of society by their traffickers.⁴⁸ Compartmentalizing these two policy areas makes it more challenging for law enforcement to prioritize the well-being of VoTs or to even understand the ways that restrictive immigration policies impact the nation's anti-trafficking agenda.

Despite the existence of national legislation and international directives that guide anti-trafficking efforts, VoTs within the U.S. remain difficult to track and identify. Part of this can be pinned on the overarching conflict between the aims of immigration and the aims of anti-trafficking. The impact of federal anti-trafficking and immigration legislation is either enhanced or limited by state ordinances. Unfortunately, this has resulted in victim-protection articles within the TVPA being marginalized. Within states with strong anti-immigrant sentiments like Arizona and Georgia, anti-trafficking legislation has been used as a way to extend state control over migration flows.⁴⁹

Anti-trafficking efforts in the U.S. are fettered by stringent immigration policies and inconsistent patterns of enforcement. The overt focus of immigration policies on prosecution, instead of victim protection as emphasized in the TVPA when it comes to dealing with non-citizens, results in an inconsistent approach to combating trafficking across America. Moreover, current practices are plagued by the notion that more enforcement equates to less trafficking. An overall emphasis on boosting federal-state immigration enforcement cooperation, identification practices for the purpose of arrest and/or deportation, recognition of fraudulent visa claims, and caps on the number of U-visas and T-visas suggests that trafficked victims are not the priority—illegal immigrants are.

If policy makers continue to craft immigration and anti-trafficking policies solely from a security perspective, then these problems will persist. Instead, it may be more conducive for agencies to work on social programs that minimize the inequities that lead to exploitation in the first place. Comprehensive services—with set standards that all fifty states must meet—that address the many physical and psychological needs of VoTs and at-risk communities are necessary. At present, the U.S. reliably scrutinizes migrants to ensure that no threats to public safety enter the country. It is important to keep people safe by fortifying U.S. borders, but it is also incumbent on agencies to improve current VoT identification strategies, administrative immigration processes, and visa oversight. Providing a pathway to citizenship for undocumented immigrants and allowing migrants that seek to enter the country the ability to do so in a timely and legal manner is critical to curbing human trafficking, but those reforms will be undermined if legislators do not ensure greater protection for foreign nationals that come to the U.S. in search of economic opportunity.

ENDNOTES

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