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Abstract

Despite the establishment of the Trafficking Victims Protection Act (TVPA) in 2000, the state and prevalence of human trafficking in the United States has greatly increased. While there exists more information and legislation, it still remains an under-researched and under-evaluated issue. This study looks through the enacted human trafficking federal legislation over the last decade to track whether migrant vulnerability to human trafficking has been further addressed with the evolution of the issue within the country. To provide a relevant analysis, this study will look through human trafficking legislation through the years of 2013-2023 and will focus on the main research question of whether or not migrant vulnerability to human trafficking has been explicitly addressed in federal legislation and, if so, how. It is predicted that due to the issue's massive increase in awareness throughout law enforcement, policy making, and society as a whole, a majority of human trafficking-focused enacted legislation will explicitly recognize and address migrant victims' protections against human trafficking within the United States.

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MIGRANT VULNERABILITY TO HUMAN TRAFFICKING: A LEGISLATIVE DECADE IN
REVIEW WITH HISTORICAL AND POLICY PROCESS ANALYSIS

By

Elizabeth Solis

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Migrant Vulnerability to Human Trafficking: A Decade In Review

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Dr. Shu Wang Mentor

ABSTRACT

Despite the establishment of the Trafficking Victims Protection Act (TVPA) in 2000, the state and prevalence of human trafficking in the United States has greatly increased. While there exists more information and legislation, it still remains an under-researched and under-evaluated issue. This study looks through the enacted human trafficking federal legislation over the last decade to track whether migrant vulnerability to human trafficking has been further addressed with the evolution of the issue within the country. To provide a relevant analysis, this study will look through human trafficking legislation through the years of 2013-2023 and will focus on the main research question of whether or not migrant vulnerability to human trafficking has been explicitly addressed in federal legislation and, if so, how. It is predicted that due to the issue's massive increase in awareness throughout law enforcement, policy making, and society as a whole, a majority of human trafficking-focused enacted legislation will explicitly recognize and address migrant victims' protections against human trafficking within the United States.

Keywords: Human Trafficking, Human Trafficking Policy, Migrant, Vulnerability, TVPA

INTRODUCTION

Human Trafficking is an epidemic that affects every part of the world and a great deal of this nation, with an estimated 27.6 million victims worldwide at any given time (U.S. Department of State, 2023). Modern slavery is occurring in every state and in all age categories, but its dependence on secrecy makes the free man often unaware that enslavement is happening right around them. This is on top of the fact that in the 24 years since the initial domestic human trafficking legislative recognition awareness of this issue's existence increased so much that it is now a buzzword in society. Yet most of the country's residents are unaware of its prominence and danger, particularly for vulnerable populations.

One vulnerable population is the migrant community. Traffickers do not pick their victims at random. They are abusers looking for certain characteristics in individuals that could make them easier to isolate, which is why migrants are particularly at risk. Such characteristics for migrants could include: English as a second language, the lack of family to check in on their whereabouts in a different territory, the lack of US legal understanding, financial disparity, and so forth. Traffickers exploit migrants in vulnerable places, typically points of entry, for these individuals and the result is a current national human trafficking border crisis. Additionally, so has the information available surrounding vulnerable populations targeted by traffickers. One of those populations is migrant or non-citizen status individuals which was brought about by the fact that one of the risk factors for trafficking is migration or relocation (Polaris, 2019).

To address this particularly vulnerable population, the T-visa was created. Established within the Trafficking Victims Protection Act (TVPA) of 2000, the T-visa provides non-immigrant asylum for up to four years for human trafficking victims. Such services for these victims are given in exchange for assistance to law enforcement to track and prosecute traffickers and trafficking

groups. With human trafficking being an industry dependent on secrecy to function, the exchange of information is a necessity, as law enforcement requires updated knowledge of trafficker's operations. The T-visa was not only the first federal legislature to recognize migrant vulnerability to human trafficking, but also the first piece of protection for these individuals.

However, over two decades have passed since the initial implementation of the TVPA. At that time, a border crisis emerged and the amount of trafficked individuals skyrocketed. So while the T-visa was a great first step for addressing the population, it is clear that further, relevant action is required. In the years following the TVPA's establishment, the scholarly discussion of human trafficking includes court corruption, concern for little to no victim program effectiveness, and uncertainty in the trafficker conviction process. There is a massive knowledge gap between what is actually effective and the policies that are being put into implementation. Therefore, with the notation that this is an ever-evolving, difficult-to-track, population-targeting, and dangerous industry, the need for a relevant and critical review of this issue is dire.

LITERATURE REVIEW

Comprehending Migrant Vulnerability To Trafficking in the U.S.

To understand why migrants are a vulnerable population one must first comprehend how and why traffickers choose certain individuals to traffic. Human trafficking is an industry dependent on secrecy and, in turn, is reliant on the victims' lack of seeking help nor realizing the inhumanity of their treatment, resulting in the victim remaining compliant with the continued mistreatment. To achieve this, traffickers require individuals whom they know they can isolate or at least would exert the least resistance. They look for certain, dependable, characteristics to exploit and manipulate into compliance in the recruitment phase. Characteristics typical in the migrant population that are attractive to traffickers can include the inability to speak or comprehend

English, the lack of economic opportunities in their home country, discrimination, political instability in their home country, and the lack of domestic legal knowledge, among others.

After identifying such characteristics, traffickers use coercive methods like fraud or false promises to lure in their victims. This works because, "[trafficking victims] may not have a grasp of whether the trafficker's promises are realistic and often do not understand their basic human rights" (Hopper, 194, 2006). From there, the exploitation continues, as the lack of overall knowledge about the United States as their new surroundings. A study conducted with different kinds of service providers in the Midwest identified different migrant vulnerabilities to human trafficking and methods of retainment used against them. The study found that traffickers will withhold victim's documents to limit their ability to leave, exploit the lack of multilingual services in their surrounding environment, exploit migrant's housing instability due to legal status or financial resources by providing it themselves, isolate the victim physically, culturally or linguistically from social supports or networks as to limit their comfort to speak candidly, and finally exploit migrant's lack of understanding of the English language and/or American culture through the inability to communicate in the dominant language with systems of the unknown culture (Chappell Deckert, 894, 2018). That study focused on the midwestern U.S., while another study saw similar exploitation on the west coast. The second study found that 30 percent of undocumented migrant laborers in the city of San Diego were victims of labor trafficking (Zhang et al., 2014). Not only was a correlation between trafficking susceptibility and migrant status found, but the author also concluded that an individual's status in the country is the most significant factor contributing to vulnerability to trafficking violations (Zhang et al., 2014). This analysis also provides an explanation as to why ports or points of entry and national borders are particularly vulnerable to trafficking. In order to maximize profits, traffickers typically export victims across

a border and this is true in the U.S., as well. In fact, the Department of State estimates that in the year 2016, 57,700 victims had been trafficked into the U.S. (Rodriguez, 2022).

It is irrefutable that migrants are a vulnerable population for human trafficking and that they are targeted in the United States. However, what is even more alarming is that this population is not just vulnerable, but makes up the most trafficked victims in the nation. Representative Dale Strong (R-AL) testified that an estimated "72% of those trafficked in the United States are immigrants" in a recent House Committee of Homeland Security investigation (RSHHC, 2023). Migrants' vulnerability to human trafficking is not just a presence or facet of the human trafficking crisis within the United States' borders but accounts for most of the victims and thus culminates in a massive prevalence.

Legislative Discourse and Exclusion Surrounding Migrant Trafficking

The Exclusionary State of Current Federal Enactments

For a vulnerability that carries a great deal of weight among the issue of human trafficking in the United States, the notion to include this population in combative legislation would logically follow; however, the opposite appears to be true. Human trafficking legislation is exclusionary towards the protection of migrants.

One example, as mentioned earlier, is the establishment of the T-visa as the first recognition of migrant's vulnerability to human trafficking. It was a monumental implementation that granted protection for victims and created a partnership between victims and law enforcement in order to gain a greater understanding and identify traffickers. While the implementation creates the ability to gain asylum, it does not recognize the necessary accommodations to make that obtainment accessible and thus creates controversy and speculation of effectiveness. Migrant child

trafficking victims are an example of this. To qualify for the T-visa as a T-1 nonimmigrant, the child must meet four different criteria, each requiring the satisfaction of application procedures and creation of the application package. "For a child sex victim who may not benefit from the stewardship of a concerned adult, compiling an application package with supporting evidentiary documentation that the child applicant meets the regulatory requirements is monumental" (Green, 2008, p. 338). Nowhere included in that law is there a guaranteed language translator, which most migrant applicants would require. In addition to the language barrier, no child is cognitively or developmentally ready to comprehend U.S. immigration law and procedures, especially for someone who grew up in a different country. Nor is any child prepared to legally represent themselves, which ends up being the case for the many who crossed the border unaccompanied. The point is that without such accommodations in the one piece of legislation meant to provide protection against human trafficking specifically for non-citizen status individuals in the United States, what results is exclusion and inaccessibility of that protection.

The Political Thought and Discourse Behind

With clear evidence of legislative exclusion (both explicitly and implicitly) of migrant vulnerability to human trafficking in the United States, what has yet to be discussed is why this is the case. Politics in the United States is both nonlinear and increasingly polarized. Certain issues spark copious amounts of hostile exchange between political figures from standpoints of ideology and partisan loyalty, amongst other reasons. Ultimately, the result is congressional gridlock and either incremental legislation, or no legislation at all. The fact of the matter is that when the word "migrant" enters into that kind of political conversation, it is immediately marked as an immigration issue and immigration is one of those gridlocking policy subject matters. Hence the reputation of legislators to take a "suspicious" and "unsympathetic" approach to migrants (Doonan,

2016). The result of such "volatile politics of immigration in the United States" is U.S. trafficking policy that "systematically ignores significant exploitation of labor migrants" (Brennan, 2014). More explicitly stated, "... to be concerned with trafficked people means to be concerned with migrants" and yet the final result of federal human trafficking protection, prevention, and prosecution enactments appear to exclude migrants (Doonan, 2016, p. 284). To summarize, "Not all migration is undertaken by choice," as one scholar writes and continues to conclude with the notion that the United States, "never developed an immigration strategy that effectively grapples with the global forces that drive migration" (Chacon, 2019). There clearly exists little debate on the idea that the United States struggles to create humanitarian immigration policy, in fact it's known to be one of the most gridlocking congressional subject matters. The result of so much gridlock is the current, little, enacted legislation in addition to the characterizing comments from scholars as mentioned and it's quite disappointing.

Resultant Human Trafficking Policy Implementations

Setting aside the lack of migrant human trafficking legislation issues and lack of enactments, the issue of human trafficking as a whole is a congressional anomaly. This is due to the fact that there has been a large quantity of legislation passages regarding the issue. Unfortunately, the political tension that arises within immigration policy discourse is not the only legislative issue human trafficking enactments face in the United States. There is a focus on migrant's vulnerability to human trafficking in this article but it is also important to note how U.S. human trafficking policies have served as a whole in their implementations to measure legislative effectiveness. Such an inquiry finds that the human trafficking legislation is ambiguous, which causes a great deal of uncertainty and ineffectiveness in its implementations, leading to speculations of corrupt systems.

Federal Human Trafficking Courts and Programs

The courts are a prime example of ambiguous federal human trafficking legislation causing obscurity. One study focusing on the implementation of the TVPA in courts found that prosecutors were actually less likely to file other, lower criminal charges, such as pimping or promotion of prostitution when cases contained more indicators of human trafficking (Farrell et al., 2016, pg. 10). They found that evidence of human trafficking actually disrupts the "established calculations of the likelihood of conviction" that prosecutors utilize when deciding whether to prosecute a case and concluded that prosecutors are reluctant to utilize the new human trafficking laws (Farrell et al., 2016, pg 10). This sense of uncertainty amongst prosecutors is so prevalent that its swaying decisions have a serious impact on people's lives.

Additionally, that level of uncertainty and reluctance is not just present in prosecutors, but also in federal judges. A recent study analyzed all federal human trafficking court cases over a period of time and found an overwhelming majority to be cases involving minors. While that appears as a positive sign, it is actually due to the fact that within the TVPA, minors engaged in the sex industry are presumed to be trafficking victims meaning less evidence is required to prosecute in cases with minors and sex. So when the study concluded that it "would seem to provide evidence that the federal authorities are grabbing the low hanging fruit," low hanging fruit is the critic's claim that the federal court may be focused on "simpler" prosecutions in hopes of keeping a high conviction rate (Chapman, 2015, p. 42). This could skew the results so that the typical victim profile may not actually be true. On the contrary, this profile may be a reflection of what the federal court cases choose to pursue with the ulterior motives of maintaining a positive public "face" on the matter. Now take these covert intentions back to the focus on the migrant population. The cases that are not seen ultimately result in the denial or ignorance of T-visa cases

and asylum for its applicants in the United States, which is a matter of freedom or slavery and even life or death for many. It begs the question of how many applicant cases are denied due to this kind of bias.

Another area of the human trafficking court system that supports the notion of ineffective implementation are the programs designed to help survivors. Often in human trafficking situations, the victim will end up committing crimes, which can result in sentencing. Of course, more often than not the crimes are due to the trafficker's coercion in some way, thus the need to create special court programs to address such issues and help those survivors leave (in this case, "anti-trafficking" court programs). However, a recent study examining these anti-trafficking effectiveness found that their presence had very minimal impact in reality (Cook et al., 2021, p. 8). One thought behind this continuation of court behavior and appointed program results is that "few evaluations of trafficking courts have been conducted...the evaluations undertaken to date focus very little on the outcomes of these initiatives, which makes it difficult to ascertain whether these programs are effective at identifying and addressing the unique needs of trafficking victim-defendants" (Kulig et al., 2019, p. 16). What is happening in the federal human trafficking courts is truly the results and effectiveness of what is being passed at the legislative level and right now the outcomes are bleak.

A Call to Action For Federal Legislation Review

With federal implementation confusion and lack of clarity, legislative exclusion, and migrant vulnerability, the need for a Congressional enactment analysis is necessary now more than ever. Currently, vulnerable populations are being legislatively excluded and denied accessibility and court systems are struggling to the point of needing to take as many "easier" cases to keep high conviction rates. If anything has become clear, it is that migrants are extremely vulnerable to

human trafficking, are excluded legislatively, and are deeply affected by the court's ability to confidently see cases.

PURPOSE OF STUDY/RESEARCH QUESTIONS

Of the nine total key trafficking policies highlighted by the Department of Justice, five were authorized either during or after 2013 (United States Department of Justice, 2023). This means that within the last decade alone, over half of the key trafficking policies were implemented; therefore a substantial amount of human trafficking legislative evolution within the the United States has happened in a short span of time. With a great deal of recognition and policy implementation, there also exists a need for review.

More specifically, we need to review the migrant human trafficking victim population protections. This is a population both vulnerable to being trafficked for factors such as language barriers, age, and isolation, amongst others, but also often full of individuals from places where law enforcement has failed to provide adequate protections. So while under the initial Trafficking Victims Protection Act of 2000 the establishment of the T-visa recognized migrant vulnerability to being trafficked addressed this issue, much more human trafficking legislation has since passed and the need for review of inclusivity is great.

This study provides a descriptive analysis to bridge this knowledge gap so that policymakers can make much more informed decisions by providing an overview. This study aims to answer the questions of how migrant vulnerability to human trafficking has evolved over the last 10 years to provide relevant information on the fluctuations of this population's needs in addition to current policy or legal implementation failures to meet those needs.

METHODOLOGY

The current study conducts a qualitative analysis examining each piece of enacted legislation using the keyword “human trafficking” to see which policy addresses, recognizes, and combats migrant vulnerability to human trafficking within the United States in the years 2013-2023. This study also examines the implementations meant to combat human trafficking and language used to address the population. In this case, the keyword “human trafficking” is used to search the database and is the independent variable of the study. From there, the dependent variable is whether or not the body of the enactments have the ability to meet the sought-out criteria. It will be determined whether the legislation qualifies as addressing the target population depending on whether the answer to any of the following questions is “yes”:

1. Does this legislation explicitly recognize non-citizen victims as a vulnerable population to human trafficking implement protections for this population?
2. Does the legislation explicitly establish resources for areas of population vulnerability including ports of entry, points of entry, and border entry?
3. Does the legislation establish accountability towards traffickers of non-citizen human trafficking victims?
4. Does the legislation provide resources, or services explicitly to non-citizen human trafficking victims?
5. Does the legislation establish any government groups to focus on combating human trafficking related to non-citizen human trafficking victims?

Population of Study

The target population of the study is migrant individuals. Such persons can be classified as non-citizen status individuals residing in the country’s borders or smuggled across the border.

Congressionally, these individuals are also often referred to as “aliens”. The study looks to see how their vulnerability to human trafficking is legislatively recognized through the expansion of rights but also through established system expansion.

Procedures

The study looks through the enacted Congressional legislation from the years 2013-2023. This includes legislation from the 113th, 114th, 115th, 116th, 117th, and 118th (only 2023) Congresses under the keyword, “Human Trafficking” with the filtration including only pieces which “became law”. From the legislation that appears there, a scan occurs through each piece to determine if its purpose is to combat migrant vulnerability to human trafficking within the states. From the pieces that meet that criterion, a descriptive analysis is done of each piece, analyzing and documenting the language used to address the population and the implementations created to further address their vulnerability.

RESULTS

From inputting the keyword “human trafficking” and filtration of only enacted legislation, 134 pieces appeared within the years 2013-2023 from the federal Congressional database. However, upon further investigation, 50 pieces were read through for content as many of the 134 only had the keyword within its contents as a mention rather than focus or had parts of the keyword (ex: “human” instead of “human trafficking”). Analyzing each of the 50 pieces, it was determined that only 14 pieces met the criteria.

It was found that such legislation recognized this vulnerable population under multiple terms including: alien, smuggled, trafficked persons across the border, and unaccompanied alien. Additionally, the Congressional recognition of human trafficking to this population also came in

a variety of implementations including: established immigration services for victims, human trafficking investigation funds at the southern border, employee protection against the confiscation of immigration documents, employee protection against labor trafficking by the requirement to provide employee contracts in comprehensible language to the individual, postage requirement of the national human trafficking hotline at ports of entry, establishment of the Center for Countering Human Trafficking within the Department of Homeland Security, and required updates and reviews to the U.S. Customs and Border Protection inspection processes for trafficking. Additionally, it was found that of the highlighted 14 pieces of legislation, only two were a part of the five pieces deemed “key” by the Department of Justice established within the last decade.

A limitation of the study is the use of the select keyword “human trafficking” when searching Congressional databases for legislation. As learned throughout the study, federally, this population is referred to under multiple terms and only having one keyword could have unintentionally excluded legislation that could have met the criteria or been analyzed at the least. An example is the term “smuggled” or “smuggling”. It refers to a method of trafficking used across the border, as learned in the study, but does not contain the word or letters belonging to the keyword.

Policy Process Analysis

Introduction

The results of the study indicated an overall lack of legislative recognition for migrant's vulnerability to human trafficking. What the study did not provide, however, was a comprehensive outline of processes, influences, and other factors which contribute to the enactment of such legislation. To begin to understand how greatly influenced this process is, it is important to understand how it is supposed to work.

The policy process, in its most simple, linear form follows four steps: agenda, decision-making, implementation and evaluation. The agenda stage is focused on the questions of who and how a policy issue's agenda is set and where public, partisan, presidential, and interest groups' (key players setters but not all) priorities and efforts are some of those driving forces. Sometimes a focusing event such as a natural disaster or declaration of war can also initiate movement in the agenda stage. In the linear decision-making process the legislative branch debate and mark up bills and then pass it along. After enactment, the bureaucracy implements the legislation. Finally, the courts and public serve to evaluate and ultimately decide if the process begins again. There also exist five factors which guardrail and structure each role of the linear policy process which are the separation of powers, federalism, pluralism, rule of law, checks and balances. Of course, this simplistic concept is quite far from what the modern policy process in the United States. Heavy polarization, hyper-partisanship, congressional gridlock, and mass-media influence are just some of today's policy-making characteristics which make this anything but linear.

Migrant vulnerability to human trafficking is no exception to the non-linear process and in fact, is only evidence of it. With some of the biggest hotspots for human trafficking occurring at points of entry, a motivator in the creation of the TVPA, the issue of human trafficking also quickly became an issue of immigration. However, it's also become a homeland security, defense, law enforcement, justice, state, public health, labor, etc. issue. This ultimately imposes a myriad of challenges to the United States through its complexity and involvement of so many players in the governmental system. Hence, in the 24 years since its first legislative passage, human trafficking's become an anomalous area of legislation in Congress in which there exists a pattern of passage and as cited earlier, Of the nine key pieces of human trafficking legislation highlighted by the

Department of Justice, five were passed in the last decade alone which does not include every piece of human trafficking legislation in that time frame (United States Department of Justice).

This is all to say that with the large quantity of passage of human trafficking legislation, it is not a policy issue being ignored. However, no candidate nor political figure exists with a “pro-human trafficking” ideology; this presents our systematic structure of government a deeply complex issue that involves so many of its players as it leads to every agency wanting to get their hands on the issue. So many hands, unfortunately, can also lead to a lack of congressional policy depth. In terms of the five factors, the separation of powers is one of those five in which one can see this complexity as Human trafficking has fallen under all three branches and none of them seem to know where the line is in their human trafficking jurisdiction. For example, in the bureaucracy alone, the Department of State is responsible for publishing the annual “Trafficking in Persons” report, the Department of Justice funds every federal human-trafficking special initiative and program including the one centered on the U.S. border (U.S.-Mexico Bilateral Human Trafficking Enforcement Initiative), and the Department of Public Health which recently implemented human trafficking hotline numbers in points of entry, all take on an aspect of this issue and yet, do not appear to discuss nor coordinate or discuss implementation with one another. Additionally, the separation of powers gets blurred especially between the judicial and legislative branches with the judicial branch creating common law on the issue (there’s yet to be a binding Supreme Court ruling) and the legislative branch’s code law. Federalism also plays a huge factor in this issue’s complexity with the individual power of the state to create its human trafficking legislation. Is this national/security/immigration issue one that should be subjective to the power of the states as per Article 10 of the Constitution? Where is that line drawn between state and national government responsibility? Where is the line drawn between the branches of government

and the separation of powers? Overall, migrant vulnerability takes the non-linear nature of the modern policy process, characterized by overlap, to a whole other level and poses the question: are there too many players with too little coordination for any deep federal change to occur?

Agenda

The Human Trafficking Snowball

Often there can be a focusing event which entices congressional action and while I don't believe there to be a singular focusing effect for this issue, the snowball of the human trafficking border crisis is the result which brought a mass amount of attention to the issue and population vulnerability. This coupled with mass media portrayal and prevalence, carries the brunt of congressional action and recognition toward migrant vulnerability to human trafficking.

However, it did take a while for additional prevention acts to address the vulnerability overall and where it was/is most occurring regardless of its prevalence since the TVPA passage. The recent enactment of the Human Trafficking Prevention Act of 2022 is one example. This law required the posting of contact information of the national human trafficking hotline in specific places visible in all federal buildings and the restrooms of each U.S. aircraft, airport, over-the-road bus, bus station, passenger train, and passenger railroad station, and at each port of entry (Public Law No: 108-193). In its strengths, this law targeted where human trafficking is most occurring and provided life-saving pieces of information in places where the victim may actually be able to not just absorb but potentially act on it (private areas such as restrooms, etc. where they may not be with their trafficker). The legislation sends a message to traffickers that their hotspots or typical means of methods are no longer a secret on top of trying to give victims the autonomy to seek action. Yet, there are also a number of weaknesses with this law. The first is the assumption that

the trafficked individuals will have the ability to speak English, especially with the targeted population of migrant victims. There is no accessibility clause to account for the other languages these individuals first tongues which excludes many of its projected demographic since they're posted in aircrafts and ports of entry. Additionally it is assumed that the victim has access to a phone or other means where the information could be of tangible use. These are examples that align with the theme of the lack of legislative depth or implementation effectiveness of human trafficking legislation. They also point back to the results of the initial study which concluded that much of human trafficking legislation proved both implicitly and explicitly exclusive towards the migrant population.

Interest Groups as Agenda Setters

On that note, it often falls on interest groups to initiate much of the human trafficking legislation that is seen congressionally. The interest group, in this case, most key in making the Human Trafficking Prevention Act of 2022 a law is the Polaris Project. They are a nonprofit, established in 2007, to combat sex and labor trafficking in North America. Most notably, the Polaris Project is responsible for the creation and operation of the human trafficking hotline in partnership with the U.S. Department of Health and Human Services. Their current lobbying and agenda focus on criminal records relief as 90% of survivors with a criminal record reported at least some or all was related to their trafficking experience and yet they typically are not expunged (*Criminal Records Relief - Polaris, 2022*). But the Polaris Project, while prominent, is not the only key interest group, the Freedom Network USA is another whose lobbying focuses on different aspects of trafficking in the US as compared to the Polaris Project. One of those focuses includes expanding and improving access to services for survivors which includes "advocating for funding increases for federal victim services programs, providing recommendations to the Departments of

Justice and Health and Human Services to improve their grant programs, and promoting policies that support survivors of all types of trafficking, ages, genders, and immigration statuses"(Polaris Project). As seen in between these two organizations, human trafficking legislation implementation is not characterized by “pro” and “anti” ideologies but rather in the priority and attention given to the legislation passage process. Some groups believe the most crucial policy implementations to the issue’s state are around victim record expungement versus increasing the T Visa cap limit.

The Presidential Agenda

This brings up another institutional player, as previously mentioned, which is the president. This individual can more so, play a “window dresser” role, signing bills into legislation to milk popularity points on an issue everyone feels needs addressing (Biden with the Human Trafficking Prevention Act of 2022, Bush with the TVPA, etc.) but is not on their original agenda nor a item advertised in their presidential campaign. In other words, they do not need convincing to enact such legislation. Part of this is due to much of the framing towards human trafficking legislation in the United States. One study examined the framing of human trafficking policy initiatives throughout time in the US and found that such framing has in large part corresponded with changes in official responses from the government (Farrell A., 2009, pg 623). If US trafficking policy is framed as a deep humanitarian, human rights issue, signing any piece of legislation can in turn give a president a humanistic, light shed upon them.

This is not to say that a president’s ideology and agenda setting does not affect the human trafficking legislative policy process. As discussed, human trafficking is often viewed as an immigration issue in which the Democratic and Republican parties notoriously disagree upon. Former republican president Donald Trump ran on a "build the wall" campaign which promoted

tightening down national security as much as possible and in turn humanitarian aid towards migrant human trafficking survivors is not as promoted nor prioritized. The main human trafficking legislation signed into action by the Trump administration was an Executive Order on Combating Human Trafficking and Online Child Exploitation in the United States which served to recognize the 20th anniversary of the Trafficking Victims Protection Act of 2000 and re-enforce current implementations. In contrast, the Biden Administration, a Democratic party base, signed the Human Trafficking Prevention Act of 2022 which "requires the posting of contact information of the national human trafficking hotline in specific places" which includes all federal buildings, the restrooms of each U.S. aircraft, airport, over-the-board bus, bus station, passenger train, and passenger railroad station, and at each port of entry of the country. Tangibly already this act is creating greater awareness in the public and in the hotspot areas of trafficking recognizing the migrant vulnerability to the issue. So two very different responses and viewpoints overall.

Another example of this comes from the presidential administration level. A study from Syracuse University tracked the number of child sex trafficking prosecutions in federal court across different presidencies. The study showcased a low average number of 50 cases in the Bush administration, a republican party lead, a massive spike in average among the Obama administration (average of over 200 cases) a democratic party lead, and a stark decline (average back to 175) of cases during the Trump administration, with the return of a republican party lead (*Child Sex Trafficking Prosecutions Fall During Trump Administration*, 2020). No party nor president has ever been "pro" human trafficking, but there are certainly several reasons why the issue does not get as much attention with different parties in the presidential office. Five of the nine key pieces of human trafficking, as recognized by the Department of Justice, were published in the Obama (democratic party) administration. No party nor president has ever been "pro" human

trafficking, but there are certainly several reasons why the issue does not get as much attention with different parties in the presidential office.

Decision-Making

Congressional Incrementalism and Politics

Since the passage of the TVPA in 2000, 2,969 human trafficking-related bills have been introduced in congress who serve as the decision makers in the linear policy process. There are plenty of policy implementations and methods, as with any policy issue, to consider and the topic of human trafficking is no different. Yet, as found in the study, there exist few legislative enactments which explicitly address or recognize migrant's vulnerability to human trafficking and even fewer whose purpose is to singularly focus on this population who account for well over the majority of victims in the country. One answer for this result is incrementalism. Of the nine key pieces of legislation highlighted by the Department of Justice, six are reauthorization acts (Department of Justice). The Trafficking Victims Protection Act alone has been reauthorized five different times to slightly clarify implementation processes or grant greater rights. For example, the Trafficking Victims Reauthorization Act of 2003 provided victims the civil right to sue their traffickers.

Decision-Making Dynamics As Seen in Enacted Legislation

So if a human trafficking bill is not a reauthorization of a previous enactment, is the process more or less complicated? To answer, let's put the focus back on the Countering Human Trafficking Act of 2021. Specifically, the requirement for the CCHT to develop a strategy to improve systems throughout the Department of Homeland Security (DHS) related to combating

human trafficking and allow DHS to transfer any responsibilities related to combating human trafficking over to the CCHT. The bill was introduced on October 18th, 2021 in the Senate and referred to the Committee on Homeland Security and Governmental Affairs. In comparison to the traditional congressional timeline, this bill passed through fairly quickly. Skipping through, the bill was put on the Senate Legislative Calendar under General Orders, which just over a month later, it was laid before the Senate by unanimous consent, in which the bill's title was amended, read once for a third time, and finally passed. Only two days passed from the time it was first read to its final passage in the Senate. Immediately the bill was sent over to the House where it was held at the desk from April to December until Mr. Nadler moved to suspend the rules and pass the bill where the House then debated the bill for a mere forty minutes before official passage. Once passed on to the president, once again made public law in December of 2022.

There are a few interesting characteristics about this bill that I think affected its passage process. First, the cosponsor makeup. The original sponsor, Senator Rob Portman, was from the republican party, and then the following two cosponsors from the democratic party. I think a bi-partisan supported bill allowed for easier flow through the House and Senate. This is especially interesting because, on issues involving any Homeland Security issue, bi-partisan support is often rare. However, human trafficking, again, is not a subject any ideology takes a "pro" stance on. When the bill was referred to in the house (H.R. 6736) it did have a bit more attention from three different committees and then multiple sub-committees (judiciary, ways and means, and oversight and accountability) which I think is the reason it took longer for it to get through. In the House, the bill also had way more cosponsors, 19 to be exact, and was pretty split between parties, states, and areas of the countries.

I also wanted to highlight a bill that has yet to be passed with the migrant victim population in mind. The Protecting Federal Funds From Human Trafficking and Smuggling Act of 2023 (H.R.3638). This bill, if passed, requires the Director of the Office of Management and Budget to require the disclosure of violations of Federal law concerning human trafficking or alien smuggling. Essentially, this bill withholds any Federal funds awarded to a nonprofit unless they demonstrate certification to the Director of the Office of Management and Budget that they are in compliance with federal law in regard to human trafficking, alien smuggling, fraud, bribery, or gratuity. Additionally, any nonprofits previously receiving any federal funds, once enacted, would require the same demonstration of certification, or else they are required to pay the award back. This bill was introduced in the House of Representatives on May 24th, 2023, and referred to the House Committee on the Judiciary, the House Committee on Oversight and Accountability, and the House Committee of Ways and Means. Its multiple committee referral is not too shocking as this bill regards justice matters with both populations of human trafficking victims and aliens, accountability standards for the federal government, and means regarding tax documentation issues. One part of this bill I found particularly surrounded the cosponsors. All 23 named cosponsors are a part of the Republican party and are also from all areas of the country with its makeup including six cosponsors from Texas, three from Arizona, two from Alabama, two from Tennessee, and scattered single representatives from all over including states of New York, Illinois, South Carolina, etc. One thought behind a party-dominant cosponsor population is that the sponsor of the bill is Rep. Lance Gooden from Texas is also Republican. Another thought about this sponsor and cosponsor makeup is that most of them come from the state of Texas which is in the top three states for highest rates of human trafficking and certainly one of the states, if the state, most pressed with the human trafficking border crisis. So why hasn't this bill passed? It has a

unique and great deal of cosponsors, and party support, and yet, no action has been reported beyond its introduction and referral now nearly a year ago. One potential explanation is due to the upcoming election. This is a bill focused on both accountability and border control and if it were passed and signed by Biden it could give him a leg up with moderate conservatives in the upcoming election. My thought is that this republican party bill could be waiting to pass until a potential party change occurs in the executive office in order to strengthen that agenda. This thought would also make sense as such behavior aligns with the recent trend of Republicans killing a border bill in the Senate due to Trump's advisement in action earlier this February. Former president Donald Trump advised such action to create strength for his campaign and even Senate Minority Leader Mitch McConnell followed suit when he previously supported this bill's passage.

Overall, the answer is that human trafficking bills are facing a great deal of politics in their decision-making. And needless to say that much of the key legislation is simply the reauthorization of previous enactments with slightly wider scopes of protection for groups of victims and processes.

Implementation and Evaluation

Bureaucracy's Complex Role In Implementation

A great deal of human trafficking legislative responsibility falls on the bureaucracy who's main role in the policy process is to serve as the implementers of human trafficking legislation.

To name a few The Department of State is responsible for publishing the annual Trafficking In Persons Report which highlights different aspects of trafficking the country needs to recognize when it comes to implementing and creating legislation but it is also the United States' main tool for engaging foreign governments on upholding the standards of the TVPA. The Department of

Justice, as exemplified earlier, funds and leads the special task forces dedicated to the prevention and combating of Human trafficking but also informing citizens of the key legislation available for protection. The Department of Homeland Security is responsible for implementing legislation regarding human trafficking, especially on the borders and entry points. This is all to say that there is not a lot of legislation being passed on the issue because there are a lot of players involved in this conversation and there aren't many of those conversations happening at the same table.

The implementation portion of human trafficking legislation, especially migrant-related, is where the overlap goes a bit overkill. Of the fifteen departments in the cabinet, ten are consistently involved in much of the enacted legislation. Most notably though, if a head or majority of implementation responsibility were to fall on a singular entity it would be the Department of Justice.

The hint of the heavy involvement of the Department of Justice also alludes to the judicial branch's involvement in human trafficking policy. In class, we discussed how in a simple, linear process the role of the courts is to be evaluators, in partnership with the people, and I believe that to be true in this kind of legislation. However the mass amount of overlap and incoordination in all areas of the policy process has led to an additional level of uncertainty in the court's ability to prosecute and evaluate the issue.

As stated earlier, human trafficking is an issue in the US that lacks a great deal of clarity in its processes, especially within its court processes. In order to begin discussing these legal issues, within the United States, I feel it is important to outline what legislation has been established for human trafficking victims in the court system. The Trafficking Victims Protection Act, commonly referred to as the TVPA, was established in 2000 as the first federal law regarding human trafficking in the United States. It aimed to protect, prosecute, and prevent domestic human

trafficking. However, the courts have struggled with human trafficking rulings and overall lack of common law.

"The Prosecution of State Level Human Trafficking Cases in the United States"(2016 May) is an article aiming to provide an empirical examination of the factors that influence the prosecution of human trafficking crimes on a local level to in turn evaluate the effectiveness of state human trafficking laws as a response to the implementation of the TVPA in courts. The results of their study, however, showed that "prosecutors were less likely to file other, lower criminal charges such as pimping or promotion of prostitution when cases contained more indicators of human trafficking"(Farrell, pg. 10). So what is the cause behind such results? "evidence of human trafficking actually disrupts the established calculations of the likelihood of conviction that prosecutors utilize when deciding whether to prosecute a case. These findings support the notion that when faced with uncertainty prosecutors are reluctant to utilize new human trafficking laws"(Farrell, pg 10). All this means that not only does uncertainty exist within the United States Human Trafficking Court system but its prevalence is swaying decisions and ultimately the future of people's lives. Farrell's article took the route of examining state-level human trafficking cases as a response to proving a harmful lack of clarity within the implementation of the TVPA. But, a root of uncertainty also lies in federal court human trafficking hearings. "An Analysis of Human Trafficking Victims in Federal Court Cases" (2015) serves to analyze the issue of human trafficking within the US federal court system by reviewing and notating trends of federal human trafficking cases throughout time. They utilized the HTLP from the University of Michigan's Law School, a collection of all known federal and state court human trafficking cases. Though only the 354 federal court cases were included. After doing a full analysis of these cases, they found that most convictions, over a majority of cases, involved minors. In their discussion it was claimed that

the results, "would seem to provide evidence that the federal authorities are grabbing at low hanging fruit"(Chapman, B. pg .42). Under TVPA, which minor sex trafficking victims are protected, minors engaged in the sex industry are presumed to be trafficking victims meaning less evidence is required to prosecute in cases with minors and sex. So what is meant by "low hanging fruit" is the critic's claim that the federal court may be focused on "simpler" prosecutions in hopes of keeping a high conviction rate. This could infer the typical victim profile may not be true but only a reflection of what the federal court cases choose to pursue. And all based on the uncertainty in these systems and laws on how to handle such cases. If so many cases are being avoided, how much more can traffickers get away with?

Conclusion: Complexity and Constitution

Constitutionally human trafficking illegality is rooted in the thirteenth amendments' prohibition against slavery and servitude. It's prominence, especially in the United States

Legislation such as the TVPA's establishment of the T-Visa and the The Countering Human Trafficking Act of 2021 were great contributors to addressing migrant's vulnerability to human trafficking, however, these are some of the only laws to exist that address the immigration issues regarding human trafficking despite the voluminous amount of congressional enactments and especially introductions as mentioned previously.

One of the many complexities surrounding human trafficking is the fact that it remains an under-researched and under-evaluated issue in the United States. I believe this fact is a major contributor to the slow pace as it took 21 years, or 17 years since the national human trafficking hotline establishment, for a piece of legislation to be enacted that recognizes and attempts to combat the existing point of entry human trafficking vulnerability. Such legislation seems like it should be a fairly obvious first step in countering the issue and yet it's taken so long which leads

me to the next point of the law's depth. Throughout this class, a great deal of discussion was allocated not just toward the pace at which Congress moves in policy creation but also toward the lack of aggressive or progressive content. The Countering Human Trafficking Act of 2021 is a prime example of congressional incrementalism. Of course, with any point of immigration content, there are going to be strong opinions from all ideologies, but with a bill shallow in its amount of content, there isn't room for debate. This is also true for the passivity of the congressional attempt to combat the issue. Who is going to argue against awareness and implementing resources in needed places on a topic nobody is "pro" for? The only debate that could potentially arise from enacting this law would be if there was a strong alternative toward the allocation of the national budget used to implement this. But even on that note, this is not a costly implementation in the slightest.

So bringing this to a close, with the clear lack of judicial procedure, an overwhelming multitude of bureaucratic department involvement, and partisan gridlock on immigration issues (just to name a few contentions which factor into migrant human trafficking victim legislation) it is clear that the policy process is far from linear. Not only is it not linear but deeply incremental with a majority of the key legislations being reauthorizations of previous enactments. Therefore, it is hard to say when a piece of progressive legislation for the protections of the migrants against human trafficking will happen, if it ever will. However, I do have hope that there could soon be a piece of re-authorization legislation that expands the T-Visa's capabilities or honestly a supreme court ruling that provides some common law on the issue.

CONCLUSION & SUGGESTIONS FOR FUTURE RESEARCH

Migrant vulnerability to human trafficking has been addressed federally throughout the last decade, however at rates lower than expected and, thus requiring more attention. The hypothesis

that at least half of the human trafficking-centered legislation would recognize and address the population was disproven, which is surprising given the prevalence of the vulnerability within the borders of the United States. What the study also concludes is that migrant victims' rights are implicitly excluded from a majority of the "key legislation" created in the last decade, as cited by the Department of Justice, and from more than a majority of the legislation that appears under the keyword of "human trafficking" in the same time frame.

There exist a few desired directions for future study. One is to conduct a study in which the same time and congressional database parameters are used but instead to focus on tackling the discussed limitation of entering in the keyword "smuggled" instead in order to determine if there were, in fact, any pieces of legislation that did not originally appear, but still meet the same criteria. Another direction is to conduct the same study from the years 2001-2013, to analyze if and how the population was initially addressed and analyze how the needs for recognition and implementation found between the two studies differed. The last desired direction for future study is to examine the legislative process of such legislation in order to assess the difficulty in their enactment. The goal would be to assess what political barriers existed, if addressing this victim population took a longer amount of time as compared to other human trafficking legislation, and if or how much the president in power affected the timeline or streamlining of these enactments.

The objective of the study was to find out whether or not migrants' vulnerability to human trafficking is being explicitly included or implicitly excluded from legislation. The importance of such a study sheds light on the fact that without such recognition, their protections are limited. These individuals are not typically citizens with implied rights and thus there can exist an additional vulnerability to abuse in the prosecution of a crime committed against them. The explicit recognition is then not only a necessity but one that needs to be continued with each enactment

meant to create protections for victims and this study was able to show that they aren't in many ways.

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